

By: Averitt

S.B. No. 1842

A BILL TO BE ENTITLED

AN ACT

relating to rules governing the replacement of existing life insurance policies and 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 D as follows:

SUBCHAPTER D. REPLACEMENT OF LIFE INSURANCE POLICIES AND CERTAIN ANNUITY TRANSACTIONS.

Sec. 1104.201.PURPOSE AND SCOPE. (a) The purpose of this regulation is:

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

(2) to protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions. It will:

(A) assure that purchasers receive information with which a decision can be made in his or her own best interest;

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

(C) establish penalties for failure to comply with requirements of this regulation.

(b) Unless otherwise specifically included, this regulation

1 shall not apply to transactions involving:

2 (1) credit life insurance;

3 (2) group life insurance or group annuities where
4 there is no direct solicitation of individuals by an insurance
5 agent. Direct solicitation shall not include any group meeting held
6 by an insurance agent solely for the purpose of educating or
7 enrolling individuals or, when initiated by an individual member of
8 the group, assisting with the selection of investment options
9 offered by a single insurer in connection with enrolling that
10 individual. Group life insurance or group annuity certificates
11 marketed through direct response solicitation shall be subject to
12 the provisions of Section 1104.207;

13 (3) group life insurance and annuities used to fund
14 prearranged funeral contracts;

15 (4) an application to the existing insurer that issued
16 the existing policy or contract when a contractual change or a
17 conversion privilege is being exercised; or, when the existing
18 policy or contract is being replaced by the same insurer pursuant to
19 a program filed with and approved by the commissioner; or, when a
20 term conversion privilege is exercised among corporate affiliates;

21 (5) proposed life insurance that is to replace life
22 insurance under a binding or conditional receipt issued by the same
23 company;

24 (6)(A) policies or contracts used to fund:

25 (i) an employee pension or welfare benefit
26 plan that is covered by the Employee Retirement and Income Security
27 Act (ERISA);

1 (ii) a plan described by Sections 401(a),
2 401(k) or 403(b) of the Internal Revenue Code, where the plan, for
3 purposes of ERISA, is established or maintained by an employer;

4 (iii) a governmental or church plan defined
5 in Section 414, a governmental or church welfare benefit plan, or a
6 deferred compensation plan of a state or local government or tax
7 exempt organization under Section 457 of the Internal Revenue Code;
8 or

9 (iv) a nonqualified deferred compensation
10 arrangement established or maintained by an employer or plan
11 sponsor.

12 (B) Notwithstanding Subsection 6(A), this
13 regulation shall apply to policies or contracts used to fund any
14 plan or arrangement that is funded solely by contributions an
15 employee elects to make, whether on a pre-tax or after-tax basis,
16 and where the insurer has been notified that plan participants may
17 choose from among two (2) or more insurers and there is a direct
18 solicitation of an individual employee by an insurance agent for
19 the purchase of a contract or policy. As used in this subsection,
20 direct solicitation shall not include any group meeting held by an
21 insurance agent solely for the purpose of educating individuals
22 about the plan or arrangement or enrolling individuals in the plan
23 or arrangement or, when initiated by an individual employee,
24 assisting with the selection of investment options offered by a
25 single insurer in connection with enrolling that individual
26 employee;

27 (7) where new coverage is provided under a life

1 insurance policy or contract and the cost is borne wholly by the
2 insured's employer or by an association of which the insured is a
3 member;

4 (8) existing life insurance that is a non-convertible
5 term life insurance policy that will expire in five (5) years or
6 less and cannot be renewed;

7 (9) immediate annuities that are purchased with
8 proceeds from an existing contract. Immediate annuities purchased
9 with proceeds from an existing policy are not exempted from the
10 requirements of this regulation; or

11 (10) structured settlements.

12 (c) Registered contracts shall be exempt from the
13 requirements of Sections 1104.205(a)(2) and 1104.206(a)(2) with
14 respect to the provision of illustrations or policy summaries;
15 however, premium or contract contribution amounts and
16 identification of the appropriate prospectus or offering circular
17 shall be required instead.

