

By: Eiland

H.B. No. 2762

A BILL TO BE ENTITLED

AN ACT

relating to adoption of requirements regarding the replacement of existing life insurance policies and certain annuities; imposing penalties.

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

SECTION 1. Subtitle A, Title 7, Insurance Code, is amended by adding Chapter 1114 to read as follows:

CHAPTER 1114. REPLACEMENT OF CERTAIN LIFE INSURANCE POLICIES AND ANNUITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1114.001. PURPOSE. The purpose of this chapter is to:

(1) regulate the activities of insurers and agents with respect to the replacement of existing life insurance and annuities;

(2) protect the interests of purchasers of life insurance or annuities by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions;

(3) ensure that purchasers receive information with which a decision in the purchaser's best interest may be made;

(4) reduce the opportunity for misrepresentation and incomplete disclosure; and

(5) establish penalties for failure to comply with the requirements adopted under this chapter.

Sec. 1114.002. GENERAL DEFINITIONS. In this chapter:

1 (1) "Agent" means an individual who holds a license
2 under Chapter 4054 and who sells, solicits, or negotiates life
3 insurance or annuities in this state.

4 (2) "Direct-response solicitation" means a
5 solicitation made:

6 (A) by a sponsoring or endorsing entity or
7 individually; and

8 (B) solely through mails, telephone, the
9 Internet, or other mass communication media.

10 (3) "Existing insurer" means the insurer, the policy
11 or contract of which is or will be changed or affected by a
12 replacement.

13 (4) "Existing policy or contract" means an individual
14 life insurance policy or annuity contract that is in force,
15 including a policy under a binding or conditional receipt or a
16 policy or contract that is within an unconditional refund period.

17 (5) "Financed purchase" means the purchase of a new
18 policy that involves the actual or intended use of funds to pay all
19 or part of any premium due on the new policy obtained by:

20 (A) the withdrawal or surrender of an existing
21 policy; or

22 (B) borrowing from values of an existing policy.

23 (6) "Illustration" means a presentation or depiction
24 that includes nonguaranteed elements of a life insurance policy
25 over a period of years.

26 (7) "Registered contract" means a variable annuity
27 contract or variable life insurance policy subject to the

1 prospectus delivery requirements of the Securities Act of 1933 (15
2 U.S.C. Section 77a et seq.).

3 (8) "Replacement" means a transaction under which a
4 new policy or contract is to be purchased, and for which it is known
5 or should be known to the proposing agent or proposing insurer that,
6 by reason of the transaction, an existing policy or contract has
7 been or is to be:

8 (A) lapsed, forfeited, surrendered or partially
9 surrendered, assigned to a replacing insurer, or otherwise
10 terminated;

11 (B) converted to reduced paid-up insurance,
12 continued as extended term insurance, or otherwise reduced in value
13 by the use of nonforfeiture benefits or other policy values;

14 (C) amended so as to effect a reduction in
15 benefits or in the term for which coverage would otherwise remain in
16 force or for which benefits would be paid;

17 (D) reissued with any reduction in cash value; or

18 (E) used in a financed purchase.

19 (9) "Replacing insurer" means the insurer that issues
20 or proposes to issue a new policy or contract that:

21 (A) replaces an existing policy or contract; or

22 (B) is a financed purchase.

23 (10) "Sales material" means a sales illustration and
24 any other written, printed, or electronically presented
25 information:

26 (A) created or completed or provided by the
27 insurer or agent; and

1 (B) used in the presentation to the policy or
2 contract owner relating to the policy or contract purchased.

3 Sec. 1114.003. DEFINITION OF POLICY SUMMARY. (a) For
4 purposes of this chapter, "policy summary" has the meaning assigned
5 by this section.

6 (b) For a policy or contract other than a universal life
7 insurance policy, "policy summary" means a written statement
8 regarding the policy or contract that at minimum contains, to the
9 extent applicable, the following information:

- 10 (1) the current death benefit;
- 11 (2) the annual contract premium;
- 12 (3) the current cash surrender value;
- 13 (4) the current dividend;
- 14 (5) the application of the current dividend; and
- 15 (6) the amount of any outstanding loan.

