

By: Averitt

S.B. No. 1685

A BILL TO BE ENTITLED

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AN ACT

relating to rules governing suitability in certain annuity transactions.

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

SECTION 1. Chapter 1104, Insurance Code, is amended by adding Subchapter C as follows:

SUBCHAPTER C. SUITABILITY IN CERTAIN ANNUITY TRANSACTIONS.

Sec. 1104.101. PURPOSE AND SCOPE. (a) The purpose of this chapter is to set forth standards and procedures for recommendations to consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.

(b) Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.

(c) This chapter shall apply to any recommendation to purchase or exchange an annuity made to a consumer by an agent, or insurer where no agent is involved, that results in the purchase or exchange recommended.

Sec. 1104.102. DEFINITIONS. (a) The following words and terms when used in this chapter shall have the following meaning, unless the context clearly indicates otherwise:

(1) "Agent" or "insurance agent" means an individual or business entity that sells, solicits, or negotiates contracts of

1 insurance or annuity in this State.

2 (2) "Annuity" means a fixed, variable or modified
3 guaranteed annuity that is individually solicited, whether the
4 product is classified as an individual annuity or group annuity.

5 (3) "Commissioner" means the Commissioner of the Texas
6 Department of Insurance.

7 (4) "Insurer" means an insurance company required to
8 be licensed under the laws of this State.

9 (5) "Recommendation" means advice provided by an
10 agent, or an insurer where no agent is involved, to an individual
11 consumer that results in a purchase or exchange of an annuity in
12 accordance with that advice.

13 Sec. 1104.103. EXEMPTIONS. (a) Unless otherwise
14 specifically included, this chapter shall not apply to
15 recommendations involving:

16 (1) direct response solicitations where there is no
17 recommendation based on information collected from the consumer
18 pursuant to this chapter;

19 (2) contracts used to fund:

20 (A) an employee pension or welfare benefit plan
21 that is covered by the Employee Retirement Income Security Act of
22 1974 (ERISA) (29 USC Section 1001 et seq.);

23 (B) a plan described by 26 USC Sections 401(a),
24 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code, if
25 established or maintained by an employer;

26 (C) a government or church plan defined in 26 USC
27 Section 414 of the Internal Revenue Code, a government or church

1 welfare benefit plan, or a deferred compensation plan of a state or
2 local government or tax exempt organization under 26 USC Section
3 457 of the Internal Revenue Code;

4 (D) a nonqualified deferred compensation
5 arrangement established or maintained by an employer or plan
6 sponsor;

7 (E) settlements of or assumptions of liabilities
8 associated with personal injury litigation or any dispute or claim
9 resolution process; or

10 (F) preneed funeral contracts as defined in
11 Section 154 of the Texas Finance Code.

12 Sec. 1104.104. DUTIES OF INSURERS AND AGENTS.

13 (a) Suitability of annuity product is required. In recommending
14 to a consumer the purchase of an annuity or the exchange of an
15 annuity that results in another insurance transaction or series of
16 insurance transactions, the agent, or the insurer where no agent is
17 involved, shall have reasonable grounds for believing that the
18 recommendation is suitable for the consumer on the basis of the
19 facts disclosed by the consumer as to his investments and other
20 insurance products and as to his financial situation and needs.

21 (b) Prior to the execution of a purchase or exchange of an
22 annuity resulting from a recommendation, an agent, or insurer where
23 no agent is involved, shall make reasonable efforts To obtain
24 information concerning:

25 (1) the consumer's financial status;

26 (2) the consumer's tax status;

27 (3) the consumer's investment objectives; and

1 (4) such other relevant information used or considered
2 to be reasonable by the agent, or the insurer where no agent is
3 involved, in making recommendations to the consumer.

4 (c) Obligation of agents and insurers to consumers.

5 (1) Except as provided in Paragraph (2) of this
6 subsection, neither an agent, nor an insurer where no agent is
7 involved, shall have any obligation to a consumer under Subsection
8 (a) of this section related to any recommendation if a consumer:

9 (A) refuses to provide relevant information
10 requested by the insurer or agent;

11 (B) decides to enter into an insurance
12 transaction that is not based on a recommendation of the insurer or
13 agent; or

14 (C) fails to provide complete or accurate
15 information.

16 (2) An insurer or agent's recommendation subject to
17 Paragraph (1) shall be reasonable under all the circumstances
18 actually known to the insurer or agent at the time of the
19 recommendation.

20 (d)(1) An insurer either shall assure that a system to
21 supervise recommendations that is reasonably designed to achieve
22 compliance with this chapter is established and maintained by
23 complying with Paragraphs (3) through (5) of this subsection, or
24 shall establish and maintain such a system, including, but not
25 limited to:

26 (A) maintaining written procedures; and

27 (B) conducting periodic reviews of its records

1 that are reasonably designed to assist in detecting and preventing
2 violations of this chapter.

3 (2) An agent and independent agency either shall adopt
4 a system established by an insurer to supervise recommendations of
5 its agents that is reasonably designed to achieve compliance with
6 this chapter, or shall establish and maintain such a system,
7 including, but not limited to:

8 (A) maintaining written procedures; and

9 (B) conducting periodic reviews of records that
10 are reasonably designed to assist in detecting and preventing
11 violations of this chapter.

