

1-1 By: Eiland (Senate Sponsor - Williams) H.B. No. 2277
1-2 (In the Senate - Received from the House April 27, 2011;
1-3 May 3, 2011, read first time and referred to Committee on State
1-4 Affairs; May 9, 2011, reported favorably by the following vote:
1-5 Yeas 9, Nays 0; May 9, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the sale, exchange, or replacement of life insurance
1-9 and annuity contracts.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 541.058(b), Insurance Code, is amended
1-12 to read as follows:

1-13 (b) It is not a rebate or discrimination prohibited by
1-14 Section 541.056(a) or 541.057:

1-15 (1) for a life insurance or life annuity contract, to
1-16 pay a bonus to a policyholder or otherwise abate the policyholder's
1-17 premiums in whole or in part out of surplus accumulated from
1-18 nonparticipating insurance policies if the bonus or abatement:

1-19 (A) is fair and equitable to policyholders; and

1-20 (B) is in the best interests of the insurer and
1-21 its policyholders;

1-22 (2) for a life insurance policy issued on the
1-23 industrial debit plan, to make to a policyholder who has
1-24 continuously for a specified period made premium payments directly
1-25 to the insurer's office an allowance in an amount that fairly
1-26 represents the saving in collection expenses;

1-27 (3) for a group insurance policy, to readjust the rate
1-28 of premium based on the loss or expense experience under the policy
1-29 at the end of a policy year if the adjustment is retroactive for
1-30 only that policy year;

1-31 (4) for a life annuity contract, to waive surrender
1-32 charges under the contract when the contract holder exchanges that
1-33 contract for another annuity contract issued by the same insurer or
1-34 an affiliate of the same insurer that is part of the same holding
1-35 company group if:

1-36 (A) the waiver and the exchange are fully,
1-37 fairly, and accurately explained to the contract holder in a manner
1-38 that is not deceptive or misleading; and

1-39 (B) the contract holder is given credit for the
1-40 time that the previous contract was held when determining any
1-41 surrender charges under the new contract;

1-42 (5) in connection with an accident and health
1-43 insurance policy, to provide to policy or certificate holders, in
1-44 addition to benefits under the terms of the insurance contract,
1-45 health-related services or health-related information, or to
1-46 disclose the availability of those additional services and
1-47 information to prospective policy or certificate holders; or

1-48 (6) in connection with a health maintenance
1-49 organization evidence of coverage, to provide to enrollees, in
1-50 addition to benefits under the evidence of coverage, health-related
1-51 services or health-related information, or to disclose the
1-52 availability of those additional services and information to
1-53 prospective enrollees or contract holders.

1-54 SECTION 2. Section 1114.004(a), Insurance Code, is amended
1-55 to read as follows:

1-56 (a) Except as otherwise specifically provided by this
1-57 chapter, this chapter does not apply to transactions involving:

1-58 (1) credit life insurance;

1-59 (2) group life insurance or group annuities for which
1-60 there is no direct solicitation of individuals by an agent;

1-61 (3) ~~group~~ life insurance and annuities used to fund
1-62 prepaid funeral benefits contracts, as defined by Chapter 154,
1-63 Finance Code;

1-64 (4) an application to:

2-1 (A) exercise a contractual change or a conversion
 2-2 privilege made to the insurer that issued the existing policy or
 2-3 contract;
 2-4 (B) replace an existing policy or contract by the
 2-5 insurer that issued the existing policy or contract under a program
 2-6 filed with and approved by the commissioner; or
 2-7 (C) exercise a term conversion privilege among
 2-8 corporate affiliates;
 2-9 (5) life insurance proposed to replace life insurance
 2-10 under a binding or conditional receipt issued by the same insurer;
 2-11 (6) a policy or contract used to fund:
 2-12 (A) an employee pension benefit plan or employee
 2-13 welfare benefit plan that is covered by the Employee Retirement
 2-14 Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);
 2-15 (B) a plan described by Section 401(a), 401(k),
 2-16 or 403(b), Internal Revenue Code of 1986, if established or
 2-17 maintained by an employer;
 2-18 (C) a government or church plan, as defined by
 2-19 Section 414, Internal Revenue Code of 1986, a government or church
 2-20 welfare benefit plan, or a deferred compensation plan of a state or
 2-21 local government or tax exempt organization described under Section
 2-22 457, Internal Revenue Code of 1986; or
 2-23 (D) a nonqualified deferred compensation
 2-24 arrangement established or maintained by an employer or plan
 2-25 sponsor;
 2-26 (7) new coverage provided under a life insurance
 2-27 policy or contract if the cost is borne wholly by the insured's
 2-28 employer or by an association of which the insured is a member;
 2-29 (8) an existing life insurance policy that is a
 2-30 nonconvertible term life insurance policy scheduled to expire in
 2-31 five years or less and that cannot be renewed;
 2-32 (9) immediate annuities purchased with proceeds from
 2-33 an existing contract; or
 2-34 (10) structured settlements.

2-35 SECTION 3. Subchapter B, Chapter 1114, Insurance Code, is
 2-36 amended by adding Section 1114.057 to read as follows:
 2-37 Sec. 1114.057. DISCLOSURE OF AVAILABILITY OF WAIVER OF
 2-38 SURRENDER CHARGES. An insurer that offers to waive surrender
 2-39 charges as described by Section 541.058(b)(4) shall provide
 2-40 reasonable notice of that offer to the insurer's prospective or
 2-41 current contract holders. The notice may be provided by any
 2-42 available means, including a disclosure document or by display on a
 2-43 link that is prominently placed on the insurer's Internet website.
 2-44 SECTION 4. Section 1115.001, Insurance Code, is amended to
 2-45 read as follows:
 2-46 Sec. 1115.001. PURPOSE. The purpose of this chapter is to
 2-47 establish standards and procedures regarding recommendations made
 2-48 to a consumer that result in a transaction involving annuity
 2-49 products, and to require insurers to establish a system to
 2-50 supervise those recommendations, to ensure that the insurance needs
 2-51 and financial objectives of the consumer as of the time of the
 2-52 transaction are appropriately addressed.
 2-53 SECTION 5. Section 1115.002, Insurance Code, is amended by
 2-54 amending Subdivisions (2), (3), and (4) and adding Subdivisions
 2-55 (2-a), (5), and (6) to read as follows:
 2-56 (2) "Annuity" means an [a fixed, variable, or modified
 2-57 guaranteed] annuity that is an insurance product under the laws of
 2-58 this state that is individually solicited, whether the product is
 2-59 classified as an individual annuity or group annuity.
 2-60 (2-a) "Continuing education provider" means a person
 2-61 authorized to offer continuing education courses under Chapter
 2-62 4004.
 2-63 (3) "Insurer" means a [an insurance] company
 2-64 authorized to engage in the business of life insurance and
 2-65 annuities in this state.
 2-66 (4) "Recommendation" means advice provided by an
 2-67 agent, or an insurer if no agent is involved, to an individual
 2-68 consumer that results in a purchase, [or] exchange, or replacement
 2-69 of an annuity made in accordance with that advice.

3-1 (5) "Replacement" means a transaction in which a new
 3-2 policy or contract is to be purchased and the proposing agent, or
 3-3 the proposing insurer if an agent is not involved, knows or should
 3-4 know that, by reason of the transaction, an existing policy or
 3-5 contract has been or is to be:

3-6 (A) lapsed, forfeited, surrendered or partially
 3-7 surrendered, assigned to the replacing insurer, or otherwise
 3-8 terminated;

3-9 (B) converted to reduced paid-up insurance,
 3-10 continued as extended term insurance, or otherwise reduced in value
 3-11 by the use of nonforfeiture benefits or other policy values;

3-12 (C) amended so as to effect either a reduction in
 3-13 benefits or in the term for which coverage would otherwise remain in
 3-14 force or for which benefits would be paid;

3-15 (D) reissued with any reduction in cash value; or

3-16 (E) used in a financed purchase.