16 (c) For a universal life insurance policy, "policy summary"
17 means a written statement that contains, at minimum, the following
18 information:

- 19 (1) the beginning and ending date of the current
20 reporting period;
- 21 (2) the policy value at the end of the previous
22 reporting period and at the end of the current reporting period;
- 23 (3) the total amounts that have been credited or
24 debited to the policy value during the current reporting period,
25 identifying each by type, including interest, mortality, expense,
26 and riders;
- 27 (4) the current death benefit at the end of the current

1 reporting period on each life covered by the policy;

2 (5) the net cash surrender value of the policy as of
3 the end of the current reporting period; and

4 (6) the amount of any outstanding loans as of the end
5 of the current reporting period.

6 Sec. 1114.004. APPLICABILITY; EXEMPTIONS. (a) Except as
7 otherwise specifically provided by this chapter, this chapter does
8 not apply to transactions involving:

9 (1) credit life insurance;

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

12 (3) group life insurance and annuities used to fund
13 prepaid funeral benefits contracts, as defined by Chapter 154,
14 Finance Code;

15 (4) an application to:

16 (A) exercise a contractual change or a conversion
17 privilege made to the insurer that issued the existing policy or
18 contract;

19 (B) replace an existing policy or contract by the
20 insurer that issued the existing policy or contract under a program
21 filed with and approved by the commissioner; or

22 (C) exercise a term conversion privilege among
23 corporate affiliates;

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

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

27 (A) an employee pension benefit plan or employee

1 welfare benefit plan that is covered by the Employee Retirement
2 Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

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

6 (C) a government or church plan, as defined by
7 Section 414, Internal Revenue Code of 1986, a government or church
8 welfare benefit plan, or a deferred compensation plan of a state or
9 local government or tax exempt organization described under Section
10 457, Internal Revenue Code of 1986; or

11 (D) a nonqualified deferred compensation
12 arrangement established or maintained by an employer or plan
13 sponsor;

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

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

20 (9) immediate annuities purchased with proceeds from
21 an existing contract; or

22 (10) structured settlements.

23 (b) Notwithstanding Subsection (a)(6), this chapter applies
24 to policies or contracts used to fund any plan or arrangement that
25 is funded solely by contributions an employee elects to make,
26 whether on a pre-tax or after-tax basis, if:

27 (1) the insurer has been notified that plan

1 participants may choose from among two or more insurers; and

2 (2) there is a direct solicitation of an individual
3 employee by an insurance agent for the purchase of a contract or
4 policy.

5 (c) Group life insurance or group annuity certificates
6 marketed through direct response solicitation are subject to
7 Section 1114.055.

8 (d) Notwithstanding Subsection (a)(9), immediate annuities
9 purchased with proceeds from an existing policy are not exempted
10 from the requirements of this chapter.

11 (e) For the purpose of Subsections (a), (b), and (c),
12 "direct solicitation" does not include a group meeting held by an
13 insurance agent solely for the purpose of:

14 (1) educating or enrolling individuals; or

15 (2) if initiated by an individual member of the group,
16 assisting with the selection of investment options offered by a
17 single insurer in connection with enrolling that individual.

18 Sec. 1114.005. FINANCED PURCHASE. (a) If a withdrawal,
19 surrender, or borrowing involving the policy values of an existing
20 policy is used to pay premiums on a new policy that is owned by the
21 same policyholder and is issued by the same insurer not earlier than
22 four months before the effective date of the new policy or 13 months
23 after the effective date of the new policy, it is deemed prima facie
24 evidence of the policyholder's intent to finance the purchase of
25 the new policy with existing policy values.

26 (b) Subsection (a) applies only to regulatory review of an
27 individual transaction.

1 (c) The prima facie standard under Subsection (a) is not
2 intended to increase or decrease the monitoring obligations
3 contained in Section 1114.052(g).

4 Sec. 1114.006. CONSUMER NOTICE DOCUMENTS. (a) The
5 commissioner by rule shall adopt or approve model documents to be
6 used for consumer notices under this chapter.