12 (3) An insurer or agent may contract with a third
13 party, including an agent or independent agency, to establish and
14 maintain a system of supervision as required by Subsection (1) of
15 this Section with respect to agents under contract with or employed
16 by the third party.

17 (4) An insurer or agent shall make reasonable inquiry
18 to assure that the third party contracting under Paragraph (3) of
19 this subsection is performing the functions required under
20 Paragraph (1) of this subsection and shall take action that is
21 reasonable under the circumstances to enforce the contractual
22 obligation to perform the functions. An insurer or agent may comply
23 with its obligation to make reasonable inquiry by doing all of the
24 following:

25 (A) the insurer annually obtains a certification
26 from a third party senior manager who has responsibility for the
27 delegated functions that the manager has a reasonable basis to

1 represent, and does represent, that the third party is performing
2 the required functions; and

3 (B) the insurer, based on reasonable selection
4 criteria, periodically selects third parties contracting under
5 Paragraph (3) of this subsection for a review to determine whether
6 the third parties are performing the required functions. The
7 insurer shall perform those procedures to conduct the review that
8 are reasonable under the circumstances.

9 (5) An insurer or agent that contracts with a third
10 party pursuant to Paragraph (3) of this subsection and that
11 complies with the requirements to supervise in Paragraph (4) of
12 this subsection shall have fulfilled its responsibilities under
13 Paragraph (1) of this subsection.

14 (6) An insurer, agent or independent agency is not
15 required by Paragraphs (1) or (2) of this subsection to:

16 (A) review, or provide for review of, all
17 agent-solicited transactions; or

18 (B) include in its system of supervision an
19 agent's recommendations to consumers of products other than the
20 annuities offered by the insurer, agent or independent agency.

21 (7) An agent or independent agency contracting with an
22 insurer pursuant to Paragraph (3) of this subsection, when
23 requested by the insurer pursuant to Paragraph (4) of this
24 subsection, shall promptly give a certification as described in
25 Paragraph (4) or give a clear statement that it is unable to meet
26 the certification criteria.

27 (8) No person may provide a certification under

1 Paragraph (4) (A) of this subsection unless:

2 (A) the person is a senior manager with
3 responsibility for the delegated functions; and

4 (B) the person has a reasonable basis for making
5 the certification.

6 (e) Compliance with the National Association of Securities
7 Dealers Conduct Rules pertaining to suitability shall satisfy the
8 requirements under this section for the recommendation of variable
9 annuities. However, nothing in this subsection shall limit the
10 commission's ability to enforce the provisions of this chapter.

11 Sec. 1104.105. RECORDKEEPING. (a) Insurers, general
12 agents, independent agencies and insurance agents shall maintain or
13 be able to make available to the commissioner records of the
14 information collected from the consumer and other information used
15 in making the recommendations that were the basis for insurance
16 transactions for five years after the insurance transaction is
17 completed by the insurer. An insurer is permitted, but shall not be
18 required, to maintain documentation on behalf of an insurance
19 agent.

20 (b) Records that are required to be maintained by this
21 Section may be maintained in paper, photographic, microprocess,
22 magnetic, mechanical or electronic media by any process that
23 accurately reproduces the actual document.

24 Sec. 1104.106. ENFORCEMENT. (a) Mitigation of
25 responsibility.

26 (1) The Commissioner may order the following:

27 (A) an insurer to take reasonable appropriate

1 corrective action for any consumer harmed by the insurer, or by its
2 insurance agent's violation of this section.

3 (B) an insurance agent to take reasonably
4 appropriate corrective action for any consumer harmed by the
5 insurance agent's violation of this section.

6 (C) a general agency or independent agency that
7 employs or contracts with an insurance agent to sell, or solicit the
8 sale, of annuities to consumers, to take reasonably appropriate
9 corrective action for any consumer harmed by the insurance agent's
10 violation of the regulation.

11 (2) Any applicable penalty under this subsection for a
12 violation of this chapter may be reduced or eliminated if
13 corrective action for the consumer was taken promptly after a
14 violation was discovered.

15 (b) Noncompliance with this section may result, after
16 proper notice, in the imposition of any of the sanctions and
17 remedies made available in Texas pertaining to the business of
18 insurance or other suspensions or revocations of license.

19 Sec. 1104.107. SEVERABILITY. (a) If any provision of this
20 chapter, or its application to any person or circumstance is for any
21 reason held to be invalid by a court, the remainder of this chapter
22 and the application of the provisions to other persons or
23 circumstances shall not be affected.

24 Sec. 1104.108 AUTHORITY OF COMMISSIONER. (a) The
25 Commissioner of Insurance may adopt reasonable rules to accomplish
26 and enforce the purpose of this chapter.

27 SECTION 2. This Act takes effect immediately if it receives

1 a vote of two-thirds of all the members elected to each house, as
2 provided by Section 39, Article III, Texas Constitution. If this
3 Act does not receive the vote necessary for immediate effect, this
4 Act takes effect September 1, 2007.

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