18 Sec. 1104.202 DEFINITIONS. (a) "Direct-response
19 solicitation" means a solicitation through a sponsoring or
20 endorsing entity or individually solely through mails, telephone,
21 the Internet or other mass communication media.

22 (b) "Existing insurer" means the insurance company whose
23 policy or contract is or will be changed or affected in a manner
24 described within the definition of "replacement."

25 (c) "Existing policy or contract" means an individual life
26 insurance policy (policy) or annuity contract (contract) in force,
27 including a policy under a binding or conditional receipt or a

1 policy or contract that is within an unconditional refund period.

2 (d) "Financed purchase" means the purchase of a new policy
3 involving the actual or intended use of funds obtained by the
4 withdrawal or surrender of, or by borrowing from values of an
5 existing policy to pay all or part of any premium due on the new
6 policy. For purposes of a regulatory review of an individual
7 transaction only, if a withdrawal, surrender or borrowing involving
8 the policy values of an existing policy is used to pay premiums on a
9 new policy owned by the same policyholder and issued by the same
10 company within four (4) months before or thirteen (13) months after
11 the effective date of the new policy, it will be deemed prima facie
12 evidence of the policyholder's intent to finance the purchase of
13 the new policy with existing policy values. This prima facie
14 standard is not intended to increase or decrease the monitoring
15 obligations contained in Section 1104.204(a)(5) of this
16 regulation.

17 (e) "Illustration" means a presentation or depiction that
18 includes non-guaranteed elements of a policy of life insurance over
19 a period of years as defined in Section 541.051 of the Insurance
20 Code.

21 (f) "Policy summary," for the purposes of this regulation;
22 (1) For policies or contracts other than universal
23 life policies, means a written statement regarding a policy or
24 contract which shall contain to the extent applicable, but need not
25 be limited to, the following information: current death benefit;
26 annual contract premium; current cash surrender value; current
27 dividend; application of current dividend; and amount of

1 outstanding loan.

2 (2) For universal life policies, means a written
3 statement that shall contain at least the following information:
4 the beginning and end date of the current report period; the policy
5 value at the end of the previous report period and at the end of the
6 current report period; the total amounts that have been credited or
7 debited to the policy value during the current report period,
8 identifying each by type (e.g., interest, mortality, expense and
9 riders); the current death benefit at the end of the current report
10 period on each life covered by the policy; the net cash surrender
11 value of the policy as of the end of the current report period; and
12 the amount of outstanding loans, if any, as of the end of the
13 current report period.

14 (g) "Agent," for the purpose of this regulation, shall be
15 defined to include agents, brokers and agents.

16 (h) "Replacing insurer" means the insurance company that
17 issues or proposes to issue a new policy or contract that replaces
18 an existing policy or contract or is a financed purchase.

19 (i) "Registered contract" means a variable annuity contract
20 or variable life insurance policy subject to the prospectus
21 delivery requirements of the Securities Act of 1933.

22 (j) "Replacement" means a transaction in which a new policy
23 or contract is to be purchased, and it is known or should be known to
24 the proposing agent, or to the proposing insurer if there is no
25 agent, that by reason of the transaction, an existing policy or
26 contract has been or is to be:

27 (1) lapsed, forfeited, surrendered or partially

1 surrendered, assigned to the replacing insurer or otherwise
2 terminated;

3 (2) converted to reduced paid-up insurance, continued
4 as extended term insurance, or otherwise reduced in value by the use
5 of nonforfeiture benefits or other policy values;

6 (3) amended so as to effect either a reduction in
7 benefits or in the term for which coverage would otherwise remain in
8 force or for which benefits would be paid;

9 (4) reissued with any reduction in cash value; or

10 (5) used in a financed purchase.

11 (k) "Sales material" means a sales illustration and any
12 other written, printed or electronically presented information
13 created, or completed or provided by the company or agent and used
14 in the presentation to the policy or contract owner related to the
15 policy or contract purchased.

16 Sec. 1104.203. DUTIES OF AGENTS. (a) An agent who
17 initiates an application shall submit to the insurer, with or as
18 part of the application, a statement signed by both the applicant
19 and the agent as to whether the applicant has existing policies or
20 contracts. If the answer is "no," the agent's duties with respect
21 to replacement are complete.