7 (b) The department may develop model documents under this
8 section, or the commissioner may approve model documents developed
9 by insurers or published by national organizations recognized by
10 the commissioner.

11 Sec. 1114.007. RULES. The commissioner may adopt
12 reasonable rules in the manner prescribed by Subchapter A, Chapter
13 36, to accomplish and enforce the purpose of this chapter.

14 [Sections 1114.008-1114.050 reserved for expansion]

15 SUBCHAPTER B. DUTIES OF INSURERS AND AGENTS

16 Sec. 1114.051. DUTIES OF AGENT; NOTICE. (a) An agent who
17 initiates an application for a life insurance policy or annuity
18 contract shall submit to the insurer, with or as part of the
19 application, a statement signed by both the applicant and the agent
20 as to whether the applicant has existing policies or contracts.

21 (b) If the applicant states that the applicant does not have
22 existing policies or contracts, the agent's duties, after
23 compliance with Subsection (a), with respect to replacement are
24 complete.

25 (c) If the applicant states that the applicant does have
26 existing policies or contracts, the agent shall present and read to
27 the applicant, not later than at the time of taking the application,

1 a notice regarding replacements as provided by Subsection (d).

2 (d) Except as provided by Subsection (e), the notice
3 required by this section must be given in a form adopted or approved
4 by the commissioner. The notice shall be signed by both the
5 applicant and the agent attesting that the notice has been read
6 aloud by the agent or that the applicant did not wish the notice to
7 be read aloud, in which case the agent is not required to read the
8 notice aloud, and that the notice was left with the applicant. The
9 notice must list all life insurance policies or annuities proposed
10 to be replaced, properly identified by the name of the insurer, the
11 name of the insured or annuitant, and the policy or contract number
12 if available, and include a statement as to whether each policy or
13 contract will be replaced or whether a policy will be used as a
14 source of financing for the new policy or contract. If a policy or
15 contract number has not been issued by the existing insurer,
16 alternative identification, such as an application or receipt
17 number, must be listed.

18 (e) Commissioner approval of a notice is not required if a
19 notice adopted or approved by the commissioner is used and
20 amendments to that notice are limited to the omission of references
21 not applicable to the product being sold or replaced.

22 (f) In connection with a replacement transaction, the agent
23 shall leave with the applicant, at the time an application for a new
24 policy or contract is completed, the original of all sales material
25 or a copy of that material. Electronically presented sales material
26 must be provided to the policy or contract owner in printed form not
27 later than the date that the policy or contract is delivered.

1 (g) Except as provided by Section 1114.053(g), in
2 connection with a replacement transaction, the agent shall submit
3 to the insurer to which an application for a policy or contract is
4 presented:

5 (1) a copy of each document required by this section;

6 (2) a statement identifying any preprinted or
7 electronically presented insurer-approved sales materials used;
8 and

9 (3) copies of any individualized sales materials,
10 including any illustrations related to the specific policy or
11 contract purchased.

12 Sec. 1114.052. DUTIES OF INSURERS THAT USE AGENTS. (a) An
13 insurer that uses an agent shall comply with this section.

14 (b) Each insurer shall maintain a system of supervision and
15 control to ensure compliance with the requirements of this chapter.
16 Under the system, the insurer must, at minimum:

17 (1) inform its agents of the requirements of this
18 chapter and incorporate the requirements of this chapter into all
19 relevant agent training manuals prepared by the insurer;

20 (2) provide each agent a written statement of the
21 insurer's position with respect to the acceptability of
22 replacements and provide guidance to the agent as to the
23 appropriateness of these transactions;

24 (3) review the appropriateness of each replacement
25 transaction that the agent does not indicate is in accord with
26 Subdivision (2);

27 (4) implement procedures to confirm that the

1 requirements of this chapter have been met; and

2 (5) implement procedures to detect transactions that
3 are replacements of existing policies or contracts by the existing
4 insurer but that have not been reported as such by the applicant or
5 agent.

6 (c) Compliance with Subsection (a)(5) may include
7 systematic customer surveys, interviews, confirmation letters, or
8 programs of internal monitoring.

