

1-1 By: Eiland (Senate Sponsor - Averitt) H.B. No. 2762  
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. 2762 By: Jackson

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

1-10 relating to adoption of requirements regarding the replacement of  
1-11 existing life insurance policies and certain annuities; imposing  
1-12 penalties.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subtitle A, Title 7, Insurance Code, is amended  
1-15 by adding Chapter 1114 to read as follows:

1-16 CHAPTER 1114. REPLACEMENT OF CERTAIN LIFE INSURANCE POLICIES AND  
1-17 ANNUITIES

1-18 SUBCHAPTER A. GENERAL PROVISIONS

1-19 Sec. 1114.001. PURPOSE. The purpose of this chapter is to:

1-20 (1) regulate the activities of insurers and agents  
1-21 with respect to the replacement of existing life insurance and  
1-22 annuities;

1-23 (2) protect the interests of purchasers of life  
1-24 insurance or annuities by establishing minimum standards of conduct  
1-25 to be observed in replacement or financed purchase transactions;

1-26 (3) ensure that purchasers receive information with  
1-27 which a decision in the purchaser's best interest may be made;

1-28 (4) reduce the opportunity for misrepresentation and  
1-29 incomplete disclosure; and

1-30 (5) establish penalties for failure to comply with the  
1-31 requirements adopted under this chapter.

1-32 Sec. 1114.002. GENERAL DEFINITIONS. In this chapter:

1-33 (1) "Agent" means an individual who holds a license  
1-34 under Chapter 4054 and who sells, solicits, or negotiates life  
1-35 insurance or annuities in this state.

1-36 (2) "Direct-response solicitation" means a  
1-37 solicitation made:

1-38 (A) by a sponsoring or endorsing entity or  
1-39 individually; and

1-40 (B) solely through mails, telephone, the  
1-41 Internet, or other mass communication media.

1-42 (3) "Existing insurer" means the insurer, the policy  
1-43 or contract of which is or will be changed or affected by a  
1-44 replacement.

1-45 (4) "Existing policy or contract" means an individual  
1-46 life insurance policy or annuity contract that is in force,  
1-47 including a policy under a binding or conditional receipt or a  
1-48 policy or contract that is within an unconditional refund period.

1-49 (5) "Financed purchase" means the purchase of a new  
1-50 policy that involves the actual or intended use of funds to pay all  
1-51 or part of any premium due on the new policy obtained by:

1-52 (A) the withdrawal or surrender of an existing  
1-53 policy; or

1-54 (B) borrowing from values of an existing policy.

1-55 (6) "Illustration" means a presentation or depiction  
1-56 that includes nonguaranteed elements of a life insurance policy  
1-57 over a period of years.

1-58 (7) "Registered contract" means a variable annuity  
1-59 contract or variable life insurance policy subject to the  
1-60 prospectus delivery requirements of the Securities Act of 1933 (15  
1-61 U.S.C. Section 77a et seq.).

1-62 (8) "Replacement" means a transaction under which a  
1-63 new policy or contract is to be purchased, and for which it is known

