

By: Oliverson

H.B. No. 1777

Substitute the following for H.B. No. 1777:

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C.S.H.B. No. 1777

A BILL TO BE ENTITLED

1

AN ACT

2 relating to disclosures and standards required for certain annuity
3 transactions and benefits under certain annuity contracts.

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

5 SECTION 1. Section [1107.055](#), Insurance Code, is amended to
6 read as follows:

7 Sec. 1107.055. INTEREST RATE. The interest rate used in
8 determining minimum nonforfeiture amounts shall be an annual rate
9 of interest determined as the lesser of three percent per annum and
10 the following, which must be specified in the contract if the
11 interest rate will be redetermined:

12 (1) the five-year Constant Maturity Treasury Rate
13 reported by the Federal Reserve as of a date, or average over a
14 period, rounded to the nearest 1/20th of one percent, specified in
15 the contract no longer than 15 months prior to the contract issue
16 date or redetermination date under Subdivision (4);

17 (2) reduced by 125 basis points;

18 (3) where the resulting interest rate is not less than
19 0.15 [~~one~~] percent; and

20 (4) the interest rate shall apply for an initial
21 period and may be redetermined for additional periods. The
22 redetermination date, basis, and period, if any, shall be stated in
23 the contract. As used in this section, basis is the date, or
24 average over a specified period, which produces the five-year

1 Constant Maturity Treasury Rate to be used at each redetermination
2 date.

3 SECTION 2. Section 1115.001, Insurance Code, is amended to
4 read as follows:

5 Sec. 1115.001. PURPOSE. The purpose of this chapter is to
6 require an agent to act in the best interest of the consumer when
7 making a recommendation of an [~~establish standards and procedures~~
8 ~~regarding recommendations made to a consumer that result in a~~
9 ~~transaction involving~~] annuity [~~products,~~] and to require insurers
10 to establish and maintain a system to supervise those
11 recommendations so [~~, to ensure~~] that the insurance needs and
12 financial objectives of the consumer as of the time of the
13 transaction are effectively [~~appropriately~~] addressed.

14 SECTION 3. Section 1115.002, Insurance Code, is amended by
15 amending Subdivisions (2-a), (3), (4), and (5) and adding
16 Subdivisions (2-b), (2-c), (3-a), (3-b), (3-c), and (3-d) to read
17 as follows:

18 (2-a) "Cash compensation" means a discount,
19 concession, fee, service fee, commission, sales charge, loan,
20 override, or cash benefit received by an agent from an insurer,
21 intermediary, or consumer in connection with the recommendation or
22 sale of an annuity.

23 (2-b) "Consumer profile information" means
24 information that is reasonably appropriate to determine whether a
25 recommendation addresses the consumer's financial situation,
26 insurance needs, and financial objectives, including the
27 following:

- 1 (A) age;
- 2 (B) annual income;
- 3 (C) existing assets and financial products,
4 including investment, annuity, and insurance holdings;
- 5 (D) financial situation and needs, including
6 debts and other obligations;
- 7 (E) financial experience;
- 8 (F) financial objectives;
- 9 (G) financial resources used to fund the annuity;
- 10 (H) financial time horizon;
- 11 (I) insurance needs;
- 12 (J) intended use of the annuity;
- 13 (K) liquid net worth;
- 14 (L) liquidity needs;
- 15 (M) risk tolerance, including willingness to
16 accept non-guaranteed elements in the annuity; and
- 17 (N) tax status.

18 (2-c) "Continuing education provider" means a person
19 authorized to offer continuing education courses under Chapter
20 [4004](#).

21 (3) "Insurer" means a company authorized to engage in
22 the business of life insurance and annuities in this state, and
23 includes a fraternal benefit society operating under Chapter [885](#).

24 (3-a) "Intermediary" means an entity contracted
25 directly with an insurer or with another entity contracted with an
26 insurer to facilitate the sale of the insurer's annuities by
27 agents.

1 (3-b) "Material conflict of interest" means a
2 financial interest of an agent in the sale of an annuity that a
3 reasonable person would expect to influence the impartiality of a
4 recommendation. The term does not include cash or noncash
5 compensation paid to an agent.

6 (3-c) "Noncash compensation" means any form of
7 compensation that is not cash compensation, including health
8 insurance, office rent, office support, and retirement benefits.

9 (3-d) "Non-guaranteed element" means a premium,
10 credited interest rate, including any bonus, benefit, value,
11 dividend, non-interest based credit, or charge, or an element of a
12 formula used to determine any of those elements, that is determined
13 at the discretion of the insurer and is not guaranteed at issue. The
14 term includes an element that is calculated using an element that is
15 determined at the discretion of the insurer and is not guaranteed at
16 issue.

17 (4) "Recommendation" means advice provided by an
18 agent, or an insurer if no agent is involved, to an individual
19 consumer that is intended to result or does result ~~[results]~~ in a
20 purchase, exchange, or replacement of an annuity made in accordance
21 with that advice. The term does not include a general communication
22 to the public, any generalized customer service assistance or
23 administrative support, any general educational information or
24 tools, a prospectus, or any other product or sales material.