9 (d) Each insurer must have the capacity to monitor each
10 agent's life insurance policy and annuity contract replacements for
11 that insurer. The insurer shall maintain records regarding the
12 monitoring and shall produce and make the records available to the
13 department on request. The capacity to monitor under this
14 subsection must include the ability to produce records for:

15 (1) each agent's life insurance replacements,
16 including financed purchases, as a percentage of the agent's total
17 annual sales for life insurance;

18 (2) the number of lapses of policies by the agent as a
19 percentage of the agent's total annual sales for life insurance;

20 (3) each agent's annuity contract replacements as a
21 percentage of the agent's total annual annuity contract sales;

22 (4) the number of transactions that are unreported
23 replacements of existing policies or contracts by the existing
24 insurer detected by the insurer's monitoring system as required by
25 Subsection (b)(5); and

26 (5) replacements, indexed by replacing agent and
27 existing insurer.

1 (e) Each insurer shall require, with or as a part of each
2 application for life insurance or an annuity, a signed statement by
3 both the applicant and the agent as to whether the applicant has
4 existing policies or contracts.

5 (f) Each insurer shall require, with each application for
6 life insurance or an annuity that indicates an existing policy or
7 contract, a completed notice regarding replacements.

8 (g) If the applicant has existing policies or contracts,
9 each insurer must be able to produce, for at least five years after
10 the date of termination or expiration of the proposed policy or
11 contract, copies of any sales material required by Section
12 1114.051(f), the basic illustration and any supplemental
13 illustrations related to the specific policy or contract that is
14 purchased, and the agent's and applicant's signed statements with
15 respect to financing and replacement.

16 (h) The insurer shall ascertain that the sales material and
17 illustrations required by Section 1114.051(f) meet the
18 requirements of this chapter and are complete and accurate for the
19 proposed policy or contract.

20 (i) If an application does not meet the requirements of this
21 chapter, the insurer shall notify the agent and applicant and
22 fulfill the outstanding requirements.

23 (j) The insurer shall maintain records required by this
24 section in paper, photographic, microprocess, magnetic,
25 mechanical, or electronic media or by any process that accurately
26 reproduces the actual document.

27 Sec. 1114.053. DUTIES OF REPLACING INSURERS THAT USE

1 AGENTS. (a) If a transaction under this chapter involves a
2 replacement, the replacing insurer shall comply with this section.

3 (b) The replacing insurer shall verify that the required
4 forms are received and are in compliance with this chapter.

5 (c) The replacing insurer shall:

6 (1) notify any existing insurer that may be affected
7 by the proposed replacement not later than the fifth business day
8 after:

9 (A) the date of receipt of a completed
10 application indicating replacement; or

11 (B) the date that replacement is identified if it
12 is not indicated on the application; and

13 (2) mail a copy of the available illustration or
14 policy summary for the proposed policy or available disclosure
15 document for the proposed contract to the existing insurer not
16 later than the fifth business day after the date of a request from
17 the existing insurer.

18 (d) The replacing insurer must be able to produce copies of
19 the notification regarding replacement required by Section
20 1114.051(d), indexed by agent, until the later of:

21 (1) the fifth anniversary of the date of the
22 notification; or

23 (2) the date of the replacing insurer's next regular
24 examination by the insurance regulatory authority of the insurer's
25 state of domicile.

26 (e) The replacing insurer shall provide to the policy or
27 contract owner notice of the owner's right to return the policy or

1 contract within 30 days of the delivery of the policy or contract
2 and to receive an unconditional full refund of all premiums or
3 considerations paid on the policy or contract, including any policy
4 fees or charges or, in the case of a variable or market value
5 adjustment policy or contract, a payment of the cash surrender
6 value provided under the policy or contract plus the fees and other
7 charges deducted from the gross premiums or considerations or
8 imposed under the policy or contract. The notice may be combined
9 with other notices required under this chapter in accordance with
10 rules of the commissioner.