2-1 or should be known to the proposing agent or proposing insurer that,  
 2-2 by reason of the transaction, an existing policy or contract has  
 2-3 been or is to be:  
 2-4 (A) lapsed, forfeited, surrendered or partially  
 2-5 surrendered, assigned to a replacing insurer, or otherwise  
 2-6 terminated;  
 2-7 (B) converted to reduced paid-up insurance,  
 2-8 continued as extended term insurance, or otherwise reduced in value  
 2-9 by the use of nonforfeiture benefits or other policy values;  
 2-10 (C) amended so as to effect a reduction in  
 2-11 benefits or in the term for which coverage would otherwise remain in  
 2-12 force or for which benefits would be paid;  
 2-13 (D) reissued with any reduction in cash value; or  
 2-14 (E) used in a financed purchase.  
 2-15 (9) "Replacing insurer" means the insurer that issues  
 2-16 or proposes to issue a new policy or contract that:  
 2-17 (A) replaces an existing policy or contract; or  
 2-18 (B) is a financed purchase.  
 2-19 (10) "Sales material" means a sales illustration and  
 2-20 any other written, printed, or electronically presented  
 2-21 information:  
 2-22 (A) created or completed or provided by the  
 2-23 insurer or agent; and  
 2-24 (B) used in the presentation to the policy or  
 2-25 contract owner relating to the policy or contract purchased.  
 2-26 Sec. 1114.003. DEFINITION OF POLICY SUMMARY. (a) For  
 2-27 purposes of this chapter, "policy summary" has the meaning assigned  
 2-28 by this section.  
 2-29 (b) For a policy or contract other than a universal life  
 2-30 insurance policy, "policy summary" means a written statement  
 2-31 regarding the policy or contract that at minimum contains, to the  
 2-32 extent applicable, the following information:  
 2-33 (1) the current death benefit;  
 2-34 (2) the annual contract premium;  
 2-35 (3) the current cash surrender value;  
 2-36 (4) the current dividend;  
 2-37 (5) the application of the current dividend; and  
 2-38 (6) the amount of any outstanding loan.  
 2-39 (c) For a universal life insurance policy, "policy summary"  
 2-40 means a written statement that contains, at minimum, the following  
 2-41 information:  
 2-42 (1) the beginning and ending date of the current  
 2-43 reporting period;  
 2-44 (2) the policy value at the end of the previous  
 2-45 reporting period and at the end of the current reporting period;  
 2-46 (3) the total amounts that have been credited or  
 2-47 debited to the policy value during the current reporting period,  
 2-48 identifying each by type, including interest, mortality, expense,  
 2-49 and riders;  
 2-50 (4) the current death benefit at the end of the current  
 2-51 reporting period on each life covered by the policy;  
 2-52 (5) the net cash surrender value of the policy as of  
 2-53 the end of the current reporting period; and  
 2-54 (6) the amount of any outstanding loans as of the end  
 2-55 of the current reporting period.  
 2-56 Sec. 1114.004. APPLICABILITY; EXEMPTIONS. (a) Except as  
 2-57 otherwise specifically provided by this chapter, this chapter does  
 2-58 not apply to transactions involving:  
 2-59 (1) credit life insurance;  
 2-60 (2) group life insurance or group annuities for which  
 2-61 there is no direct solicitation of individuals by an agent;  
 2-62 (3) group life insurance and annuities used to fund  
 2-63 prepaid funeral benefits contracts, as defined by Chapter 154,  
 2-64 Finance Code;  
 2-65 (4) an application to:  
 2-66 (A) exercise a contractual change or a conversion  
 2-67 privilege made to the insurer that issued the existing policy or  
 2-68 contract;  
 2-69 (B) replace an existing policy or contract by the

3-1 insurer that issued the existing policy or contract under a program  
 3-2 filed with and approved by the commissioner; or

3-3 (C) exercise a term conversion privilege among  
 3-4 corporate affiliates;

3-5 (5) life insurance proposed to replace life insurance  
 3-6 under a binding or conditional receipt issued by the same insurer;

3-7 (6) a policy or contract used to fund:  
 3-8 (A) an employee pension benefit plan or employee  
 3-9 welfare benefit plan that is covered by the Employee Retirement  
 3-10 Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

3-11 (B) a plan described by Section 401(a), 401(k),  
 3-12 or 403(b), Internal Revenue Code of 1986, if established or  
 3-13 maintained by an employer;

3-14 (C) a government or church plan, as defined by  
 3-15 Section 414, Internal Revenue Code of 1986, a government or church  
 3-16 welfare benefit plan, or a deferred compensation plan of a state or  
 3-17 local government or tax exempt organization described under Section  
 3-18 457, Internal Revenue Code of 1986; or

3-19 (D) a nonqualified deferred compensation  
 3-20 arrangement established or maintained by an employer or plan  
 3-21 sponsor;

3-22 (7) new coverage provided under a life insurance  
 3-23 policy or contract if the cost is borne wholly by the insured's  
 3-24 employer or by an association of which the insured is a member;

3-25 (8) an existing life insurance policy that is a  
 3-26 nonconvertible term life insurance policy scheduled to expire in  
 3-27 five years or less and that cannot be renewed;

3-28 (9) immediate annuities purchased with proceeds from  
 3-29 an existing contract; or

3-30 (10) structured settlements.