3-17 (6) "Suitability information" means information that
 3-18 is reasonably appropriate to determine the suitability of a
 3-19 recommendation, including the following:

3-20 (A) age;

3-21 (B) annual income;

3-22 (C) financial situation and needs, including the
 3-23 financial resources used for the funding of the annuity;

3-24 (D) financial experience;

3-25 (E) financial objectives;

3-26 (F) intended use of the annuity;

3-27 (G) financial time horizon;

3-28 (H) existing assets, including investment and
 3-29 life insurance holdings;

3-30 (I) liquidity needs;

3-31 (J) liquid net worth;

3-32 (K) risk tolerance; and

3-33 (L) tax status.

3-34 SECTION 6. Section 1115.003, Insurance Code, is amended to
 3-35 read as follows:

3-36 Sec. 1115.003. APPLICABILITY; EXEMPTIONS. (a) This
 3-37 chapter applies to any recommendation to purchase, replace, or
 3-38 exchange an annuity that:

3-39 (1) is made to a consumer by an agent, or an insurer if
 3-40 an agent is not involved; and

3-41 (2) results in the recommended purchase, replacement,
 3-42 or exchange.

3-43 (b) Unless otherwise specifically included, this chapter
 3-44 does not apply to transactions [recommendations] involving:

3-45 (1) direct response solicitations if there is no
 3-46 recommendation based on information collected from the consumer
 3-47 under this chapter; or

3-48 (2) contracts used to fund:

3-49 (A) an employee pension benefit plan or employee
 3-50 welfare benefit plan covered by the Employee Retirement Income
 3-51 Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

3-52 (B) a plan described by Section 401(a), 401(k),
 3-53 403(b), 408(k), or 408(p), Internal Revenue Code of 1986, if
 3-54 established or maintained by an employer;

3-55 (C) a government or church plan, as defined by
 3-56 Section 414, Internal Revenue Code of 1986, a government or church
 3-57 welfare benefit plan, or a deferred compensation plan of a state or
 3-58 local government or tax exempt organization described under Section
 3-59 457, Internal Revenue Code of 1986;

3-60 (D) a nonqualified deferred compensation
 3-61 arrangement established or maintained by an employer or plan
 3-62 sponsor;

3-63 (E) settlements of or assumptions of liabilities
 3-64 associated with personal injury litigation or any dispute or claim
 3-65 resolution process; or

3-66 (F) prepaid funeral benefits contracts, as
 3-67 defined by Chapter 154, Finance Code.

3-68 SECTION 7. Section 1115.051, Insurance Code, is amended to
 3-69 read as follows:

4-1 Sec. 1115.051. SUITABILITY OF ANNUITY PRODUCT REQUIRED.
4-2 (a) In recommending to a consumer the purchase of an annuity or the
4-3 exchange of an annuity that results in another insurance
4-4 transaction or series of insurance transactions, the agent, or the
4-5 insurer if an agent is not involved, must have a reasonable basis to
4-6 believe that:

4-7 (1) the recommendation is suitable for the consumer on
4-8 the basis of the facts disclosed by the consumer as to the
4-9 consumer's investments and other insurance products and as to the
4-10 consumer's financial situation and needs, including the consumer's
4-11 suitability information;

4-12 (2) the consumer has been reasonably informed of
4-13 various features of the annuity, such as the potential surrender
4-14 period and the surrender charge, any potential tax penalty if the
4-15 consumer sells, exchanges, surrenders, or annuitizes the annuity,
4-16 mortality and expense fees, investment advisory fees, potential
4-17 charges for and features of riders, limitations on interest
4-18 returns, insurance and investment components, and market risk;

4-19 (3) the consumer would benefit from certain features
4-20 of the annuity, such as tax-deferred growth, annuitization, or a
4-21 death or living benefit;

4-22 (4) the particular annuity as a whole, the underlying
4-23 subaccounts to which funds are allocated at the time of the purchase
4-24 or exchange of the annuity, and any riders or similar product
4-25 enhancements are suitable, and, in the case of an exchange or
4-26 replacement, the transaction as a whole is suitable, for the
4-27 particular consumer based on the consumer's suitability
4-28 information; and

