

By: Eiland

H.B. No. 1294

Substitute the following for H.B. No. 1294:

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C.S.H.B. No. 1294

A BILL TO BE ENTITLED

AN ACT

1
2 relating to certain certifications, professional designations, and
3 education requirements regarding the sale of life insurance and
4 annuities.

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

6 ARTICLE 1. AGENT EDUCATION REQUIREMENTS

7 SECTION 1.001. Subchapter B, Chapter 1115, Insurance Code,
8 is amended by adding Section 1115.056 to read as follows:

9 Sec. 1115.056. AGENT EDUCATION REQUIREMENTS. (a) An agent
10 that intends to sell, solicit, or negotiate a contract for an
11 annuity in this state or to represent an insurer in relation to such
12 an annuity must submit evidence satisfactory to the department of
13 completion of at least four hours of training relating to annuities
14 before soliciting individual consumers for the purpose of selling
15 annuities.

16 (b) The training required under Subsection (a) may be used
17 to satisfy the continuing education requirements imposed under this
18 code and rules adopted under this code for issuance of a license
19 under this code.

20 SECTION 1.002. Chapter 4004, Insurance Code, is amended by
21 adding Subchapter E to read as follows:

22 SUBCHAPTER E. ADDITIONAL CONTINUING EDUCATION REQUIREMENTS FOR
23 SALE OF ANNUITIES

24 Sec. 4004.201. DEFINITION. In this subchapter, "annuity"

1 has the meaning assigned by Section 1115.002.

2 Sec. 4004.202. REQUIRED CONTINUING EDUCATION REGARDING
3 ANNUITIES. (a) This section applies to an agent who:

4 (1) sells, solicits, or negotiates a contract for an
5 annuity in this state; or

6 (2) represents or purports to represent an insurer in
7 relation to such an annuity.

8 (b) Each agent described by Subsection (a) must complete
9 four hours of continuing education annually that specifically
10 relates to annuities. The continuing education required under this
11 subsection may be used to satisfy the continuing education
12 requirements under Subchapter B.

13 Sec. 4004.203. PROGRAM CERTIFICATION REQUIREMENTS. (a)
14 The commissioner by rule shall adopt criteria for continuing
15 education programs used to satisfy the requirements of Section
16 4004.202. Those criteria must include:

17 (1) topics related specifically to annuities;

18 (2) state laws and rules related to annuities,
19 including requirements adopted under Chapter 1115;

20 (3) prohibited sales practices regarding annuities;

21 (4) recognition of indicators that a prospective
22 insured may lack the short-term memory or judgment to knowingly
23 purchase an annuity; and

24 (5) fraudulent and unfair trade practices regarding
25 the sale of annuities.

26 (b) Subject matter determined by the commissioner to be
27 primarily intended to promote the sale or marketing of annuities

1 does not qualify as continuing education for purposes of this
2 subchapter.

3 (c) Subchapter C applies to continuing education programs
4 described by Subsection (a). Any training program disapproved
5 under Subsection (b) shall be presumed invalid for certification
6 under Subchapter C unless the program is approved in writing by the
7 commissioner.

8 SECTION 1.003. The commissioner of insurance shall adopt
9 rules as required by Section 4004.203, Insurance Code, as added by
10 this article, not later than December 1, 2009.

11 SECTION 1.004. Subchapter E, Chapter 4004, Insurance Code,
12 as added by this article, applies to continuing education
13 requirements for insurance agents for a license issued or renewed
14 on or after January 1, 2010.

15 ARTICLE 2. USE OF SENIOR-SPECIFIC CERTIFICATIONS OR PROFESSIONAL
16 DESIGNATIONS

17 SECTION 2.001. Subtitle A, Title 7, Insurance Code, is
18 amended by adding Chapter 1117 to read as follows:

19 CHAPTER 1117. USE OF SENIOR-SPECIFIC CERTIFICATIONS OR
20 PROFESSIONAL DESIGNATIONS

21 SUBCHAPTER A. GENERAL PROVISIONS

22 Sec. 1117.001. PURPOSE. The purpose of this chapter is to
23 establish standards to protect consumers from misleading and
24 fraudulent marketing practices with respect to the use of certain
25 senior-specific certifications and professional designations in
26 soliciting the sale of, the sale of, or providing advice made
27 concerning life insurance or annuity contracts.

1 Sec. 1117.002. DEFINITIONS. In this chapter:

2 (1) "Insurance agent" means an agent licensed under
3 this code to sell, solicit the sale of, or negotiate a life
4 insurance or annuity contract.