3-31 (b) Notwithstanding Subsection (a)(6), this chapter applies  
 3-32 to policies or contracts used to fund any plan or arrangement that  
 3-33 is funded solely by contributions an employee elects to make,  
 3-34 whether on a pre-tax or after-tax basis, if:

3-35 (1) the insurer has been notified that plan  
 3-36 participants may choose from among two or more insurers; and

3-37 (2) there is a direct solicitation of an individual  
 3-38 employee by an insurance agent for the purchase of a contract or  
 3-39 policy.

3-40 (c) Group life insurance or group annuity certificates  
 3-41 marketed through direct response solicitation are subject to  
 3-42 Section 1114.055.

3-43 (d) Notwithstanding Subsection (a)(9), immediate annuities  
 3-44 purchased with proceeds from an existing policy are not exempted  
 3-45 from the requirements of this chapter.

3-46 (e) For the purpose of Subsections (a), (b), and (c),  
 3-47 "direct solicitation" does not include a group meeting held by an  
 3-48 insurance agent solely for the purpose of:

3-49 (1) educating or enrolling individuals; or

3-50 (2) if initiated by an individual member of the group,  
 3-51 assisting with the selection of investment options offered by a  
 3-52 single insurer in connection with enrolling that individual.

3-53 Sec. 1114.005. FINANCED PURCHASE. (a) If a withdrawal,  
 3-54 surrender, or borrowing involving the policy values of an existing  
 3-55 policy is used to pay premiums on a new policy that is owned by the  
 3-56 same policyholder and is issued by the same insurer not earlier than  
 3-57 four months before the effective date of the new policy or 13 months  
 3-58 after the effective date of the new policy, it is deemed prima facie  
 3-59 evidence of the policyholder's intent to finance the purchase of  
 3-60 the new policy with existing policy values.

3-61 (b) Subsection (a) applies only to regulatory review of an  
 3-62 individual transaction.

3-63 (c) The prima facie standard under Subsection (a) is not  
 3-64 intended to increase or decrease the monitoring obligations  
 3-65 contained in Section 1114.052(g).

3-66 Sec. 1114.006. CONSUMER NOTICE DOCUMENTS. (a) The  
 3-67 commissioner by rule shall adopt or approve model documents to be  
 3-68 used for consumer notices under this chapter.

3-69 (b) The department may develop model documents under this

4-1 section, or the commissioner may approve model documents developed  
 4-2 by insurers or published by national organizations recognized by  
 4-3 the commissioner.

4-4 Sec. 1114.007. RULES. The commissioner may adopt  
 4-5 reasonable rules in the manner prescribed by Subchapter A, Chapter  
 4-6 36, to accomplish and enforce the purpose of this chapter.

4-7 [Sections 1114.008-1114.050 reserved for expansion]

4-8 SUBCHAPTER B. DUTIES OF INSURERS AND AGENTS

4-9 Sec. 1114.051. DUTIES OF AGENT; NOTICE. (a) An agent who  
 4-10 initiates an application for a life insurance policy or annuity  
 4-11 contract shall submit to the insurer, with or as part of the  
 4-12 application, a statement signed by both the applicant and the agent  
 4-13 as to whether the applicant has existing policies or contracts.

4-14 (b) If the applicant states that the applicant does not have  
 4-15 existing policies or contracts, the agent's duties, after  
 4-16 compliance with Subsection (a), with respect to replacement are  
 4-17 complete.

4-18 (c) If the applicant states that the applicant does have  
 4-19 existing policies or contracts, the agent shall present and read to  
 4-20 the applicant, not later than at the time of taking the application,  
 4-21 a notice regarding replacements as provided by Subsection (d).

4-22 (d) Except as provided by Subsection (e), the notice  
 4-23 required by this section must be given in a form adopted or approved  
 4-24 by the commissioner. The notice shall be signed by both the  
 4-25 applicant and the agent attesting that the notice has been read  
 4-26 aloud by the agent or that the applicant did not wish the notice to  
 4-27 be read aloud, in which case the agent is not required to read the  
 4-28 notice aloud. The notice must be left with the applicant unless it  
 4-29 is presented to the applicant by electronic means and signed  
 4-30 electronically, in which case the insurer shall mail the applicant  
 4-31 a copy of the notice not later than the third business day after the  
 4-32 date the application is received by the insurer. The notice must  
 4-33 list all life insurance policies or annuities proposed to be  
 4-34 replaced, properly identified by the name of the insurer, the name  
 4-35 of the insured or annuitant, and the policy or contract number if  
 4-36 available, and include a statement as to whether each policy or  
 4-37 contract will be replaced or whether a policy will be used as a  
 4-38 source of financing for the new policy or contract. If a policy or  
 4-39 contract number has not been issued by the existing insurer,  
 4-40 alternative identification, such as an application or receipt  
 4-41 number, must be listed.