4-29 (5) in the case of an exchange or replacement of an
4-30 annuity, the exchange or replacement is suitable, including taking
4-31 into consideration whether the consumer:

4-32 (A) will incur a surrender charge, be subject to
4-33 the commencement of a new surrender period, lose existing benefits
4-34 such as death, living, or other contractual benefits, or be subject
4-35 to increased fees, investment advisory fees, or charges for riders
4-36 or similar product enhancements;

4-37 (B) would benefit from product enhancements and
4-38 improvements; and

4-39 (C) has had another annuity exchange or
4-40 replacement, and in particular, an exchange or replacement in the
4-41 preceding 36 months.

4-42 (b) Before the execution of a purchase, exchange, or
4-43 replacement of an annuity resulting from a recommendation, an
4-44 agent, or an insurer if an agent is not involved, shall make
4-45 reasonable efforts to obtain the consumer's suitability
4-46 information.

4-47 (c) Except as permitted by Subsection (d), an insurer may
4-48 not issue an annuity recommended to a consumer unless the insurer
4-49 has a reasonable basis to believe the annuity is suitable based on
4-50 the consumer's suitability information.

4-51 (d) Subject to Subsection (e), an agent or insurer does not
4-52 have any obligation to a consumer related to an annuity transaction
4-53 if:

4-54 (1) the consumer refuses to provide suitability
4-55 information requested by the agent or insurer;

4-56 (2) the agent or insurer does not make a
4-57 recommendation;

4-58 (3) the agent or insurer makes a recommendation later
4-59 found to have been prepared based on inaccurate material
4-60 information provided by the consumer; or

4-61 (4) the consumer decides to enter into a transaction
4-62 that is not based on a recommendation of the agent or insurer.

4-63 (e) An insurer's issuance of an annuity under circumstances
4-64 described by Subsection (d) must be reasonable under all
4-65 circumstances actually known to the insurer at the time the annuity
4-66 is issued.

4-67 (f) An agent, or an insurer if an agent is not involved,
4-68 shall at the time of sale of an annuity:

4-69 (1) make a record of any recommendation made by the

5-1 agent or insurer that is subject to Subsection (a);
5-2 (2) obtain a customer-signed statement documenting
5-3 the customer's refusal, if any, to provide suitability information;
5-4 and
5-5 (3) obtain a customer-signed statement acknowledging
5-6 that an annuity transaction is not recommended if the customer
5-7 decides to enter into an annuity transaction that is not based on
5-8 the agent's or insurer's recommendation. ~~[Before the execution of a~~
5-9 ~~purchase or exchange of an annuity resulting from a recommendation,~~
5-10 ~~an agent, or the insurer if an agent is not involved, must make~~
5-11 ~~reasonable efforts to obtain:~~
5-12 ~~[(1) information from the consumer concerning:~~
5-13 ~~[(A) the consumer's financial status;~~
5-14 ~~[(B) the consumer's tax status; and~~
5-15 ~~[(C) the consumer's investment objectives; and~~
5-16 ~~[(2) other relevant information used or considered to~~
5-17 ~~be reasonable by the agent or that insurer in making~~
5-18 ~~recommendations to consumers.~~
5-19 ~~[(b) In a recommendation to a consumer regarding the~~
5-20 ~~purchase of an annuity or the exchange of an annuity that results in~~
5-21 ~~another insurance transaction or series of insurance transactions,~~
5-22 ~~an agent or the insurer, if an agent is not involved, has reasonable~~
5-23 ~~grounds for believing that the recommendation is suitable for that~~
5-24 ~~consumer based on the facts disclosed by the consumer regarding the~~
5-25 ~~consumer's:~~
5-26 ~~[(1) investments and other insurance products; and~~
5-27 ~~[(2) financial situation and needs.~~
5-28 ~~[(c) An agent, or an insurer if an agent is not involved, has~~
5-29 ~~no obligation to a consumer related to a recommendation if the~~
5-30 ~~consumer:~~
5-31 ~~[(1) refuses to provide relevant information~~
5-32 ~~requested by the agent or insurer;~~
5-33 ~~[(2) fails to provide complete or accurate information~~
5-34 ~~on the request of the agent or insurer; or~~
5-35 ~~[(3) decides to enter into a transaction that is not~~
5-36 ~~based on a recommendation of the agent or insurer.~~
5-37 ~~[(d) An agent's or insurer's recommendation subject to~~
5-38 ~~Subsection (a) must be reasonable under all the circumstances~~
5-39 ~~actually known to the agent or insurer at the time of the~~
5-40 ~~recommendation.]~~
5-41 SECTION 8. Section 1115.052, Insurance Code, is amended to
5-42 read as follows:
5-43 Sec. 1115.052. SUPERVISION ~~[COMPLIANCE]~~ SYSTEM. (a) Each
5-44 insurer shall establish supervision ~~[operate a system,]~~ that is
5-45 reasonably designed to achieve the insurer's and the insurer's
5-46 agents' compliance with this chapter ~~[, to supervise~~
5-47 recommendations].
5-48 (b) An insurer may comply with Subsection (a) ~~[by complying~~
5-49 with Subsections (c)-(e) or] by establishing and maintaining the
5-50 insurer's own supervision ~~[compliance]~~ system under which, at a
5-51 minimum, the insurer ~~[that complies with Subsection (c). Each~~
5-52 agent and independent agency shall adopt an insurer's compliance
5-53 system or shall establish and maintain such a system.
5-54 ~~[(c) A compliance system established under Subsection~~
5-55 (b) must include]:
5-56 (1) maintains reasonable procedures to inform the
5-57 insurer's agents of the requirements of this chapter and
5-58 incorporates the requirements of this chapter into relevant agent
5-59 training manuals ~~[maintenance of written procedures]; [and]~~
5-60 (2) establishes standards for agent product training
5-61 and maintains reasonable procedures to require the insurer's agents
5-62 to comply with the requirements of Section 1115.056;
5-63 (3) provides product-specific training and training
5-64 materials that explain all material features of the insurer's
5-65 annuity products to the insurer's agents;
5-66 (4) maintains procedures to review each
5-67 recommendation electronically, physically, or otherwise before the
5-68 issuance of an annuity that:
5-69 (A) are designed to ensure that there is a

6-1 reasonable basis to determine that a recommendation is suitable;
6-2 and

6-3 (B) may:

6-4 (i) include the application of a screening
6-5 system to identify selected transactions for additional review; and

6-6 (ii) be designed to require additional
6-7 review only of those transactions identified for additional review
6-8 by the selection criteria;

6-9 (5) maintains reasonable procedures, such as
6-10 confirmation of consumer suitability information, systematic
6-11 customer surveys, interviews, confirmation letters, and programs
6-12 of internal monitoring, to detect recommendations that are not
6-13 suitable, which may involve applying sampling procedures or
6-14 confirming suitability information after the issuance or delivery
6-15 of the annuity; and

6-16 (6) annually provides a report to the insurer's senior
6-17 management, including to the senior manager responsible for audit
6-18 functions, that details a review, with appropriate testing,
6-19 reasonably designed to determine the effectiveness of the
6-20 supervision system, the exceptions found, and any corrective action
6-21 taken or recommended [~~periodic reviews of the insurer's or agent's~~
6-22 records in a manner reasonably designed to assist in detecting and
6-23 preventing violations of this chapter].