5 (2) "Senior-specific certification or professional
6 designation" means a certification or designation that implies that
7 an insurance agent holds a special certification or has specialized
8 training in advising or servicing seniors regarding purchasing or
9 selling a life insurance or annuity contract.

10 Sec. 1117.003. APPLICABILITY OF CHAPTER; CONSTRUCTION WITH
11 OTHER LAW. (a) This chapter applies to any solicitation, sale, or
12 purchase of, or advice made in connection with, a life insurance or
13 annuity product by an insurance agent.

14 (b) Nothing in this chapter may be construed to limit the
15 commissioner's authority to enforce any other provision of this
16 code or another law.

17 [Sections 1117.004-1117.050 reserved for expansion]

18 SUBCHAPTER B. USE OF SENIOR-SPECIFIC CERTIFICATIONS AND
19 PROFESSIONAL DESIGNATIONS

20 Sec. 1117.051. CERTAIN USES OF SENIOR-SPECIFIC
21 CERTIFICATIONS AND DESIGNATIONS PROHIBITED. (a) An insurance
22 agent may not, directly or indirectly, use a senior-specific
23 certification or professional designation:

24 (1) through any writing or other publication; or
25 (2) by issuing or disseminating analyses or reports
26 related to a life insurance or annuity product.

27 (b) Subsection (a) prohibits the use of a senior-specific

1 certification or professional designation only by an insurance
2 agent using:

3 (1) a certification or professional designation that
4 the agent has not actually earned or for which the agent is
5 ineligible;

6 (2) a nonexistent or self-conferred certification or
7 professional designation;

8 (3) a certification or professional designation that
9 indicates or implies a level of occupational qualification obtained
10 through education, training, or experience that the agent has not
11 obtained; and

12 (4) a certification or professional designation that
13 was obtained from an organization that:

14 (A) is primarily engaged in the business of
15 instruction in sales or marketing;

16 (B) does not have reasonable standards or
17 procedures for:

18 (i) assuring the competency of individuals
19 granted a certification or designation by the organization; or

20 (ii) monitoring and disciplining
21 individuals granted a certification or designation by the
22 organization for improper or unethical conduct; or

23 (C) does not have reasonable continuing
24 education requirements for individuals granted a certification or
25 designation by the organization.

26 (c) A rebuttable presumption exists that a certification or
27 professional designation granted by an organization described by

1 Subsection (b)(4) is not prohibited under Subsection (a) if the
2 certification or designation issued by the organization does not
3 primarily apply to sales or marketing and if the organization or the
4 certification or designation has been accredited by:

- 5 (1) the American National Standards Institute;
6 (2) the National Commission for Certifying Agencies;
7 (3) any organization that is included in "Accrediting
8 Agencies Recognized for Title IV Purposes" published by the U.S.
9 Department of Education; or

10 (4) any other national accrediting organization
11 recognized by the commissioner.

12 (d) In determining whether a word, a combination of words,
13 or an acronym constitutes a senior-specific certification or
14 professional designation, the commissioner shall consider:

15 (1) the use of one or more words such as "senior,"
16 "retirement," "elder," or similar words combined with one or more
17 words such as "certified," "registered," "chartered," "advisor,"
18 "specialist," "consultant," "planner," or similar words, in the
19 name of the certification or professional designation; and

20 (2) the manner in which those words are combined.

21 Sec. 1117.052. APPLICABILITY TO CERTAIN FINANCIAL
22 SERVICES. (a) Notwithstanding Section 1117.003, for purposes of
23 this chapter, a job title used within an organization that is
24 licensed or registered by a state or federal financial services
25 regulatory agency and that indicates seniority or standing within
26 the organization, or that specifies an individual's area of
27 specialization within the organization, is not a senior-specific

1 certification or professional designation unless the title is used
2 in a manner that is likely to confuse or mislead a reasonable
3 consumer.

4 (b) For purposes of Subsection (a), "financial services
5 regulatory agency" includes an agency that regulates insurers,
6 insurance producers, broker-dealers, investment advisers, or
7 investment companies, as defined by the Investment Company Act of
8 1940 (15 U.S.C. Section 80a-1 et seq.).

9 SECTION 2.002. The change in law made by this article
10 applies only to the solicitation of, sale of, or advice made in
11 connection with, a life insurance or annuity contract by an
12 insurance agent on or after January 1, 2010. The solicitation of,
13 sale of, or advice made in connection with, a life insurance or
14 annuity contract by an insurance agent before January 1, 2010, is
15 covered by the law in effect at the time the solicitation or sale
16 was made or the advice was given, and that law is continued in
17 effect for that purpose.

18 ARTICLE 3. EFFECTIVE DATE

19 SECTION 3.001. This Act takes effect September 1, 2009.