

By: Eiland

H.B. No. 2277

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the sale, exchange, or replacement of life insurance
3 and annuity contracts.

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

5 SECTION 1. Section 541.058(b), Insurance Code, is amended
6 to read as follows:

7 (b) It is not a rebate or discrimination prohibited by
8 Section 541.056(a) or 541.057:

9 (1) for a life insurance or life annuity contract, to
10 pay a bonus to a policyholder or otherwise abate the policyholder's
11 premiums in whole or in part out of surplus accumulated from
12 nonparticipating insurance policies if the bonus or abatement:

13 (A) is fair and equitable to policyholders; and

14 (B) is in the best interests of the insurer and
15 its policyholders;

16 (2) for a life insurance policy issued on the
17 industrial debit plan, to make to a policyholder who has
18 continuously for a specified period made premium payments directly
19 to the insurer's office an allowance in an amount that fairly
20 represents the saving in collection expenses;

21 (3) for a group insurance policy, to readjust the rate
22 of premium based on the loss or expense experience under the policy
23 at the end of a policy year if the adjustment is retroactive for
24 only that policy year;

1 (4) for a life annuity contract, to waive surrender
2 charges under the contract when the contract holder exchanges that
3 contract for another annuity contract issued by the same insurer or
4 an affiliate of the same insurer that is part of the same holding
5 company group if:

6 (A) the waiver and the exchange are fully,
7 fairly, and accurately explained to the contract holder in a manner
8 that is not deceptive or misleading; and

9 (B) the contract holder is given credit for the
10 time that the previous contract was held when determining any
11 surrender charges under the new contract;

12 (5) in connection with an accident and health
13 insurance policy, to provide to policy or certificate holders, in
14 addition to benefits under the terms of the insurance contract,
15 health-related services or health-related information, or to
16 disclose the availability of those additional services and
17 information to prospective policy or certificate holders; or

18 (6) in connection with a health maintenance
19 organization evidence of coverage, to provide to enrollees, in
20 addition to benefits under the evidence of coverage, health-related
21 services or health-related information, or to disclose the
22 availability of those additional services and information to
23 prospective enrollees or contract holders.

24 SECTION 2. Section 1114.004(a), Insurance Code, is amended
25 to read as follows:

26 (a) Except as otherwise specifically provided by this
27 chapter, this chapter does not apply to transactions involving:

- 1 (1) credit life insurance;
- 2 (2) group life insurance or group annuities for which
3 there is no direct solicitation of individuals by an agent;
- 4 (3) [~~group~~] life insurance and annuities used to fund
5 prepaid funeral benefits contracts, as defined by Chapter 154,
6 Finance Code;
- 7 (4) an application to:
 - 8 (A) exercise a contractual change or a conversion
9 privilege made to the insurer that issued the existing policy or
10 contract;
 - 11 (B) replace an existing policy or contract by the
12 insurer that issued the existing policy or contract under a program
13 filed with and approved by the commissioner; or
 - 14 (C) exercise a term conversion privilege among
15 corporate affiliates;
- 16 (5) life insurance proposed to replace life insurance
17 under a binding or conditional receipt issued by the same insurer;
- 18 (6) a policy or contract used to fund:
 - 19 (A) an employee pension benefit plan or employee
20 welfare benefit plan that is covered by the Employee Retirement
21 Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);
 - 22 (B) a plan described by Section 401(a), 401(k),
23 or 403(b), Internal Revenue Code of 1986, if established or
24 maintained by an employer;
 - 25 (C) a government or church plan, as defined by
26 Section 414, Internal Revenue Code of 1986, a government or church
27 welfare benefit plan, or a deferred compensation plan of a state or

1 local government or tax exempt organization described under Section
2 457, Internal Revenue Code of 1986; or

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

6 (7) new coverage provided under a life insurance
7 policy or contract if the cost is borne wholly by the insured's
8 employer or by an association of which the insured is a member;

9 (8) an existing life insurance policy that is a
10 nonconvertible term life insurance policy scheduled to expire in
11 five years or less and that cannot be renewed;

12 (9) immediate annuities purchased with proceeds from
13 an existing contract; or

14 (10) structured settlements.