6-24 (c) This subsection does not prohibit an insurer from
6-25 contracting for the performance of a function, including
6-26 maintenance of procedures, required by Subsection (b). An
6-27 insurer's supervision system under Subsection (b) must include the
6-28 supervision of contractual performance under this subsection that
6-29 includes, at a minimum [~~(d) An agent or insurer may contract with a~~
6-30 third party, including an agent or independent agency, to establish
6-31 and maintain a compliance system with respect to agents under
6-32 contract with or employed by the third party. The agent or insurer
6-33 shall make reasonable inquiries sufficient to ensure that the third
6-34 party is performing the functions required under Subsection (a),
6-35 and shall take any action reasonable under the circumstances to
6-36 enforce the contractual obligation to perform those functions. An
6-37 agent or insurer may comply with the obligation to make reasonable
6-38 inquiries by]:

6-39 (1) annually obtaining certification that complies
6-40 with Section 1115.053 from a senior manager who represents that the
6-41 contracted function is properly performed [~~of the third party that~~
6-42 the third party is performing the required functions]; and

6-43 (2) monitoring and, as appropriate, conducting audits
6-44 to ensure that the contracted function is properly performed
6-45 [~~periodically selecting third parties, based on reasonable~~
6-46 selection criteria, for a review to determine whether the third
6-47 parties are performing the required functions].

6-48 (d) [~~(c) An agent or insurer shall adopt procedures for~~
6-49 conducting a review under Subsection (d)(2) that are reasonable
6-50 under the circumstances. An insurer that contracts with a third
6-51 party under Subsection (d) and that complies with the requirements
6-52 to supervise under Subsection (d) is deemed to have complied with
6-53 the insurer's responsibilities under Subsection (b).

6-54 [~~(f)] An insurer[, agent, or independent agency] is not~~
6-55 required by this section to[~~+~~

6-56 [~~(1) review, or provide for review of, all~~
6-57 agent-solicited transactions; or

6-58 [~~(2)] include in the supervision [~~compliance~~] system~~
6-59 an agent's recommendations to consumers of products other than the
6-60 annuities offered by the insurer[, agent, or independent agency].

6-61 (e) An agent may not dissuade, or attempt to dissuade, a
6-62 consumer from:

6-63 (1) truthfully responding to an insurer's request for
6-64 confirmation or suitability information;

6-65 (2) filing a complaint; or

6-66 (3) cooperating with the investigation of a complaint.

6-67 SECTION 9. Section 1115.053, Insurance Code, is amended to
6-68 read as follows:

6-69 Sec. 1115.053. CERTIFICATION REQUIREMENTS. [~~(a)~~—On

7-1 ~~request by an insurer, an agent or independent agency that~~
 7-2 ~~contracts with an insurer under Section 1115.052(d) shall promptly~~
 7-3 ~~obtain a certification as described under Section 1115.052(d)(1) or~~
 7-4 ~~give a clear statement that it is unable to meet the certification~~
 7-5 ~~criteria.~~

7-6 ~~[(b)]~~ A person may not provide a certification under Section
 7-7 1115.052(c)(1) ~~[1115.052(d)(1)]~~ unless the person:

7-8 (1) is a senior manager with responsibility for the
 7-9 delegated functions; and

7-10 (2) has a reasonable basis for making the
 7-11 certification.

7-12 SECTION 10. Section 1115.054, Insurance Code, is amended to
 7-13 read as follows:

7-14 Sec. 1115.054. COMPLIANCE WITH CERTAIN NATIONAL STANDARDS.

7-15 (a) Subject to Subsection (c), sales made in compliance
 7-16 [Compliance] with the conduct rules of the Financial Industry
 7-17 Regulatory Authority (FINRA) relating to suitability and
 7-18 supervision of annuity transactions, or the rules of another
 7-19 national organization recognized by the commissioner, satisfy
 7-20 [satisfies] the requirements of [under] this chapter. This section
 7-21 applies to FINRA member broker-dealer sales of variable annuities
 7-22 and fixed annuities if the suitability and supervision conduct
 7-23 rules are similar to those applied to variable annuity sales [for
 7-24 the recommendation of annuities registered under the Securities Act
 7-25 of 1933 (15 U.S.C. Section 77a et seq.) or rules or regulations
 7-26 adopted under that Act].

7-27 (b) This section does not affect or limit the commissioner's
 7-28 ability to enforce or investigate under this chapter.