4-42 (e) Commissioner approval of a notice is not required if a  
 4-43 notice adopted or approved by the commissioner is used and  
 4-44 amendments to that notice are limited to the omission of references  
 4-45 not applicable to the product being sold or replaced.

4-46 (f) In connection with a replacement transaction, the agent  
 4-47 shall leave with the applicant, at the time an application for a new  
 4-48 policy or contract is completed, the original of all sales material  
 4-49 or a copy of that material. Electronically presented sales material  
 4-50 must be provided to the policy or contract owner in printed form not  
 4-51 later than the date that the policy or contract is delivered.

4-52 (g) Except as provided by Section 1114.053(g), in  
 4-53 connection with a replacement transaction, the agent shall submit  
 4-54 to the insurer to which an application for a policy or contract is  
 4-55 presented:

4-56 (1) a copy of each document required by this section;  
 4-57 (2) a statement identifying any preprinted or  
 4-58 electronically presented insurer-approved sales materials used;  
 4-59 and

4-60 (3) copies of any individualized sales materials,  
 4-61 including any illustrations related to the specific policy or  
 4-62 contract purchased.

4-63 Sec. 1114.052. DUTIES OF INSURERS THAT USE AGENTS. (a) An  
 4-64 insurer that uses an agent shall comply with this section.

4-65 (b) Each insurer shall maintain a system of supervision and  
 4-66 control to ensure compliance with the requirements of this chapter.  
 4-67 Under the system, the insurer must, at minimum:

4-68 (1) inform its agents of the requirements of this  
 4-69 chapter and incorporate the requirements of this chapter into all

5-1 relevant agent training manuals prepared by the insurer;

5-2 (2) provide each agent a written statement of the  
 5-3 insurer's position with respect to the acceptability of  
 5-4 replacements and provide guidance to the agent as to the  
 5-5 appropriateness of these transactions;

5-6 (3) review the appropriateness of each replacement  
 5-7 transaction that the agent does not indicate is in accord with  
 5-8 Subdivision (2);

5-9 (4) implement procedures to confirm that the  
 5-10 requirements of this chapter have been met; and

5-11 (5) implement procedures to detect transactions that  
 5-12 are replacements of existing policies or contracts by the existing  
 5-13 insurer but that have not been reported as such by the applicant or  
 5-14 agent.

5-15 (c) Compliance with Subsection (b)(5) may include  
 5-16 systematic customer surveys, interviews, confirmation letters, or  
 5-17 programs of internal monitoring.

5-18 (d) Each insurer must have the capacity to monitor each  
 5-19 agent's life insurance policy and annuity contract replacements for  
 5-20 that insurer. The insurer shall maintain records regarding the  
 5-21 monitoring and shall produce and make the records available to the  
 5-22 department on request. The capacity to monitor under this  
 5-23 subsection must include the ability to produce records for:

5-24 (1) each agent's life insurance replacements,  
 5-25 including financed purchases, as a percentage of the agent's total  
 5-26 annual sales for life insurance;

5-27 (2) the number of lapses of policies by the agent as a  
 5-28 percentage of the agent's total annual sales for life insurance;

5-29 (3) each agent's annuity contract replacements as a  
 5-30 percentage of the agent's total annual annuity contract sales;

5-31 (4) the number of transactions that are unreported  
 5-32 replacements of existing policies or contracts by the existing  
 5-33 insurer detected by the insurer's monitoring system as required by  
 5-34 Subsection (b)(5); and

5-35 (5) replacements, indexed by replacing agent and  
 5-36 existing insurer.

5-37 (e) Each insurer shall require, with or as a part of each  
 5-38 application for life insurance or an annuity, a signed statement by  
 5-39 both the applicant and the agent as to whether the applicant has  
 5-40 existing policies or contracts.

5-41 (f) Each insurer shall require, with each application for  
 5-42 life insurance or an annuity that indicates an existing policy or  
 5-43 contract, a completed notice regarding replacements.