15 SECTION 3. Subchapter B, Chapter 1114, Insurance Code, is
16 amended by adding Section 1114.057 to read as follows:

17 Sec. 1114.057. DISCLOSURE OF AVAILABILITY OF WAIVER OF
18 SURRENDER CHARGES. An insurer that offers to waive surrender
19 charges as described by Section 541.058(b)(4) shall provide
20 reasonable notice of that offer to the insurer's prospective or
21 current contract holders. The notice may be provided by any
22 available means, including a disclosure document or by display on a
23 link that is prominently placed on the insurer's Internet website.

24 SECTION 4. Section 1115.001, Insurance Code, is amended to
25 read as follows:

26 Sec. 1115.001. PURPOSE. The purpose of this chapter is to
27 establish standards and procedures regarding recommendations made

1 to a consumer that result in a transaction involving annuity
2 products, and to require insurers to establish a system to
3 supervise those recommendations, to ensure that the insurance needs
4 and financial objectives of the consumer as of the time of the
5 transaction are appropriately addressed.

6 SECTION 5. Section 1115.002, Insurance Code, is amended by
7 amending Subdivisions (2), (3), and (4) and adding Subdivisions
8 (2-a), (5), and (6) to read as follows:

9 (2) "Annuity" means an [a fixed, variable, or modified
10 guaranteed] annuity that is an insurance product under the laws of
11 this state that is individually solicited, whether the product is
12 classified as an individual annuity or group annuity.

13 (2-a) "Continuing education provider" means a person
14 authorized to offer continuing education courses under Chapter
15 4004.

16 (3) "Insurer" means a [an insurance] company
17 authorized to engage in the business of life insurance and
18 annuities in this state.

19 (4) "Recommendation" means advice provided by an
20 agent, or an insurer if no agent is involved, to an individual
21 consumer that results in a purchase, [or] exchange, or replacement
22 of an annuity made in accordance with that advice.

23 (5) "Replacement" means a transaction in which a new
24 policy or contract is to be purchased and the proposing agent, or
25 the proposing insurer if an agent is not involved, knows or should
26 know that, by reason of the transaction, an existing policy or
27 contract has been or is to be:

1 (A) lapsed, forfeited, surrendered or partially
2 surrendered, assigned to the replacing insurer, or otherwise
3 terminated;

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

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

10 (D) reissued with any reduction in cash value; or

11 (E) used in a financed purchase.

12 (6) "Suitability information" means information that
13 is reasonably appropriate to determine the suitability of a
14 recommendation, including the following:

15 (A) age;

16 (B) annual income;

17 (C) financial situation and needs, including the
18 financial resources used for the funding of the annuity;

19 (D) financial experience;

20 (E) financial objectives;

21 (F) intended use of the annuity;

22 (G) financial time horizon;

23 (H) existing assets, including investment and
24 life insurance holdings;

25 (I) liquidity needs;

26 (J) liquid net worth;

27 (K) risk tolerance; and

1 (L) tax status.

2 SECTION 6. Section 1115.003, Insurance Code, is amended to
3 read as follows:

4 Sec. 1115.003. APPLICABILITY; EXEMPTIONS. (a) This
5 chapter applies to any recommendation to purchase, replace, or
6 exchange an annuity that:

7 (1) is made to a consumer by an agent, or an insurer if
8 an agent is not involved; and

9 (2) results in the recommended purchase, replacement,
10 or exchange.

11 (b) Unless otherwise specifically included, this chapter
12 does not apply to transactions [~~recommendations~~] involving:

13 (1) direct response solicitations if there is no
14 recommendation based on information collected from the consumer
15 under this chapter; or

16 (2) contracts used to fund:

17 (A) an employee pension benefit plan or employee
18 welfare benefit plan covered by the Employee Retirement Income
19 Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

20 (B) a plan described by Section 401(a), 401(k),
21 403(b), 408(k), or 408(p), Internal Revenue Code of 1986, if
22 established or maintained by an employer;

23 (C) a government or church plan, as defined by
24 Section 414, Internal Revenue Code of 1986, a government or church
25 welfare benefit plan, or a deferred compensation plan of a state or
26 local government or tax exempt organization described under Section
27 457, Internal Revenue Code of 1986;

1 (D) a nonqualified deferred compensation
2 arrangement established or maintained by an employer or plan
3 sponsor;

4 (E) settlements of or assumptions of liabilities
5 associated with personal injury litigation or any dispute or claim
6 resolution process; or

7 (F) prepaid funeral benefits contracts, as
8 defined by Chapter 154, Finance Code.