22 (b) If the applicant answered "yes" to the question
23 regarding existing coverage referred to in Subsection (a), the
24 agent shall present and read to the applicant, not later than at the
25 time of taking the application, a notice regarding replacements in
26 a form approved by the commissioner. However, no approval shall be
27 required when amendments to the notice are limited to the omission

1 of references not applicable to the product being sold or replaced.
2 The notice shall be signed by both the applicant and the agent
3 attesting that the notice has been read aloud by the agent or that
4 the applicant did not wish the notice to be read aloud (in which
5 case the agent need not have read the notice aloud) and left with
6 the applicant.

7 (c) The notice shall list all life insurance policies or
8 annuities proposed to be replaced, properly identified by name of
9 insurer, the insured or annuitant, and policy or contract number if
10 available; and shall include a statement as to whether each policy
11 or contract will be replaced or whether a policy will be used as a
12 source of financing for the new policy or contract. If a policy or
13 contract number has not been issued by the existing insurer,
14 alternative identification, such as an application or receipt
15 number, shall be listed.

16 (d) In connection with a replacement transaction the agent
17 shall leave with the applicant at the time an application for a new
18 policy or contract is completed the original or a copy of all sales
19 material. With respect to electronically presented sales material,
20 it shall be provided to the policy or contract owner in printed form
21 no later than at the time of policy or contract delivery.

22 (e) Except as provided in Section 1104.205(C), in
23 connection with a replacement transaction the agent shall submit to
24 the insurer to which an application for a policy or contract is
25 presented, a copy of each document required by this section, a
26 statement identifying any preprinted or electronically presented
27 company approved sales materials used, and copies of any

1 individualized sales materials, including any illustrations
2 related to the specific policy or contract purchased.

3 Sec. 1104.204 DUTIES OF INSURERS THAT USE AGENTS.

4 (a) Each insurer shall:

5 (1) maintain a system of supervision and control to
6 insure compliance with the requirements of this regulation that
7 shall include at least the following:

8 (A) inform its agents of the requirements of this
9 regulation and incorporate the requirements of this regulation into
10 all relevant agent training manuals prepared by the insurer;

11 (B) provide to each agent a written statement of
12 the company's position with respect to the acceptability of
13 replacements providing guidance to its agent as to the
14 appropriateness of these transactions;

15 (C) a system to review the appropriateness of
16 each replacement transaction that the agent does not indicate is in
17 accord with Subdivision (2) above;

18 (D) procedures to confirm that the requirements
19 of this regulation have been met; and

20 (E) procedures to detect transactions that are
21 replacements of existing policies or contracts by the existing
22 insurer, but that have not been reported as such by the applicant or
23 agent. Compliance with this regulation may include, but shall not
24 be limited to, systematic customer surveys, interviews,
25 confirmation letters, or programs of internal monitoring;

26 (2) have the capacity to monitor each agent's life
27 insurance policy and annuity contract replacements for that

1 insurer, and shall produce, upon request, and make such records
2 available to the Insurance Department. The capacity to monitor
3 shall include the ability to produce records for each agent's:

4 (A) life replacements, including financed
5 purchases, as a percentage of the agent's total annual sales for
6 life insurance;

7 (B) number of lapses of policies by the agent as a
8 percentage of the agent's total annual sales for life insurance;

9 (C) annuity contract replacements as a
10 percentage of the agent's total annual annuity contract sales;

11 (D) number of transactions that are unreported
12 replacements of existing policies or contracts by the existing
13 insurer detected by the company's monitoring system as required by
14 Subsection (a)(5) of this section; and

15 (E) replacements, indexed by replacing agent and
16 existing insurer;

17 (3) require with or as a part of each application for
18 life insurance or an annuity a signed statement by both the
19 applicant and the agent as to whether the applicant has existing
20 policies or contracts;

21 (4) require with each application for life insurance
22 or an annuity that indicates an existing policy or contract a
23 completed notice regarding replacements;

