

By: Eiland

H.B. No. 2278

A BILL TO BE ENTITLED

AN ACT

relating to the suitability of certain annuity transactions.

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

SECTION 1. Section 1115.001, Insurance Code, is amended to read as follows:

Sec. 1115.001. PURPOSE. The purpose of this chapter is to establish standards and procedures regarding recommendations made to a consumer that result in a transaction involving annuity products, and to require insurers to establish a system to supervise those recommendations, to ensure that the insurance needs and financial objectives of the consumer as of the time of the transaction are appropriately addressed.

SECTION 2. Section 1115.002, Insurance Code, is amended by adding Subdivision (5) to read as follows:

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

(A) age;

(B) annual income;

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

(D) financial experience;

(E) financial objectives;

(F) intended use of the annuity;

- 1 (G) financial time horizon;
- 2 (H) existing assets, including investment and
- 3 life insurance holdings;
- 4 (I) liquidity needs;
- 5 (J) liquid net worth;
- 6 (K) risk tolerance; and
- 7 (L) tax status.

8 SECTION 3. Section 1115.003(a), Insurance Code, is amended
9 to read as follows:

10 (a) This chapter applies to any recommendation to purchase,
11 replace, or exchange an annuity that:

- 12 (1) is made to a consumer by an agent or insurer; and
- 13 (2) results in the recommended purchase, replacement,
- 14 or exchange.

15 SECTION 4. Section 1115.051, Insurance Code, is amended to
16 read as follows:

17 Sec. 1115.051. SUITABILITY OF ANNUITY PRODUCT REQUIRED.

18 (a) Before the execution of a purchase or exchange of an annuity
19 resulting from a recommendation, an agent, or the insurer if an
20 agent is not involved, must make reasonable efforts to obtain[+]

21 [~~(1)~~] information from the consumer concerning:

22 (1) [~~(A)~~] the consumer's financial situation and needs
23 [~~status~~];

24 (2) [~~(B)~~] the consumer's investments [~~tax status~~]; and

25 (3) [~~(C)~~] the consumer's suitability information
26 [~~investment objectives, and~~

27 [~~(2) other relevant information used or considered to~~

1 ~~be reasonable by the agent or that insurer in making~~
2 ~~recommendations to consumers].~~

3 (b) In a recommendation to a consumer regarding the purchase
4 of an annuity or the exchange of an annuity that results in another
5 insurance transaction or series of insurance transactions, an agent
6 or the insurer, if an agent is not involved, has reasonable grounds
7 for believing that:

8 (1) on the basis of [~~that the recommendation is~~
9 ~~suitable for that consumer based on the]~~ facts disclosed by the
10 consumer regarding the consumer's[+]

11 [~~(1)~~] investments and other insurance products[+] and
12 the consumer's [~~(2)~~] financial situation and needs, including the
13 consumer's suitability information, the recommendation is suitable
14 for the consumer;

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

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

25 (4) the particular annuity as a whole, the underlying
26 subaccounts to which funds are allocated at the time of the purchase
27 or exchange of the annuity, and any riders or similar product

1 enhancements are suitable, and, in the case of an exchange or
2 replacement, the transaction as a whole is suitable, for the
3 particular consumer based on the consumer's suitability
4 information; and

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

8 (A) will incur a surrender charge, be subject to
9 the commencement of a new surrender period, lose existing benefits
10 such as death, living, or other contractual benefits, or be subject
11 to increased fees, investment advisory fees, or charges for riders
12 or similar product enhancements;

13 (B) would benefit from product enhancements and
14 improvements; and

15 (C) has had another annuity exchange or
16 replacement, and in particular, an exchange or replacement in the
17 preceding 36 months.

18 (c) Before the execution of a purchase, exchange, or
19 replacement of an annuity resulting from a recommendation, an
20 agent, or an insurer if an agent is not involved, shall make
21 reasonable efforts to obtain the consumer's suitability
22 information.