9 SECTION 7. Section 1115.051, Insurance Code, is amended to
10 read as follows:

11 Sec. 1115.051. SUITABILITY OF ANNUITY PRODUCT REQUIRED.

12 (a) In recommending to a consumer the purchase of an annuity or the
13 exchange of an annuity that results in another insurance
14 transaction or series of insurance transactions, the agent, or the
15 insurer if an agent is not involved, must have a reasonable basis to
16 believe that:

17 (1) the recommendation is suitable for the consumer on
18 the basis of the facts disclosed by the consumer as to the
19 consumer's investments and other insurance products and as to the
20 consumer's financial situation and needs, including the consumer's
21 suitability information;

22 (2) the consumer has been reasonably informed of
23 various features of the annuity, such as the potential surrender
24 period and the surrender charge, any potential tax penalty if the
25 consumer sells, exchanges, surrenders, or annuitizes the annuity,
26 mortality and expense fees, investment advisory fees, potential
27 charges for and features of riders, limitations on interest

1 returns, insurance and investment components, and market risk;

2 (3) the consumer would benefit from certain features
3 of the annuity, such as tax-deferred growth, annuitization, or a
4 death or living benefit;

5 (4) the particular annuity as a whole, the underlying
6 subaccounts to which funds are allocated at the time of the purchase
7 or exchange of the annuity, and any riders or similar product
8 enhancements are suitable, and, in the case of an exchange or
9 replacement, the transaction as a whole is suitable, for the
10 particular consumer based on the consumer's suitability
11 information; and

12 (5) in the case of an exchange or replacement of an
13 annuity, the exchange or replacement is suitable, including taking
14 into consideration whether the consumer:

15 (A) will incur a surrender charge, be subject to
16 the commencement of a new surrender period, lose existing benefits
17 such as death, living, or other contractual benefits, or be subject
18 to increased fees, investment advisory fees, or charges for riders
19 or similar product enhancements;

20 (B) would benefit from product enhancements and
21 improvements; and

22 (C) has had another annuity exchange or
23 replacement, and in particular, an exchange or replacement in the
24 preceding 36 months.

25 (b) Before the execution of a purchase, exchange, or
26 replacement of an annuity resulting from a recommendation, an
27 agent, or an insurer if an agent is not involved, shall make

1 reasonable efforts to obtain the consumer's suitability
2 information.

3 (c) Except as permitted by Subsection (d), an insurer may
4 not issue an annuity recommended to a consumer unless the insurer
5 has a reasonable basis to believe the annuity is suitable based on
6 the consumer's suitability information.

7 (d) Subject to Subsection (e), an agent or insurer does not
8 have any obligation to a consumer related to an annuity transaction
9 if:

10 (1) the consumer refuses to provide suitability
11 information requested by the agent or insurer;

12 (2) the agent or insurer does not make a
13 recommendation;

14 (3) the agent or insurer makes a recommendation later
15 found to have been prepared based on inaccurate material
16 information provided by the consumer; or

17 (4) the consumer decides to enter into a transaction
18 that is not based on a recommendation of the agent or insurer.

19 (e) An insurer's issuance of an annuity under circumstances
20 described by Subsection (d) must be reasonable under all
21 circumstances actually known to the insurer at the time the annuity
22 is issued.