24 (5) when the applicant has existing policies or
25 contracts, each insurer shall be able to produce copies of any sales
26 material required by Section 1104.203(e), the basic illustration
27 and any supplemental illustrations related to the specific policy

1 or contract that is purchased, and the agent's and applicant's
2 signed statements with respect to financing and replacement for at
3 least five (5) years after the termination or expiration of the
4 proposed policy or contract;

5 (6) ascertain that the sales material and
6 illustrations required by Section 1104.203(e) of this regulation
7 meet the requirements of this regulation and are complete and
8 accurate for the proposed policy or contract;

9 (7) if an application does not meet the requirements
10 of this regulation, notify the agent and applicant and fulfill the
11 outstanding requirements; and

12 (8) maintains records in paper, photograph,
13 microprocess, magnetic, mechanical or electronic media or by any
14 process that accurately reproduces the actual document.

15 Sec. 1104.205. DUTIES OF REPLACING INSURERS THAT USE
16 AGENTS. (a) Where a replacement is involved in the transaction,
17 the replacing insurer shall:

18 (1) verify that the required forms are received and
19 are in compliance with this regulation;

20 (2) notify any other existing insurer that may be
21 affected by the proposed replacement within five (5) business days
22 of receipt of a completed application indicating replacement or
23 when the replacement is identified if not indicated on the
24 application, and mail a copy of the available illustration or
25 policy summary for the proposed policy or available disclosure
26 document for the proposed contract within five (5) business days of
27 a request from an existing insurer;

1 (3) be able to produce copies of the notification
2 regarding replacement required in Section 1104.203(b), indexed by
3 agent, for at least five (5) years or until the next regular
4 examination by the insurance department of a company's state of
5 domicile, whichever is later; and

6 (4) provide to the policy or contract owner notice of
7 the right to return the policy or contract within thirty (30) days
8 of the delivery of the contract and receive an unconditional full
9 refund of all premiums or considerations paid on it, including any
10 policy fees or charges or, in the case of a variable or market value
11 adjustment policy or contract, a payment of the cash surrender
12 value provided under the policy or contract plus the fees and other
13 charges deducted from the gross premiums or considerations or
14 imposed under such policy or contract; such notice must be included
15 in clear and conspicuous language.

16 (b) In transactions where the replacing insurer and the
17 existing insurer are the same or subsidiaries or affiliates under
18 common ownership or control, allow credit for the period of time
19 that has elapsed under the replaced policy's or contract's
20 incontestability and suicide period up to the face amount of the
21 existing policy or contract. With regard to financed purchases,
22 the credit may be limited to the amount the face amount of the
23 existing policy is reduced by the use of existing policy values to
24 fund the new policy or contract.

25 (c) If an insurer prohibits the use of sales material other
26 than that approved by the company, as an alternative to the
27 requirements made of an insurer pursuant to Section 1104.203(e),

1 the insurer may:

2 (1) require with each application a statement signed
3 by the agent that:

4 (A) represents that the agent used only
5 company-approved sales material; and

6 (B) states that copies of all sales material were
7 left with the applicant in accordance with Section 1104.203(d); and

8 (2) within ten (10) days of the issuance of the policy
9 or contract:

10 (A) notify the applicant by sending a letter or
11 by verbal communication with the applicant by a person whose duties
12 are separate from the marketing area of the insurer, that the agent
13 has represented that copies of all sales material have been left
14 with the applicant in accordance with Section 1104.203(d);

15 (B) provide the applicant with a toll free number
16 to contact company personnel involved in the compliance function if
17 such is not the case; and

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

20 (3) be able to produce a copy of the letter or other
21 verification in the policy file for at least five (5) years after
22 the termination or expiration of the policy or contract.

23 Sec. 1104.206. DUTIES OF THE EXISTING INSURER. (a) Where
24 a replacement is involved in the transaction, the existing insurer
25 shall:

26 (1) retain and be able to produce all replacement
27 notifications received, indexed by replacing insurer, for at least

1 five (5) years or until the conclusion of the next regular
2 examination conducted by the Insurance Department of its state of
3 domicile, whichever is later.