23 (d) Except as permitted by Subsection (e), an insurer may
24 not issue an annuity recommended to a consumer unless the insurer
25 has a reasonable basis to believe the annuity is suitable based on
26 the consumer's suitability information.

27 (e) [~~(e)~~] An agent, or an insurer if an agent is not

1 involved, has no obligation to a consumer related to a
2 recommendation if ~~[the consumer]~~:

3 (1) the consumer refuses to provide relevant
4 information requested by the agent or insurer and the annuity
5 transaction is not recommended;

6 (2) the consumer received a recommendation that was
7 made and was later found to have been prepared based on materially
8 inaccurate information provided by the consumer; ~~[fails to provide~~
9 ~~complete or accurate information on the request of the agent or~~
10 ~~insurer; or]~~

11 (3) the consumer decides to enter into a transaction
12 that is not based on a recommendation of the agent or insurer; or

13 (4) a recommendation is not made.

14 (f) ~~[(a)]~~ An agent's or insurer's recommendation subject to
15 Subsection (b) ~~[(a)]~~ must be reasonable under all the circumstances
16 actually known to the agent or insurer at the time of the
17 recommendation.

18 (g) An agent, or the responsible insurer if an agent is not
19 involved, shall at the time of sale of an annuity:

20 (1) make a record of any recommendation made by the
21 agent or insurer that is subject to this chapter;

22 (2) obtain a customer-signed statement documenting
23 the customer's refusal, if any, to provide suitability information;
24 and

25 (3) obtain a customer-signed statement acknowledging
26 that an annuity transaction is not recommended if the customer
27 decides to enter into an annuity transaction that is not based on

1 the agent's or insurer's recommendation.

2 (h) An agent may not dissuade, or attempt to dissuade, a
3 consumer from:

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

6 (2) filing a complaint; or

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

8 SECTION 5. Section 1115.052, Insurance Code, is amended to
9 read as follows:

10 Sec. 1115.052. SUPERVISION [~~COMPLIANCE~~] SYSTEM. (a) Each
11 insurer shall operate a system, that is reasonably designed to
12 achieve the insurer's and the insurer's agents' compliance with this
13 chapter, to supervise recommendations.

14 (b) [~~An insurer may comply with Subsection (a) by complying~~
15 ~~with Subsections (c)-(e) or by establishing and maintaining the~~
16 ~~insurer's own compliance system that complies with Subsection (c).~~
17 ~~Each agent and independent agency shall adopt an insurer's~~
18 ~~compliance system or shall establish and maintain such a system.~~

19 [(c)] A supervision [~~compliance~~] system established under
20 Subsection (a) [(b)] must [~~include~~]:

21 (1) include reasonable procedures to inform the
22 insurer's agents of the requirements of this chapter and
23 incorporate the requirements of this chapter into relevant agent
24 training manuals [~~maintenance of written procedures~~]; [~~and~~]

25 (2) establish standards for agent product training and
26 maintain reasonable procedures to require the insurer's agents to
27 comply with the requirements of Section 1115.056;

1 (3) provide product-specific training and training
2 materials that explain all material features of the insurer's
3 annuity products to the insurer's agents;

4 (4) maintain procedures to review each recommendation
5 electronically, physically, or otherwise before the issuance of an
6 annuity that:

7 (A) are designed to ensure that there is a
8 reasonable basis to determine that a recommendation is suitable;
9 and

10 (B) may:

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

13 (ii) be designed to require additional
14 review only of those transactions identified for additional review
15 by the selection criteria;

16 (5) maintain reasonable procedures, such as
17 confirmation of consumer suitability information, systematic
18 customer surveys, interviews, confirmation letters, and programs
19 of internal monitoring, to detect recommendations that are not
20 suitable, which may involve applying sampling procedures or
21 confirming suitability information after the issuance or delivery
22 of the annuity; and

23 (6) annually provide a report to the insurer's senior
24 management, including to the senior manager responsible for audit
25 functions, that details a review, with appropriate testing,
26 reasonably designed to determine the effectiveness of the
27 supervision system, the exceptions found, and any corrective action

1 taken or recommended [~~periodic reviews of the insurer's or agent's~~
2 ~~records in a manner reasonably designed to assist in detecting and~~
3 ~~preventing violations of this chapter~~].