23 (f) An agent, or an insurer if an agent is not involved,
24 shall at the time of sale of an annuity:

25 (1) make a record of any recommendation made by the
26 agent or insurer that is subject to Subsection (a);

27 (2) obtain a customer-signed statement documenting

1 the customer's refusal, if any, to provide suitability information;
2 and

3 (3) obtain a customer-signed statement acknowledging
4 that an annuity transaction is not recommended if the customer
5 decides to enter into an annuity transaction that is not based on
6 the agent's or insurer's recommendation. ~~[Before the execution of a~~
7 ~~purchase or exchange of an annuity resulting from a recommendation,~~
8 ~~an agent, or the insurer if an agent is not involved, must make~~
9 ~~reasonable efforts to obtain:~~

10 ~~[(1) information from the consumer concerning:~~

11 ~~[(A) the consumer's financial status,~~

12 ~~[(B) the consumer's tax status; and~~

13 ~~[(C) the consumer's investment objectives; and~~

14 ~~[(2) other relevant information used or considered to~~
15 ~~be reasonable by the agent or that insurer in making~~
16 ~~recommendations to consumers.~~

17 ~~[(b) In a recommendation to a consumer regarding the~~
18 ~~purchase of an annuity or the exchange of an annuity that results in~~
19 ~~another insurance transaction or series of insurance transactions,~~
20 ~~an agent or the insurer, if an agent is not involved, has reasonable~~
21 ~~grounds for believing that the recommendation is suitable for that~~
22 ~~consumer based on the facts disclosed by the consumer regarding the~~
23 ~~consumer's:~~

24 ~~[(1) investments and other insurance products; and~~

25 ~~[(2) financial situation and needs.~~

26 ~~[(c) An agent, or an insurer if an agent is not involved, has~~
27 ~~no obligation to a consumer related to a recommendation if the~~

1 consumer:

2 ~~[(1) refuses to provide relevant information~~
3 ~~requested by the agent or insurer,~~

4 ~~[(2) fails to provide complete or accurate information~~
5 ~~on the request of the agent or insurer, or~~

6 ~~[(3) decides to enter into a transaction that is not~~
7 ~~based on a recommendation of the agent or insurer.~~

8 ~~[(d) An agent's or insurer's recommendation subject to~~
9 ~~Subsection (a) must be reasonable under all the circumstances~~
10 ~~actually known to the agent or insurer at the time of the~~
11 ~~recommendation.]~~

12 SECTION 8. Section 1115.052, Insurance Code, is amended to
13 read as follows:

14 Sec. 1115.052. SUPERVISION ~~[COMPLIANCE]~~ SYSTEM. (a) Each
15 insurer shall establish supervision ~~[operate a system,~~ that is
16 reasonably designed to achieve the insurer's and the insurer's
17 agents' compliance with this chapter ~~[, to supervise~~
18 ~~recommendations].~~

19 (b) An insurer may comply with Subsection (a) ~~[by complying~~
20 ~~with Subsections (c)-(e) or]~~ by establishing and maintaining the
21 insurer's own supervision ~~[compliance]~~ system under which, at a
22 minimum, the insurer ~~[that complies with Subsection (c). Each~~
23 ~~agent and independent agency shall adopt an insurer's compliance~~
24 ~~system or shall establish and maintain such a system.~~

25 ~~[(c) A compliance system established under Subsection~~
26 ~~(b) must include]:~~

27 (1) maintains reasonable procedures to inform the

1 insurer's agents of the requirements of this chapter and
2 incorporates the requirements of this chapter into relevant agent
3 training manuals [~~maintenance of written procedures~~]; [~~and~~]

4 (2) establishes standards for agent product training
5 and maintains reasonable procedures to require the insurer's agents
6 to comply with the requirements of Section 1115.056;

7 (3) provides product-specific training and training
8 materials that explain all material features of the insurer's
9 annuity products to the insurer's agents;

10 (4) maintains procedures to review each
11 recommendation electronically, physically, or otherwise before the
12 issuance of an annuity that:

13 (A) are designed to ensure that there is a
14 reasonable basis to determine that a recommendation is suitable;
15 and

16 (B) may:

17 (i) include the application of a screening
18 system to identify selected transactions for additional review; and

19 (ii) be designed to require additional
20 review only of those transactions identified for additional review
21 by the selection criteria;