5-44 (g) If the applicant has existing policies or contracts,  
 5-45 each insurer must be able to produce, for at least five years after  
 5-46 the date of termination or expiration of the proposed policy or  
 5-47 contract, copies of any sales material required by Section  
 5-48 1114.051(g), the basic illustration and any supplemental  
 5-49 illustrations related to the specific policy or contract that is  
 5-50 purchased, and the agent's and applicant's signed statements with  
 5-51 respect to financing and replacement.

5-52 (h) The insurer shall ascertain that the sales material and  
 5-53 illustrations required by Section 1114.051(g) meet the  
 5-54 requirements of this chapter and are complete and accurate for the  
 5-55 proposed policy or contract.

5-56 (i) If an application does not meet the requirements of this  
 5-57 chapter, the insurer shall notify the agent and applicant and  
 5-58 fulfill the outstanding requirements.

5-59 (j) The insurer shall maintain records required by this  
 5-60 section in paper, photographic, microprocess, magnetic,  
 5-61 mechanical, or electronic media or by any process that accurately  
 5-62 reproduces the actual document.

5-63 Sec. 1114.053. DUTIES OF REPLACING INSURERS THAT USE  
 5-64 AGENTS. (a) If a transaction under this chapter involves a  
 5-65 replacement, the replacing insurer shall comply with this section.

5-66 (b) The replacing insurer shall verify that the required  
 5-67 forms are received and are in compliance with this chapter.

5-68 (c) The replacing insurer shall:

5-69 (1) notify any existing insurer that may be affected

6-1 by the proposed replacement not later than the fifth business day  
6-2 after:

6-3 (A) the date of receipt of a completed  
6-4 application indicating replacement; or

6-5 (B) the date that replacement is identified if it  
6-6 is not indicated on the application; and

6-7 (2) mail a copy of the available illustration or  
6-8 policy summary for the proposed policy or available disclosure  
6-9 document for the proposed contract to the existing insurer not  
6-10 later than the fifth business day after the date of a request from  
6-11 the existing insurer.

6-12 (d) The replacing insurer must be able to produce copies of  
6-13 the notification regarding replacement required by Section  
6-14 1114.051(d), indexed by agent, until the later of:

6-15 (1) the fifth anniversary of the date of the  
6-16 notification; or

6-17 (2) the date of the replacing insurer's next regular  
6-18 examination by the insurance regulatory authority of the insurer's  
6-19 state of domicile.

6-20 (e) The replacing insurer shall provide to the policy or  
6-21 contract owner notice of the owner's right to return the policy or  
6-22 contract within 30 days of the delivery of the policy or contract  
6-23 and to receive an unconditional full refund of all premiums or  
6-24 considerations paid on the policy or contract, including any policy  
6-25 fees or charges or, in the case of a variable or market value  
6-26 adjustment policy or contract, a payment of the cash surrender  
6-27 value provided under the policy or contract plus the fees and other  
6-28 charges deducted from the gross premiums or considerations or  
6-29 imposed under the policy or contract. The notice may be combined  
6-30 with other notices required under this chapter in accordance with  
6-31 rules of the commissioner.

6-32 (f) In transactions in which the replacing insurer and the  
6-33 existing insurer are the same or are subsidiaries or affiliates  
6-34 under common ownership or control, the replacing insurer shall  
6-35 allow credit for the period that has elapsed under the replaced  
6-36 policy's or contract's incontestability and suicide period up to  
6-37 the face amount of the existing policy or contract. With regard to  
6-38 financed purchases, the credit may be limited to the amount that the  
6-39 face amount of the existing policy is reduced by the use of existing  
6-40 policy values to fund the new policy or contract.