11 (f) In transactions in which the replacing insurer and the
12 existing insurer are the same or are subsidiaries or affiliates
13 under common ownership or control, the replacing insurer shall
14 allow credit for the period that has elapsed under the replaced
15 policy's or contract's incontestability and suicide period up to
16 the face amount of the existing policy or contract. With regard to
17 financed purchases, the credit may be limited to the amount that the
18 face amount of the existing policy is reduced by the use of existing
19 policy values to fund the new policy or contract.

20 (g) If an insurer prohibits the use of sales material other
21 than that approved by the insurer, as an alternative to the
22 requirements under Section 1114.051(g), the insurer shall:

23 (1) require with each application a statement signed
24 by the agent that:

25 (A) represents that the agent used only
26 insurer-approved sales material; and

27 (B) states that copies of all sales material were

1 left with the applicant in accordance with Section 1114.051(f);

2 (2) not later than the 10th day after the date of
3 issuance of the policy or contract:

4 (A) notify the applicant by sending a letter, or
5 by verbal communication with the applicant by a person whose duties
6 are separate from the marketing area of the insurer, that the agent
7 has represented that copies of all sales material have been left
8 with the applicant in accordance with Section 1114.051(f);

9 (B) provide the applicant with a toll-free
10 telephone number to contact the insurer's personnel involved in the
11 compliance function if copies of all sales material have not been
12 left with the applicant in accordance with Section 1114.051(f); and

13 (C) stress the importance of retaining copies of
14 the sales material for future reference; and

15 (3) be able to produce a copy of the letter or other
16 verification in the policy file until the fifth anniversary of the
17 date of termination or expiration of the policy or contract.

18 Sec. 1114.054. DUTIES OF EXISTING INSURER. (a) If a
19 transaction involves a replacement, the existing insurer shall
20 comply with this section.

21 (b) The existing insurer shall retain and be able to produce
22 all replacement notifications received, indexed by the replacing
23 insurer, until the later of:

24 (1) the fifth anniversary of the date of receipt of the
25 notification; or

26 (2) the date of conclusion of the next regular
27 examination conducted by the insurance regulatory authority of the

1 existing insurer's state of domicile.

2 (c) The existing insurer shall send a letter to the policy
3 or contract owner regarding the owner's right to receive
4 information regarding the existing policy or contract values. The
5 letter must include, if available, an in force illustration or, if
6 an in force illustration cannot be produced not later than the fifth
7 business day after the date of receipt of a notice that an existing
8 policy or contract is being replaced, a policy summary. The
9 information must be provided not later than the fifth business day
10 after the date of receipt of the request from the policy or contract
11 owner.

12 (d) On receipt of a request to borrow, surrender, or
13 withdraw any policy values, the existing insurer shall send a
14 notice advising the policy owner that the release of policy values
15 may affect the guaranteed elements, nonguaranteed elements, face
16 amount, or surrender value of the policy from which the values are
17 released. The notice must be sent separately from the payment if
18 the payment is sent to any person other than the policy owner. In
19 the case of consecutive automatic premium loans, the insurer is
20 only required to send the notice at the time of the first loan.

21 Sec. 1114.055. DUTIES OF INSURERS REGARDING DIRECT RESPONSE
22 SOLICITATIONS. (a) In the case of an application initiated as a
23 result of a direct response solicitation, the insurer shall require
24 submission of a statement asking whether the applicant, by applying
25 for the proposed policy or contract, intends to replace,
26 discontinue, or change an existing policy or contract. The
27 statement may be included with, or submitted as part of, each

1 completed application for a policy or contract. If the applicant
2 indicates a replacement or change is not intended or if the
3 applicant fails to respond to the statement, the insurer shall send
4 the applicant, with the policy or contract, a notice, in a form
5 adopted or approved by the commissioner, regarding replacement.

6 (b) If the insurer has proposed the replacement or if the
7 applicant indicates a replacement is intended and the insurer
8 continues with the replacement, the insurer shall:

9 (1) provide to the applicant or prospective applicant,
10 with the policy or contract, a notice adopted or approved by the
11 commissioner; and

12 (2) comply with the requirements of:

13 (A) Section 1114.053(c), if the applicant
14 furnishes the names of the existing insurers; and

15 (B) Sections 1114.053(d), (e), and (f).