22 (5) maintains reasonable procedures, such as
23 confirmation of consumer suitability information, systematic
24 customer surveys, interviews, confirmation letters, and programs
25 of internal monitoring, to detect recommendations that are not
26 suitable, which may involve applying sampling procedures or
27 confirming suitability information after the issuance or delivery

1 of the annuity; and

2 (6) annually provides a report to the insurer's senior
3 management, including to the senior manager responsible for audit
4 functions, that details a review, with appropriate testing,
5 reasonably designed to determine the effectiveness of the
6 supervision system, the exceptions found, and any corrective action
7 taken or recommended [~~periodic reviews of the insurer's or agent's~~
8 ~~records in a manner reasonably designed to assist in detecting and~~
9 ~~preventing violations of this chapter].~~

10 (c) This subsection does not prohibit an insurer from
11 contracting for the performance of a function, including
12 maintenance of procedures, required by Subsection (b). An
13 insurer's supervision system under Subsection (b) must include the
14 supervision of contractual performance under this subsection that
15 includes, at a minimum [~~(d) An agent or insurer may contract with a~~
16 ~~third party, including an agent or independent agency, to establish~~
17 ~~and maintain a compliance system with respect to agents under~~
18 ~~contract with or employed by the third party. The agent or insurer~~
19 ~~shall make reasonable inquiries sufficient to ensure that the third~~
20 ~~party is performing the functions required under Subsection (a),~~
21 ~~and shall take any action reasonable under the circumstances to~~
22 ~~enforce the contractual obligation to perform those functions. An~~
23 ~~agent or insurer may comply with the obligation to make reasonable~~
24 ~~inquiries by]:~~

25 (1) annually obtaining certification that complies
26 with Section 1115.053 from a senior manager who represents that the
27 contracted function is properly performed [~~of the third party that~~

1 ~~the third party is performing the required functions]; and~~

2 (2) monitoring and, as appropriate, conducting audits
3 to ensure that the contracted function is properly performed
4 ~~[periodically selecting third parties, based on reasonable~~
5 ~~selection criteria, for a review to determine whether the third~~
6 ~~parties are performing the required functions].~~

7 (d) ~~[(e) An agent or insurer shall adopt procedures for~~
8 ~~conducting a review under Subsection (d)(2) that are reasonable~~
9 ~~under the circumstances. An insurer that contracts with a third~~
10 ~~party under Subsection (d) and that complies with the requirements~~
11 ~~to supervise under Subsection (d) is deemed to have complied with~~
12 ~~the insurer's responsibilities under Subsection (b)].~~

13 ~~[(f)]~~ An insurer~~[, agent, or independent agency]~~ is not
14 required by this section to~~+~~

15 ~~[(1) review, or provide for review of, all~~
16 ~~agent-solicited transactions; or~~

17 ~~[(2)]~~ include in the supervision ~~[compliance]~~ system
18 an agent's recommendations to consumers of products other than the
19 annuities offered by the insurer~~[, agent, or independent agency]~~.

20 (e) An agent may not dissuade, or attempt to dissuade, a
21 consumer from:

22 (1) truthfully responding to an insurer's request for
23 confirmation or suitability information;

24 (2) filing a complaint; or

25 (3) cooperating with the investigation of a complaint.

26 SECTION 9. Section 1115.053, Insurance Code, is amended to
27 read as follows:

1 Sec. 1115.053. CERTIFICATION REQUIREMENTS. ~~[(a) On~~
2 ~~request by an insurer, an agent or independent agency that~~
3 ~~contracts with an insurer under Section 1115.052(d) shall promptly~~
4 ~~obtain a certification as described under Section 1115.052(d)(1) or~~
5 ~~give a clear statement that it is unable to meet the certification~~
6 ~~criteria.~~

7 ~~[(b)]~~ A person may not provide a certification under Section
8 1115.052(c)(1) ~~[1115.052(d)(1)]~~ unless the person:

9 (1) is a senior manager with responsibility for the
10 delegated functions; and

11 (2) has a reasonable basis for making the
12 certification.