6-41 (g) If an insurer prohibits the use of sales material other  
6-42 than that approved by the insurer, as an alternative to the  
6-43 requirements under Section 1114.051(g), the insurer shall:

6-44 (1) require with each application a statement signed  
6-45 by the agent that:

6-46 (A) represents that the agent used only  
6-47 insurer-approved sales material; and

6-48 (B) states that copies of all sales material were  
6-49 left with the applicant in accordance with Section 1114.051(f);

6-50 (2) not later than the 10th day after the date of  
6-51 issuance of the policy or contract:

6-52 (A) notify the applicant by sending a letter, or  
6-53 by verbal communication with the applicant by a person whose duties  
6-54 are separate from the marketing area of the insurer, that the agent  
6-55 has represented that copies of all sales material have been left  
6-56 with the applicant in accordance with Section 1114.051(f);

6-57 (B) provide the applicant with a toll-free  
6-58 telephone number to contact the insurer's personnel involved in the  
6-59 compliance function if copies of all sales material have not been  
6-60 left with the applicant in accordance with Section 1114.051(f); and

6-61 (C) stress the importance of retaining copies of  
6-62 the sales material for future reference; and

6-63 (3) be able to produce a copy of the letter or other  
6-64 verification in the policy file until the fifth anniversary of the  
6-65 date of termination or expiration of the policy or contract.

6-66 Sec. 1114.054. DUTIES OF EXISTING INSURER. (a) If a  
6-67 transaction involves a replacement, the existing insurer shall  
6-68 comply with this section.

6-69 (b) The existing insurer shall retain and be able to produce

7-1 all replacement notifications received, indexed by the replacing  
 7-2 insurer, until the later of:

7-3 (1) the fifth anniversary of the date of receipt of the  
 7-4 notification; or

7-5 (2) the date of conclusion of the next regular  
 7-6 examination conducted by the insurance regulatory authority of the  
 7-7 existing insurer's state of domicile.

7-8 (c) The existing insurer shall send a letter to the policy  
 7-9 or contract owner regarding the owner's right to receive  
 7-10 information regarding the existing policy or contract values. The  
 7-11 letter must include, if available, an in force illustration or, if  
 7-12 an in force illustration cannot be produced not later than the fifth  
 7-13 business day after the date of receipt of a notice that an existing  
 7-14 policy or contract is being replaced, a policy summary. The  
 7-15 information must be provided not later than the fifth business day  
 7-16 after the date of receipt of the request from the policy or contract  
 7-17 owner.

7-18 (d) On receipt of a request to borrow, surrender, or  
 7-19 withdraw any policy values, the existing insurer shall send a  
 7-20 notice advising the policy owner that the release of policy values  
 7-21 may affect the guaranteed elements, nonguaranteed elements, face  
 7-22 amount, or surrender value of the policy from which the values are  
 7-23 released. The notice must be sent separately from the payment if  
 7-24 the payment is sent to any person other than the policy owner. In  
 7-25 the case of consecutive automatic premium loans, the insurer is  
 7-26 only required to send the notice at the time of the first loan.

7-27 Sec. 1114.055. DUTIES OF INSURERS REGARDING DIRECT RESPONSE  
 7-28 SOLICITATIONS. (a) In the case of an application initiated as a  
 7-29 result of a direct response solicitation, the insurer shall require  
 7-30 submission of a statement asking whether the applicant, by applying  
 7-31 for the proposed policy or contract, intends to replace,  
 7-32 discontinue, or change an existing policy or contract. The  
 7-33 statement may be included with, or submitted as part of, each  
 7-34 completed application for a policy or contract. If the applicant  
 7-35 indicates a replacement or change is not intended or if the  
 7-36 applicant fails to respond to the statement, the insurer shall send  
 7-37 the applicant, with the policy or contract, a notice, in a form  
 7-38 adopted or approved by the commissioner, regarding replacement.

7-39 (b) If the insurer has proposed the replacement or if the  
 7-40 applicant indicates a replacement is intended and the insurer  
 7-41 continues with the replacement, the insurer shall:

7-42 (1) provide to the applicant or prospective applicant,  
 7-43 with the policy or contract, a notice adopted or approved by the  
 7-44 commissioner; and

7-45 (2) comply with the requirements of:  
 7-46 (A) Section 1114.053(c), if the applicant  
 7-47 furnishes the names of the existing insurers; and

7-48 (B) Sections 1114.053(d), (e), and (f).

7-49 (c) In a situation described by Subsection (b)(1), the  
 7-50 insurer may use a notice that deletes references to the agent,  
 7-51 including the agent's signature, and references not applicable to  
 7-52 the product being sold or replaced, without having to obtain prior  
 7-53 approval of the notice from the commissioner. The insurer's  
 7-54 obligation to obtain the applicant's signature is satisfied if the  
 7-55 insurer can demonstrate that the insurer has made a diligent effort  
 7-56 to secure a signed copy of the notice. The requirement to make a  
 7-57 diligent effort is deemed satisfied if the insurer includes in the  
 7-58 mailing a self-addressed postage prepaid envelope with  
 7-59 instructions for the return of the signed notice.

