

1-1 By: Eiland (Senate Sponsor - Ellis) H.B. No. 1294  
1-2 (In the Senate - Received from the House April 29, 2009;  
1-3 May 4, 2009, read first time and referred to Committee on State  
1-4 Affairs; May 14, 2009, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;  
1-6 May 14, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1294 By: Ellis

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

1-10 relating to certain certifications, professional designations, and  
1-11 education requirements regarding the sale of life insurance and  
1-12 annuities.

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

1-14 ARTICLE 1. AGENT EDUCATION REQUIREMENTS

1-15 SECTION 1.001. Subchapter B, Chapter 1115, Insurance Code,  
1-16 is amended by adding Section 1115.056 to read as follows:

1-17 Sec. 1115.056. AGENT EDUCATION REQUIREMENTS. (a) A  
1-18 resident agent that intends to sell, solicit, or negotiate a  
1-19 contract for an annuity in this state or to represent an insurer in  
1-20 relation to such an annuity must submit evidence satisfactory to  
1-21 the department of completion of at least four hours of training  
1-22 relating to annuities before soliciting individual consumers for  
1-23 the purpose of selling annuities.

1-24 (b) The training required under Subsection (a) may be used  
1-25 to satisfy the continuing education requirements imposed under this  
1-26 code and rules adopted under this code for issuance of a license  
1-27 under this code.

1-28 SECTION 1.002. Chapter 4004, Insurance Code, is amended by  
1-29 adding Subchapter E to read as follows:

1-30 SUBCHAPTER E. CONTINUING EDUCATION REQUIREMENTS FOR SALE OF  
1-31 ANNUITIES

1-32 Sec. 4004.201. DEFINITION. In this subchapter, "annuity"  
1-33 has the meaning assigned by Section 1115.002.

1-34 Sec. 4004.202. REQUIRED CONTINUING EDUCATION REGARDING  
1-35 ANNUITIES. (a) This section applies to a resident agent who:

1-36 (1) sells, solicits, or negotiates a contract for an  
1-37 annuity in this state; or

1-38 (2) represents or purports to represent an insurer in  
1-39 relation to such an annuity.

1-40 (b) Each agent described by Subsection (a) must complete  
1-41 four hours of continuing education annually that specifically  
1-42 relates to annuities. The annual period under this section must be  
1-43 based on the agent's license expiration date or another date  
1-44 specified by the commissioner by rule, and the education  
1-45 requirement under this subsection must be met within that annual  
1-46 period, notwithstanding Section 4004.051(b).

1-47 (c) The continuing education required under this section  
1-48 may be used to satisfy the continuing education requirements under  
1-49 Subchapter B.

1-50 Sec. 4004.203. PROGRAM CERTIFICATION REQUIREMENTS. (a)  
1-51 The commissioner by rule shall adopt criteria for continuing  
1-52 education programs used to satisfy the requirements of Section  
1-53 4004.202. Those criteria must include:

1-54 (1) topics related specifically to annuities;

1-55 (2) state laws and rules related to annuities,  
1-56 including requirements adopted under Chapter 1115;

1-57 (3) prohibited sales practices regarding annuities;

1-58 (4) recognition of indicators that a prospective  
1-59 insured may lack the short-term memory or judgment to knowingly  
1-60 purchase an annuity; and

1-61 (5) fraudulent and unfair trade practices regarding  
1-62 the sale of annuities.

1-63 (b) Subject matter determined by the commissioner to be  
1-64 primarily intended to promote the sale or marketing of annuities  
1-65 does not qualify as continuing education for purposes of this

2-1 subchapter.

2-2 (c) Subchapter C applies to continuing education programs  
2-3 described by Subsection (a) and training under Section 1115.056.  
2-4 Any training program disapproved under Subsection (b) shall be  
2-5 presumed invalid for certification under Subchapter C unless the  
2-6 program is approved in writing by the commissioner.

2-7 SECTION 1.003. The commissioner of insurance shall adopt  
2-8 rules as required by Section 4004.203, Insurance Code, as added by  
2-9 this article, not later than December 1, 2009.

2-10 SECTION 1.004. Subchapter E, Chapter 4004, Insurance Code,  
2-11 as added by this article, applies to continuing education  
2-12 requirements for insurance agents for a license issued or renewed  
2-13 on or after April 1, 2010.

2-14 SECTION 1.005. Section 1115.056, Insurance Code, as added  
2-15 by this article, applies to training requirements for insurance  
2-16 agents for a license issued or renewed on or after April 1, 2010.

2-17 ARTICLE 2. USE OF SENIOR-SPECIFIC CERTIFICATIONS OR  
2-18 PROFESSIONAL DESIGNATIONS

2-19 SECTION 2.001. Subtitle A, Title 7, Insurance Code, is  
2-20 amended by adding Chapter 1117 to read as follows:

2-21 CHAPTER 1117. USE OF SENIOR-SPECIFIC CERTIFICATIONS OR  
2-22 PROFESSIONAL DESIGNATIONS

2-23 SUBCHAPTER A. GENERAL PROVISIONS

2-24 Sec. 1117.001. PURPOSE. The purpose of this chapter is to  
2-25 establish standards to protect consumers from misleading and  
2-26 fraudulent marketing practices with respect to the use of certain  
2-27 senior-specific certifications and professional designations in  
2-28 soliciting the sale or purchase of, or providing advice made  
2-29 concerning, life insurance or annuity products.

2-30 Sec. 1117.002. DEFINITIONS. In this chapter:

2-31 (1) "Insurance agent" means an agent licensed under  
2-32 this code to sell, solicit the sale of, or negotiate a life  
2-33 insurance or annuity product.