13 SECTION 10. Section 1115.054, Insurance Code, is amended to
14 read as follows:

15 Sec. 1115.054. COMPLIANCE WITH CERTAIN NATIONAL STANDARDS.

16 (a) Subject to Subsection (c), sales made in compliance
17 ~~[Compliance]~~ with the conduct rules of the Financial Industry
18 Regulatory Authority (FINRA) relating to suitability and
19 supervision of annuity transactions, or the rules of another
20 national organization recognized by the commissioner, satisfy
21 ~~[satisfies]~~ the requirements of ~~[under]~~ this chapter. This section
22 applies to FINRA member broker-dealer sales of variable annuities
23 and fixed annuities if the suitability and supervision conduct
24 rules are similar to those applied to variable annuity sales ~~[for~~
25 ~~the recommendation of annuities registered under the Securities Act~~
26 ~~of 1933 (15 U.S.C. Section 77a et seq.) or rules or regulations~~
27 ~~adopted under that Act].~~

1 (b) This section does not affect or limit the commissioner's
2 ability to enforce or investigate under this chapter.

3 (c) Subsection (a) applies only if the insurer:

4 (1) monitors the FINRA member broker-dealer using
5 information collected in the normal course of the insurer's
6 business; and

7 (2) provides to the FINRA member broker-dealer
8 information and reports that are reasonably appropriate to assist
9 the broker-dealer to maintain the broker-dealer's supervision
10 system.

11 SECTION 11. Section 1115.056, Insurance Code, is amended to
12 read as follows:

13 Sec. 1115.056. AGENT TRAINING [~~EDUCATION~~] REQUIREMENTS.

14 (a) An agent may not solicit the sale of an annuity product unless
15 the agent has adequate knowledge of the product to recommend the
16 annuity and is in compliance with the insurer's standards for
17 product training. An agent may rely on insurer-provided,
18 product-specific training standards and materials to comply with
19 this subsection.

20 (b) An agent who engages in the sale of annuity products
21 must complete a one-time training course approved by the department
22 and provided by a continuing education provider.

23 (c) The training required by Subsection (b) must be of a
24 length sufficient to qualify for at least four continuing education
25 credits, as determined by the commissioner in accordance with
26 Chapter 4004 and any rules adopted under that chapter, but may be
27 longer. The training required by Subsection (b) may be used to

1 satisfy the continuing education requirements under Subchapters B
2 and E, Chapter 4004, and is not in addition to the continuing
3 education requirements in Section 4004.202.

4 (d) The training required by Subsection (b) must include
5 information on the following topics:

6 (1) the types of annuities and various classifications
7 of annuities;

8 (2) identification of the parties to an annuity;

9 (3) how fixed, variable, and indexed annuity contract
10 provisions affect consumers;

11 (4) the application of income taxation of qualified
12 and nonqualified annuities;

13 (5) the primary uses of annuities; and

14 (6) appropriate sales practices, replacement, and
15 disclosure requirements.

16 (e) A provider of a course intended to comply with
17 Subsection (b) must cover all topics listed in Subsection (d) and
18 may not present any marketing information, provide training on
19 sales techniques, or provide specific information about a
20 particular insurer's products. Additional topics may be offered in
21 conjunction with and in addition to the required topics.

22 (f) A provider of a course intended to comply with
23 Subsection (b) must register as a continuing education provider in
24 this state and comply with the rules and guidelines applicable to
25 agent continuing education courses provided by Chapter 4004.

26 (g) An annuity training course may be conducted and
27 completed by classroom or self-study methods in accordance with

1 Chapter 4004.

2 (h) A provider of annuity training under Subsection (b) must
3 comply with the reporting requirements and issue certificates of
4 completion in accordance with Chapter 4004.

5 (i) The satisfaction of the training requirements of
6 another state that are substantially similar to the provisions of
7 this section is considered to satisfy the training requirements of
8 this section.