7-60 Sec. 1114.056. REGISTERED CONTRACTS. A registered contract  
 7-61 is exempt from the requirements of Sections 1114.053(c) and  
 7-62 1114.054(c) with respect to the provision of illustrations or  
 7-63 policy summaries, but must provide instead premium or contract  
 7-64 contribution amounts and identification of the appropriate  
 7-65 prospectus or offering circular.

7-66 [Sections 1114.057-1114.100 reserved for expansion]

7-67 SUBCHAPTER C. ENFORCEMENT

7-68 Sec. 1114.101. UNFAIR METHOD OF COMPETITION; SANCTIONS AND  
 7-69 PENALTIES. (a) A failure by an insurer or agent to comply with this

8-1 chapter constitutes a violation of Chapter 541 and is subject to  
8-2 sanctions and penalties as provided by that chapter. For purposes  
8-3 of this section, examples of violations include:

8-4 (1) deceptive or misleading information set forth in  
8-5 any sales material;

8-6 (2) failing to ask the applicant in completing the  
8-7 application the pertinent questions regarding the possibility of  
8-8 financing or replacement;

8-9 (3) intentionally recording an answer incorrectly;

8-10 (4) advising an applicant to respond negatively to any  
8-11 question regarding replacement in order to prevent notice to the  
8-12 existing insurer; or

8-13 (5) advising a policy or contract owner to contact the  
8-14 insurer directly in such a way as to attempt to obscure the identity  
8-15 of the replacing agent or insurer.

8-16 (b) A policy or contract owner has the right to replace an  
8-17 existing life insurance policy or annuity contract after indicating  
8-18 in or as a part of applications for new coverage that replacement is  
8-19 not the intention. However, patterns of that action by policy or  
8-20 contract owners of the same agent shall be deemed prima facie  
8-21 evidence of the agent's knowledge that replacement was intended in  
8-22 connection with the identified transactions, and those patterns of  
8-23 action shall be deemed prima facie evidence of the agent's intent to  
8-24 violate this chapter.

8-25 (c) If it is determined that the requirements of this  
8-26 chapter have not been met, the replacing insurer shall provide to  
8-27 the policy owner:

8-28 (1) an in force illustration or, if an in force  
8-29 illustration is not available, a policy summary for the replacement  
8-30 policy or an available disclosure document for the replacement  
8-31 contract; and

8-32 (2) the appropriate notice regarding replacements.

8-33 Sec. 1114.102. ADDITIONAL SANCTIONS. (a) In addition to  
8-34 sanctions and penalties under Chapter 541 as provided by Section  
8-35 1114.101, an insurer or agent that violates this chapter is subject  
8-36 to sanctions as provided by Chapter 82, which may include:

8-37 (1) the revocation or suspension of the agent's  
8-38 license or the insurer's certificate of authority;

8-39 (2) administrative penalties under Chapter 84; and

8-40 (3) forfeiture of any commissions or other  
8-41 compensation paid to an agent as a result of the transaction in  
8-42 connection with which the violations occurred.

8-43 (b) In addition, if the commissioner has determined that the  
8-44 violations of this chapter were material to the sale, the insurer  
8-45 may be required to:

8-46 (1) make restitution in the manner provided by Section  
8-47 82.053;

8-48 (2) restore policy or contract values; and

8-49 (3) pay interest at the rate set by Section 84.050 on  
8-50 the amount refunded in cash.

8-51 SECTION 2. The commissioner of insurance shall adopt rules  
8-52 and adopt or approve model documents as necessary to implement  
8-53 Chapter 1114, Insurance Code, as added by this Act, not later than  
8-54 December 1, 2007.

8-55 SECTION 3. This Act applies only to replacement of an  
8-56 insurance policy or annuity contract on or after January 1, 2008.  
8-57 Replacement of a policy or annuity contract before January 1, 2008,  
8-58 is governed by the law as it existed immediately before the  
8-59 effective date of this Act, and that law is continued in effect for  
8-60 that purpose.

8-61 SECTION 4. This Act takes effect September 1, 2007.

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