4 (c) This section does not prohibit an insurer from
5 contracting for the performance of a function, including
6 maintenance of procedures, required by Subsection (a). An insurer
7 is responsible for taking appropriate corrective action and may be
8 subject to sanctions and penalties under Section 1115.102
9 regardless of whether the insurer contracts for performance of a
10 function and regardless of the insurer's compliance with Subsection
11 (d).

12 (d) An insurer's supervision system under this section must
13 include the supervision of contractual performance under this
14 subsection that includes, at a minimum [~~(d) An agent or insurer~~
15 ~~may contract with a third party, including an agent or independent~~
16 ~~agency, to establish and maintain a compliance system with respect~~
17 ~~to agents under contract with or employed by the third party. The~~
18 ~~agent or insurer shall make reasonable inquiries sufficient to~~
19 ~~ensure that the third party is performing the functions required~~
20 ~~under Subsection (a), and shall take any action reasonable under~~
21 ~~the circumstances to enforce the contractual obligation to perform~~
22 ~~those functions. An agent or insurer may comply with the obligation~~
23 ~~to make reasonable inquiries by]:~~

24 (1) annually obtaining certification from a senior
25 manager who has responsibility for the contracted function that the
26 manager has a reasonable basis to represent and does represent that
27 the contracted function is properly performed [~~of the third party~~

1 ~~that 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 (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 insurer's supervision
18 ~~[compliance]~~ system an agent's recommendations to consumers of
19 products other than the annuities offered by the insurer~~[, agent,~~
20 ~~or independent agency]~~.

21 SECTION 6. Section 1115.054, Insurance Code, is amended by
22 amending Subsection (a) and adding Subsection (c) to read as
23 follows:

24 (a) Subject to Subsection (c), compliance ~~[Compliance]~~ with
25 the conduct rules of the Financial Industry Regulatory Authority
26 (FINRA) relating to suitability and supervision of annuity
27 transactions, or the rules of another national organization

1 recognized by the commissioner, satisfies the requirements of
2 ~~[under]~~ this chapter for the recommendation of annuities registered
3 under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) or
4 rules or regulations adopted under that Act.

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

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

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

13 SECTION 7. Section 1115.101, Insurance Code, is amended to
14 read as follows:

15 Sec. 1115.101. MITIGATION. An insurer is responsible for
16 compliance with this chapter. If a violation occurs because of the
17 action or inaction of the insurer or the insurer's agent, the ~~The~~
18 commissioner may order:

19 (1) an insurer to take reasonable appropriate
20 corrective action for any consumer harmed by the insurer or by the
21 insurer's agent because of a violation of this chapter;

22 (2) an agent to take reasonably appropriate corrective
23 action for any consumer harmed by the agent's violation of this
24 chapter; and

25 (3) a managing general agent or independent agency
26 that employs or contracts with an agent to sell, or solicit the sale
27 of, annuities to consumers to take reasonably appropriate

1 corrective action for any consumer harmed by the agent's violation
2 of this chapter.

3 SECTION 8. Section 1115.053, Insurance Code, is repealed.

4 SECTION 9. Chapter 1115, Insurance Code, as amended by this
5 Act, applies only to a recommendation to purchase, exchange, or
6 replace an annuity contract made on or after January 1, 2012, and
7 any transaction arising from that recommendation. A recommendation
8 made before January 1, 2012, and a transaction arising from that
9 recommendation are governed by the law in effect immediately before
10 the effective date of this Act, and that law is continued in effect
11 for that purpose.

12 SECTION 10. This Act takes effect September 1, 2011.