4 (2) send a letter to the policy or contract owner of
5 the right to receive information regarding the existing policy or
6 contract values including, if available, an in force illustration
7 or policy summary if an in force illustration cannot be produced
8 within five (5) business days of receipt of a notice that an
9 existing policy or contract is being replaced. The information
10 shall be provided within five (5) business days of receipt of the
11 request from the policy or contract owner.

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

21 Sec. 1104.207 DUTIES OF INSURERS WITH RESPECT TO DIRECT
22 RESPONSE SOLICITATIONS. (a) In the case of an application that is
23 initiated as a result of a direct response solicitation, the
24 insurer shall require, with or as part of each completed
25 application for a policy or contract, a statement asking whether
26 the applicant, by applying for the proposed policy or contract,
27 intends to replace, discontinue or change an existing policy or

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

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 applicants or prospective applicants
10 with the policy or contract a notice or form approved by the
11 commissioner. In these instances the insurer may delete the
12 references to the agent, including the agent's signature, and
13 references not applicable to the product being sold or replaced,
14 without having to obtain approval of the form from the
15 commissioner. The insurer's obligation to obtain the applicant's
16 signature shall be satisfied if it can demonstrate that it has made
17 a diligent effort to secure a signed copy of the notice referred to
18 in this paragraph. The requirement to make a diligent effort shall
19 be deemed satisfied if the insurer includes in the mailing a
20 self-addressed postage prepaid envelope with instructions for the
21 return of the signed notice referred to in this section; and

22 (2) comply with the requirements of Section
23 1104.205(a)(2), if the applicant furnishes the names of the
24 existing insurers, and the requirements of Sections
25 1104.205(a)(3), 1104.25(a)(4) and 1104.205(b).

26 Sec. 1104.208. VIOLATIONS AND PENALTIES. (a) Any failure
27 to comply with this regulation shall be considered a violation of

1 Texas Insurance Code Chapter 541. Examples of violations include:

2 (1) any deceptive or misleading information set forth
3 in sales material;

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

7 (3) the intentional incorrect recording of an answer;

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

11 (5) advising a policy or contract owner to write
12 directly to the company in such a way as to attempt to obscure the
13 identity of the replacing agent or company.

14 (b) Policy and contract owners have the right to replace
15 existing life insurance policies or annuity contracts after
16 indicating in or as a part of applications for new coverage that
17 replacement is not their intention; however, patterns of such
18 action by policy or contract owners of the same agent shall be
19 deemed prima facie evidence of the agent's knowledge that
20 replacement was intended in connection with the identified
21 transactions, and these patterns of action shall be deemed prima
22 facie evidence of the agent's intent to violate this regulation.

23 (c) Where it is determined that the requirements of this
24 regulation have not been met the replacing insurer shall provide to
25 the policy owner an in force illustration if available or policy
26 summary for the replacement policy or available disclosure document
27 for the replacement contract and the appropriate notice regarding

1 replacements.

2 (d) Violations of this regulation shall subject the
3 violators to penalties that may include the revocation or
4 suspension of a agent's or company's license, monetary fines and the
5 forfeiture of any commissions or compensation paid to a agent as a
6 result of the transaction in connection with which the violations
7 occurred. In addition, where the commissioner has determined that
8 the violations were material to the sale, the insurer may be
9 required to make restitution, restore policy or contract values and
10 pay interest at the rate set by Section 84.050 of the Insurance Code
11 on the amount refunded in cash.

12 Sec. 1104.209. SEVERABILITY. (a) If any section or
13 portion of a section of this regulation, or its applicability to any
14 person or circumstances, is held invalid by a court, the remainder
15 of this regulation, or the applicability of its provisions to other
16 persons, shall not be affected.

17 Sec. 1104.210. AUTHORITY OF COMMISSIONER. The Commissioner
18 of Insurance may adopt reasonable rules to accomplish and enforce
19 the purpose of this chapter.

20 SECTION 2. This Act takes effect immediately if it receives
21 a vote of two-thirds of all the members elected to each house, as
22 provided by Section 39, Article III, Texas Constitution. If this
23 Act does not receive the vote necessary for immediate effect, this
24 Act takes effect September 1, 2007.