

House Bill 1294
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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ARTICLE 1. AGENT EDUCATION REQUIREMENTS

Same as House version.

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

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

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

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

SUBCHAPTER E. ADDITIONAL CONTINUING EDUCATION REQUIREMENTS FOR SALE OF ANNUITIES

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

Sec. 4004.202. REQUIRED CONTINUING

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

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

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

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

SUBCHAPTER E. CONTINUING EDUCATION REQUIREMENTS FOR SALE OF ANNUITIES

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

Sec. 4004.202. REQUIRED CONTINUING EDUCATION REGARDING ANNUITIES. (a) This

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EDUCATION REGARDING ANNUITIES. (a) This section applies to an agent who:

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

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

(b) Each agent described by Subsection (a) must complete four hours of continuing education annually that specifically relates to annuities.

The continuing education required under this subsection may be used to satisfy the continuing education requirements under Subchapter B.

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

(1) topics related specifically to annuities;

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

(3) prohibited sales practices regarding annuities;

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

(5) fraudulent and unfair trade practices regarding the

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section applies to a resident agent who:

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

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

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

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

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

(1) topics related specifically to annuities;

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

(3) prohibited sales practices regarding annuities;

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

(5) fraudulent and unfair trade practices regarding the

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sale of annuities.

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

(c) Subchapter C applies to continuing education programs described by Subsection (a).

Any training program disapproved under Subsection (b) shall be presumed invalid for certification under Subchapter C unless the program is approved in writing by the commissioner.

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

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

No equivalent provision.

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sale of annuities.

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

(c) Subchapter C applies to continuing education programs described by Subsection (a) **and training under Section 1115.056.**

Any training program disapproved under Subsection (b) shall be presumed invalid for certification under Subchapter C unless the program is approved in writing by the commissioner.

Same as House version.

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

SECTION 1.005. Section 1115.056, Insurance Code, as added by this article, applies to training requirements for

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insurance agents for a license issued or renewed on or after April 1, 2010.

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

Same as House version.

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

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

SUBCHAPTER A. GENERAL PROVISIONS

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

Sec. 1117.002. DEFINITIONS. In this chapter:

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

(2) "Senior-specific certification or professional designation" means a certification or designation that implies that an insurance agent holds a special

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

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

SUBCHAPTER A. GENERAL PROVISIONS

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

Sec. 1117.002. DEFINITIONS. In this chapter:

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

(2) "Senior-specific certification or professional designation" means a certification or designation that implies that an insurance agent holds a special

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certification or has specialized training in advising or servicing seniors regarding purchasing or selling a life insurance or annuity **contract.**

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

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

[Sections 1117.004-1117.050 reserved for expansion]

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

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

- (1) through any writing or other publication; or
- (2) by issuing or disseminating analyses or reports

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certification or has specialized training in advising or servicing seniors regarding purchasing or selling a life insurance or annuity **product.**

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

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

[Sections 1117.004-1117.050 reserved for expansion]

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

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

- (1) through any writing or other publication; or
- (2) by issuing or disseminating analyses or reports

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related to a life insurance or annuity product.

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

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

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

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

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

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

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

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

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

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

(c) A rebuttable presumption exists that a certification or

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related to a life insurance or annuity product.

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

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

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

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

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

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

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

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

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

(C) does not have reasonable continuing education requirements **in order to maintain the certification or designation** for individuals granted a certification or designation by the organization.

(c) A rebuttable presumption exists that a certification or

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

- (1) the American National Standards Institute;
- (2) the National Commission for Certifying Agencies;
- (3) any organization that is included in "Accrediting Agencies Recognized for Title IV Purposes" published by the U.S. Department of Education; or
- (4) any other national accrediting organization recognized by the commissioner.

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

- (1) the use of one or more words such as "senior," "retirement," "elder," or similar words combined with one or more words such as "certified," "registered," "chartered," "advisor," "specialist," "consultant," "planner," or similar words, in the name of the certification or professional designation; and
- (2) the manner in which those words are combined.

Sec. 1117.052. APPLICABILITY TO CERTAIN FINANCIAL SERVICES. (a) Notwithstanding Section 1117.003, for purposes of this chapter, a job title used within an organization that is licensed or registered by a state or federal financial services regulatory agency and

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

- (1) the American National Standards Institute;
- (2) the National Commission for Certifying Agencies;
- (3) any organization that is included in "Accrediting Agencies Recognized for Title IV Purposes" published by the U.S. Department of Education; or
- (4) any other national accrediting organization recognized by the commissioner.

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

- (1) the use of one or more words such as "senior," "retirement," "elder," or similar words combined with one or more words such as "certified," "registered," "chartered," "advisor," "specialist," "consultant," "planner," or similar words, in the name of the certification or professional designation; and
- (2) the manner in which those words are combined.

Sec. 1117.052. APPLICABILITY TO CERTAIN FINANCIAL SERVICES. (a) Notwithstanding Section 1117.003, for purposes of this chapter, a job title used within an organization that is licensed or registered by a state or federal financial services regulatory agency and

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that indicates seniority or standing within the organization, or that specifies an individual's area of specialization within the organization, is not a senior-specific certification or professional designation unless the title is used in a manner that is likely to confuse or mislead a reasonable consumer.

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

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

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that indicates seniority or standing within the organization, or that specifies an individual's area of specialization within the organization, is not a senior-specific certification or professional designation unless the title is used in a manner that is likely to confuse or mislead a reasonable consumer.

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

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

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

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