2-34 (2) "Senior-specific certification or professional  
2-35 designation" means a certification or designation that implies that  
2-36 an insurance agent holds a special certification or has specialized  
2-37 training in advising or servicing seniors regarding purchasing or  
2-38 selling a life insurance or annuity product.

2-39 Sec. 1117.003. APPLICABILITY OF CHAPTER; CONSTRUCTION WITH  
2-40 OTHER LAW. (a) This chapter applies to any solicitation, sale or  
2-41 purchase of, or advice made in connection with, a life insurance or  
2-42 annuity product by an insurance agent.

2-43 (b) Nothing in this chapter may be construed to limit the  
2-44 commissioner's authority to enforce any other provision of this  
2-45 code or another law.

2-46 [Sections 1117.004-1117.050 reserved for expansion]

2-47 SUBCHAPTER B. USE OF SENIOR-SPECIFIC CERTIFICATIONS AND  
2-48 PROFESSIONAL DESIGNATIONS

2-49 Sec. 1117.051. CERTAIN USES OF SENIOR-SPECIFIC  
2-50 CERTIFICATIONS AND DESIGNATIONS PROHIBITED. (a) An insurance  
2-51 agent may not, directly or indirectly, use a senior-specific  
2-52 certification or professional designation in such a way as to  
2-53 mislead a purchaser or prospective purchaser that the agent has  
2-54 special certification or training in advising or servicing seniors  
2-55 in connection with the solicitation, sale, or purchase of a life  
2-56 insurance or annuity product or in the provision of advice as to the  
2-57 value of or the advisability of purchasing or selling a life  
2-58 insurance or annuity product:

2-59 (1) through any writing or other publication; or

2-60 (2) by issuing or disseminating analyses or reports  
2-61 related to a life insurance or annuity product.

2-62 (b) Subsection (a) prohibits the use of a senior-specific  
2-63 certification or professional designation only by an insurance  
2-64 agent using:

2-65 (1) a certification or professional designation that  
2-66 the agent has not actually earned or for which the agent is  
2-67 ineligible;

2-68 (2) a nonexistent or self-conferred certification or  
2-69 professional designation;

2-70 (3) a certification or professional designation that  
2-71 indicates or implies a level of occupational qualification obtained

3-1 through education, training, or experience that the agent has not  
3-2 obtained; and

3-3 (4) a certification or professional designation that  
3-4 was obtained from an organization that:

3-5 (A) is primarily engaged in the business of  
3-6 instruction in sales or marketing;

3-7 (B) does not have reasonable standards or  
3-8 procedures for:

3-9 (i) assuring the competency of individuals  
3-10 granted a certification or designation by the organization; or

3-11 (ii) monitoring and disciplining  
3-12 individuals granted a certification or designation by the  
3-13 organization for improper or unethical conduct; or

3-14 (C) does not have reasonable continuing  
3-15 education requirements in order to maintain the certification or  
3-16 designation for individuals granted a certification or designation  
3-17 by the organization.

3-18 (c) A rebuttable presumption exists that a certification or  
3-19 professional designation granted by an organization described by  
3-20 Subsection (b)(4) is not prohibited under Subsection (a) if the  
3-21 certification or designation issued by the organization does not  
3-22 primarily apply to sales or marketing and if the organization or the  
3-23 certification or designation has been accredited by:

3-24 (1) the American National Standards Institute;

3-25 (2) the National Commission for Certifying Agencies;

3-26 (3) any organization that is included in "Accrediting  
3-27 Agencies Recognized for Title IV Purposes" published by the U.S.  
3-28 Department of Education; or

3-29 (4) any other national accrediting organization  
3-30 recognized by the commissioner.

3-31 (d) In determining whether a word, a combination of words,  
3-32 or an acronym constitutes a senior-specific certification or  
3-33 professional designation, the commissioner shall consider:

3-34 (1) the use of one or more words such as "senior,"  
3-35 "retirement," "elder," or similar words combined with one or more  
3-36 words such as "certified," "registered," "chartered," "advisor,"  
3-37 "specialist," "consultant," "planner," or similar words, in the  
3-38 name of the certification or professional designation; and

3-39 (2) the manner in which those words are combined.

3-40 Sec. 1117.052. APPLICABILITY TO CERTAIN FINANCIAL  
3-41 SERVICES. (a) Notwithstanding Section 1117.003, for purposes of  
3-42 this chapter, a job title used within an organization that is  
3-43 licensed or registered by a state or federal financial services  
3-44 regulatory agency and that indicates seniority or standing within  
3-45 the organization, or that specifies an individual's area of  
3-46 specialization within the organization, is not a senior-specific  
3-47 certification or professional designation unless the title is used  
3-48 in a manner that is likely to confuse or mislead a reasonable  
3-49 consumer.

3-50 (b) For purposes of Subsection (a), "financial services  
3-51 regulatory agency" includes an agency that regulates insurers,  
3-52 insurance producers, broker-dealers, investment advisers, or  
3-53 investment companies, as defined by the Investment Company Act of  
3-54 1940 (15 U.S.C. Section 80a-1 et seq.).

3-55 SECTION 2.002. The change in law made by this article  
3-56 applies only to the solicitation of, sale of, or advice made in  
3-57 connection with, a life insurance or annuity product by an  
3-58 insurance agent on or after January 1, 2010. The solicitation of,  
3-59 sale of, or advice made in connection with, a life insurance or  
3-60 annuity product by an insurance agent before January 1, 2010, is  
3-61 covered by the law in effect at the time the solicitation or sale  
3-62 was made or the advice was given, and that law is continued in  
3-63 effect for that purpose.

3-64 ARTICLE 3. EFFECTIVE DATE

3-65 SECTION 3.001. This Act takes effect September 1, 2009.

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