9 (j) An insurer must verify that an agent has completed the
10 annuity training course required by this section before allowing
11 the agent to sell an annuity product for that insurer. An insurer
12 may satisfy the insurer's responsibility under this section by:

13 (1) obtaining a certificate of completion of the
14 training course or obtaining an appropriate report provided by the
15 department;

16 (2) using a department-sponsored database or vendor;
17 or

18 (3) using a reasonably reliable commercial database
19 vendor that has a reporting arrangement with approved insurance
20 education providers. ~~[A resident agent that intends to sell,~~
21 ~~solicit, or negotiate a contract for an annuity in this state or to~~
22 ~~represent an insurer in relation to such an annuity must submit~~
23 ~~evidence satisfactory to the department of completion of at least~~
24 ~~four hours of training relating to annuities before soliciting~~
25 ~~individual consumers for the purpose of selling annuities.~~

26 ~~[(b) The training required under Subsection (a) may be used~~
27 ~~to satisfy the continuing education requirements imposed under this~~

1 ~~code and rules adopted under this code for issuance of a license~~
2 ~~under this code.]~~

3 SECTION 12. Section 1115.101, Insurance Code, is amended to
4 read as follows:

5 Sec. 1115.101. MITIGATION. An insurer is responsible for
6 compliance with this chapter. If a violation occurs because of the
7 action or inaction of the insurer or the insurer's agent, the [The]
8 commissioner may:

9 (1) order:

10 (A) the [~~(1) an~~] insurer to take reasonable
11 appropriate corrective action for any consumer harmed by the
12 insurer or by the insurer's agent because of a violation of this
13 chapter; or

14 (B) a general agency, independent agency, or the
15 [~~(2) an~~] agent to take reasonably appropriate corrective action
16 for any consumer harmed by the agent's violation of this chapter;
17 and

18 (2) impose appropriate sanctions as provided by
19 Section 1115.102 [~~(3) a managing general agent or independent~~
20 ~~agency that employs or contracts with an agent to sell, or solicit~~
21 ~~the sale of, annuities to consumers to take reasonably appropriate~~
22 ~~corrective action for any consumer harmed by the agent's violation~~
23 ~~of this chapter].~~

24 SECTION 13. Section 1115.102(b), Insurance Code, is amended
25 to read as follows:

26 (b) The commissioner shall [~~may~~] reduce or eliminate a
27 sanction for a violation of this chapter otherwise applicable if:

1 (1) corrective action for the consumer was taken
2 promptly by the agent or insurer after a violation was discovered;
3 or
4 (2) the violation was not part of a pattern or
5 practice.

6 SECTION 14. (a) Section 541.058(b), Insurance Code, as
7 amended by this Act, applies only to an exchange of life annuity
8 contracts on or after the effective date of this Act. An exchange
9 of life annuity contracts before the effective date of this Act is
10 governed by the law in effect immediately before the effective date
11 of this Act, and that law is continued in effect for that purpose.

12 (b) Section 1114.004(a), Insurance Code, as amended by this
13 Act, applies only to a transaction involving a life insurance or
14 annuity policy or contract occurring on or after the effective date
15 of this Act. A transaction involving a policy or contract occurring
16 before the effective date of this Act is governed by the law in
17 effect immediately before the effective date of this Act, and that
18 law is continued in effect for that purpose.

19 (c) Except as provided by this section, Chapter 1115,
20 Insurance Code, as amended by this Act, applies only to a
21 recommendation to purchase, exchange, or replace an annuity
22 contract made on or after June 1, 2012, and any transaction arising
23 from that recommendation. A recommendation made before June 1,
24 2012, and a transaction arising from that recommendation are
25 governed by the law in effect immediately before the effective date
26 of this Act, and that law is continued in effect for that purpose.

27 (d) An insurance agent who becomes licensed under Chapter

1 4054, Insurance Code, on or after the effective date of this Act is
2 subject to Section 1115.056, Insurance Code, as amended by this
3 Act. An agent licensed under Chapter 4054, Insurance Code, before
4 the effective date of this Act is not subject to Section 1115.056,
5 Insurance Code, as amended by this Act, before March 1, 2012. On
6 and after the effective date of this Act and before March 1, 2012,
7 an insurance agent licensed under Chapter 4054, Insurance Code,
8 before the effective date of this Act is subject to Section
9 1115.056, Insurance Code, as that section existed immediately
10 before the effective date of this Act, and that law is continued in
11 effect for that purpose.

12 SECTION 15. This Act takes effect September 1, 2011.