7-29 (c) Subsection (a) applies only if the insurer:

7-30 (1) monitors the FINRA member broker-dealer using
 7-31 information collected in the normal course of the insurer's
 7-32 business; and

7-33 (2) provides to the FINRA member broker-dealer
 7-34 information and reports that are reasonably appropriate to assist
 7-35 the broker-dealer to maintain the broker-dealer's supervision
 7-36 system.

7-37 SECTION 11. Section 1115.056, Insurance Code, is amended to
 7-38 read as follows:

7-39 Sec. 1115.056. AGENT TRAINING ~~[EDUCATION]~~ REQUIREMENTS.

7-40 (a) An agent may not solicit the sale of an annuity product unless
 7-41 the agent has adequate knowledge of the product to recommend the
 7-42 annuity and is in compliance with the insurer's standards for
 7-43 product training. An agent may rely on insurer-provided,
 7-44 product-specific training standards and materials to comply with
 7-45 this subsection.

7-46 (b) An agent who engages in the sale of annuity products
 7-47 must complete a one-time training course approved by the department
 7-48 and provided by a continuing education provider.

7-49 (c) The training required by Subsection (b) must be of a
 7-50 length sufficient to qualify for at least four continuing education
 7-51 credits, as determined by the commissioner in accordance with
 7-52 Chapter 4004 and any rules adopted under that chapter, but may be
 7-53 longer. The training required by Subsection (b) may be used to
 7-54 satisfy the continuing education requirements under Subchapters B
 7-55 and E, Chapter 4004, and is not in addition to the continuing
 7-56 education requirements in Section 4004.202.

7-57 (d) The training required by Subsection (b) must include
 7-58 information on the following topics:

7-59 (1) the types of annuities and various classifications
 7-60 of annuities;

7-61 (2) identification of the parties to an annuity;

7-62 (3) how fixed, variable, and indexed annuity contract
 7-63 provisions affect consumers;

7-64 (4) the application of income taxation of qualified
 7-65 and nonqualified annuities;

7-66 (5) the primary uses of annuities; and

7-67 (6) appropriate sales practices, replacement, and
 7-68 disclosure requirements.

7-69 (e) A provider of a course intended to comply with

8-1 Subsection (b) must cover all topics listed in Subsection (d) and
 8-2 may not present any marketing information, provide training on
 8-3 sales techniques, or provide specific information about a
 8-4 particular insurer's products. Additional topics may be offered in
 8-5 conjunction with and in addition to the required topics.

8-6 (f) A provider of a course intended to comply with
 8-7 Subsection (b) must register as a continuing education provider in
 8-8 this state and comply with the rules and guidelines applicable to
 8-9 agent continuing education courses provided by Chapter 4004.

8-10 (g) An annuity training course may be conducted and
 8-11 completed by classroom or self-study methods in accordance with
 8-12 Chapter 4004.

8-13 (h) A provider of annuity training under Subsection (b) must
 8-14 comply with the reporting requirements and issue certificates of
 8-15 completion in accordance with Chapter 4004.

8-16 (i) The satisfaction of the training requirements of
 8-17 another state that are substantially similar to the provisions of
 8-18 this section is considered to satisfy the training requirements of
 8-19 this section.

8-20 (j) An insurer must verify that an agent has completed the
 8-21 annuity training course required by this section before allowing
 8-22 the agent to sell an annuity product for that insurer. An insurer
 8-23 may satisfy the insurer's responsibility under this section by:

8-24 (1) obtaining a certificate of completion of the
 8-25 training course or obtaining an appropriate report provided by the
 8-26 department;

8-27 (2) using a department-sponsored database or vendor;
 8-28 or

8-29 (3) using a reasonably reliable commercial database
 8-30 vendor that has a reporting arrangement with approved insurance
 8-31 education providers. ~~[A resident agent that intends to sell,
 8-32 solicit, or negotiate a contract for an annuity in this state or to
 8-33 represent an insurer in relation to such an annuity must submit
 8-34 evidence satisfactory to the department of completion of at least
 8-35 four hours of training relating to annuities before soliciting
 8-36 individual consumers for the purpose of selling annuities.]~~