16 (c) In a situation described by Subsection (b)(1), the
17 insurer may use a notice that deletes references to the agent,
18 including the agent's signature, and references not applicable to
19 the product being sold or replaced, without having to obtain prior
20 approval of the notice from the commissioner. The insurer's
21 obligation to obtain the applicant's signature is satisfied if the
22 insurer can demonstrate that the insurer has made a diligent effort
23 to secure a signed copy of the notice. The requirement to make a
24 diligent effort is deemed satisfied if the insurer includes in the
25 mailing a self-addressed postage prepaid envelope with
26 instructions for the return of the signed notice.

27 Sec. 1114.056. REGISTERED CONTRACTS. A registered contract

1 is exempt from the requirements of Sections 1114.053(c) and
2 1114.054(c) with respect to the provision of illustrations or
3 policy summaries, but must provide instead premium or contract
4 contribution amounts and identification of the appropriate
5 prospectus or offering circular.

6 [Sections 1114.057-1114.100 reserved for expansion]

7 SUBCHAPTER C. ENFORCEMENT

8 Sec. 1114.101. UNFAIR METHOD OF COMPETITION; SANCTIONS AND
9 PENALTIES. (a) A failure by an insurer or agent to comply with this
10 chapter constitutes a violation of Chapter 541 and is subject to
11 sanctions and penalties as provided by that chapter. For purposes
12 of this section, examples of violations include:

13 (1) deceptive or misleading information set forth in
14 any sales material;

15 (2) failing to ask the applicant in completing the
16 application the pertinent questions regarding the possibility of
17 financing or replacement;

18 (3) intentionally recording an answer incorrectly;

19 (4) advising an applicant to respond negatively to any
20 question regarding replacement in order to prevent notice to the
21 existing insurer; or

22 (5) advising a policy or contract owner to contact the
23 insurer directly in such a way as to attempt to obscure the identity
24 of the replacing agent or insurer.

25 (b) A policy or contract owner has the right to replace an
26 existing life insurance policy or annuity contract after indicating
27 in or as a part of applications for new coverage that replacement is

1 not the intention. However, patterns of that action by policy or
2 contract owners of the same agent shall be deemed prima facie
3 evidence of the agent's knowledge that replacement was intended in
4 connection with the identified transactions, and those patterns of
5 action shall be deemed prima facie evidence of the agent's intent to
6 violate this chapter.

7 (c) If it is determined that the requirements of this
8 chapter have not been met, the replacing insurer shall provide to
9 the policy owner:

10 (1) an in force illustration or, if an in force
11 illustration is not available, a policy summary for the replacement
12 policy or an available disclosure document for the replacement
13 contract; and

14 (2) the appropriate notice regarding replacements.

15 Sec. 1114.102. ADDITIONAL SANCTIONS. (a) In addition to
16 sanctions and penalties under Chapter 541 as provided by Section
17 1114.101, an insurer or agent that violates this chapter is subject
18 to sanctions as provided by Chapter 82, which may include:

19 (1) the revocation or suspension of the agent's
20 license or the insurer's certificate of authority;

21 (2) administrative penalties under Chapter 84; and

22 (3) forfeiture of any commissions or other
23 compensation paid to an agent as a result of the transaction in
24 connection with which the violations occurred.

25 (b) In addition, if the commissioner has determined that the
26 violations of this chapter were material to the sale, the insurer
27 may be required to:

- 1 (1) make restitution in the manner provided by Section
2 82.053;
3 (2) restore policy or contract values; and
4 (3) pay interest at the rate set by Section 84.050 on
5 the amount refunded in cash.

6 SECTION 2. The commissioner of insurance shall adopt rules
7 and adopt or approve model documents as necessary to implement
8 Chapter 1114, Insurance Code, as added by this Act, not later than
9 December 1, 2007.

10 SECTION 3. This Act applies only to replacement of an
11 insurance policy or annuity contract on or after January 1, 2008.
12 Replacement of a policy or annuity contract before January 1, 2008,
13 is governed by the law as it existed immediately before the
14 effective date of this Act, and that law is continued in effect for
15 that purpose.

16 SECTION 4. This Act takes effect September 1, 2007.