8-37 ~~[(b) The training required under Subsection (a) may be used
 8-38 to satisfy the continuing education requirements imposed under this
 8-39 code and rules adopted under this code for issuance of a license
 8-40 under this code.]~~

8-41 SECTION 12. Section 1115.101, Insurance Code, is amended to
 8-42 read as follows:

8-43 Sec. 1115.101. MITIGATION. An insurer is responsible for
 8-44 compliance with this chapter. If a violation occurs because of the
 8-45 action or inaction of the insurer or the insurer's agent, the [The]
 8-46 commissioner may:

8-47 (1) order:

8-48 (A) the [(1) an] insurer to take reasonable
 8-49 appropriate corrective action for any consumer harmed by the
 8-50 insurer or by the insurer's agent because of a violation of this
 8-51 chapter; or

8-52 (B) a general agency, independent agency, or the
 8-53 [(2) an] agent to take reasonably appropriate corrective action
 8-54 for any consumer harmed by the agent's violation of this chapter;
 8-55 and

8-56 (2) impose appropriate sanctions as provided by
 8-57 Section 1115.102 [(3) a managing general agent or independent
 8-58 agency that employs or contracts with an agent to sell, or solicit
 8-59 the sale of, annuities to consumers to take reasonably appropriate
 8-60 corrective action for any consumer harmed by the agent's violation
 8-61 of this chapter].

8-62 SECTION 13. Section 1115.102(b), Insurance Code, is amended
 8-63 to read as follows:

8-64 (b) The commissioner shall ~~[may]~~ reduce or eliminate a
 8-65 sanction for a violation of this chapter otherwise applicable if:

8-66 (1) corrective action for the consumer was taken
 8-67 promptly by the agent or insurer after a violation was discovered;
 8-68 or

8-69 (2) the violation was not part of a pattern or

9-1 practice.

9-2 SECTION 14. (a) Section 541.058(b), Insurance Code, as
9-3 amended by this Act, applies only to an exchange of life annuity
9-4 contracts on or after the effective date of this Act. An exchange
9-5 of life annuity contracts before the effective date of this Act is
9-6 governed by the law in effect immediately before the effective date
9-7 of this Act, and that law is continued in effect for that purpose.

9-8 (b) Section 1114.004(a), Insurance Code, as amended by this
9-9 Act, applies only to a transaction involving a life insurance or
9-10 annuity policy or contract occurring on or after the effective date
9-11 of this Act. A transaction involving a policy or contract occurring
9-12 before the effective date of this Act is governed by the law in
9-13 effect immediately before the effective date of this Act, and that
9-14 law is continued in effect for that purpose.

9-15 (c) Except as provided by this section, Chapter 1115,
9-16 Insurance Code, as amended by this Act, applies only to a
9-17 recommendation to purchase, exchange, or replace an annuity
9-18 contract made on or after June 1, 2012, and any transaction arising
9-19 from that recommendation. A recommendation made before June 1,
9-20 2012, and a transaction arising from that recommendation are
9-21 governed by the law in effect immediately before the effective date
9-22 of this Act, and that law is continued in effect for that purpose.

9-23 (d) An insurance agent who becomes licensed under Chapter
9-24 4054, Insurance Code, on or after the effective date of this Act is
9-25 subject to Section 1115.056, Insurance Code, as amended by this
9-26 Act. An agent licensed under Chapter 4054, Insurance Code, before
9-27 the effective date of this Act is not subject to Section 1115.056,
9-28 Insurance Code, as amended by this Act, before March 1, 2012. On
9-29 and after the effective date of this Act and before March 1, 2012,
9-30 an insurance agent licensed under Chapter 4054, Insurance Code,
9-31 before the effective date of this Act is subject to Section
9-32 1115.056, Insurance Code, as that section existed immediately
9-33 before the effective date of this Act, and that law is continued in
9-34 effect for that purpose.

9-35 SECTION 15. This Act takes effect September 1, 2011.

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