25 (5) "Replacement" means a transaction in which a new
26 annuity ~~[policy or contract]~~ is to be purchased and the proposing
27 agent, or the proposing insurer regardless of whether ~~[if]~~ an agent

1 is [~~not~~] involved, knows or should know that, by reason of the
2 transaction, an existing annuity or other insurance policy [~~or~~
3 ~~contract~~] has been or is to be:

4 (A) lapsed, forfeited, surrendered or partially
5 surrendered, assigned to the replacing insurer, or otherwise
6 terminated;

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

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

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

14 (E) used in a financed purchase.

15 SECTION 4. Section [1115.003](#), Insurance Code, is amended to
16 read as follows:

17 Sec. 1115.003. APPLICABILITY; EXEMPTIONS. (a) This
18 chapter applies to any sale of [~~recommendation to purchase,~~
19 ~~replace, or exchange~~] an annuity [~~that:~~

20 [~~(1) is made to a consumer by an agent, or an insurer~~
21 ~~if an agent is not involved, and~~

22 [~~(2) results in the recommended purchase,~~
23 ~~replacement, or exchange~~].

24 (b) Unless otherwise specifically included, this chapter
25 does not apply to transactions involving:

26 (1) direct response solicitations if there is no
27 recommendation based on information collected from the consumer

1 under this chapter; ~~or~~

2 (2) contracts used to fund:

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

6 (B) a plan described by Section 401(a), 401(k),
7 403(b), 408(k), or 408(p), Internal Revenue Code of 1986, if
8 established or maintained by an employer;

9 (C) a government or church plan, as defined by
10 Section 414, Internal Revenue Code of 1986, a government or church
11 welfare benefit plan, or a deferred compensation plan of a state or
12 local government or tax exempt organization described under Section
13 457, Internal Revenue Code of 1986; or

14 (D) a nonqualified deferred compensation
15 arrangement established or maintained by an employer or plan
16 sponsor;

17 (3) ~~(E)~~ settlements of or assumptions of
18 liabilities associated with personal injury litigation or any
19 dispute or claim resolution process; or

20 (4) ~~(F)~~ prepaid funeral benefits contracts, as
21 defined by Chapter 154, Finance Code.

22 SECTION 5. Section 1115.004, Insurance Code, is amended to
23 read as follows:

24 Sec. 1115.004. NO CAUSE OF ACTION CREATED. This chapter may
25 not be construed to create or imply a private cause of action
26 against an agent or insurer or to subject an agent or insurer to
27 civil liability for a violation of:

- 1 (1) this chapter or a rule adopted under this chapter;
2 or
3 (2) a standard governing the conduct of a fiduciary or
4 a fiduciary relationship.

5 SECTION 6. Subchapter B, Chapter 1115, Insurance Code, is
6 amended by adding Sections 1115.0505, 1115.0506, 1115.0507, and
7 1115.0508 to read as follows:

8 Sec. 1115.0505. AGENTS EXERCISING MATERIAL CONTROL. (a)
9 This subchapter applies to each agent who:

10 (1) exercises material control or influence in making
11 a recommendation or sale; and

12 (2) receives direct compensation as a result of the
13 recommendation or sale, regardless of whether the agent has direct
14 contact with the consumer.

15 (b) Activities that do not constitute material control or
16 influence include providing or delivering marketing or educational
17 materials, product wholesaling or other back office product
18 support, general supervision of an agent, and similar activities.

19 Sec. 1115.0506. TRANSACTIONS NOT BASED ON RECOMMENDATION;
20 CERTAIN EXEMPTIONS FROM SUBCHAPTER. An agent does not have an
21 obligation to a consumer under Section 1115.0513 if:

22 (1) the agent does not make a recommendation;

23 (2) the agent makes a recommendation based on
24 materially inaccurate information provided by the consumer;

25 (3) the consumer refuses to provide consumer profile
26 information; or

27 (4) the consumer enters into an annuity transaction

1 that is not based on the recommendation from the agent or the
2 insurer.

3 Sec. 1115.0507. INSURER OBLIGATIONS. (a) Notwithstanding
4 Section 1115.0506, an insurer's issuance of an annuity must be
5 reasonable under the circumstances known to the insurer at the time
6 the annuity is issued.

7 (b) If there is no agent involved in an annuity transaction,
8 the obligations described in this subchapter apply to the insurer
9 that recommends or sells the annuity in the same way those
10 obligations would apply to an agent.

11 Sec. 1115.0508. ADDITIONAL LICENSURE NOT REQUIRED. Nothing
12 in this subchapter may be construed to require an agent to obtain a
13 license other than the license described by Chapter 4054.

14 SECTION 7. The heading to Section 1115.051, Insurance Code,
15 is amended to read as follows:

16 Sec. 1115.051. BEST-INTEREST OBLIGATION [~~SUITABILITY OF~~
17 ~~ANNUITY PRODUCT REQUIRED~~].

18 SECTION 8. Sections 1115.051(a) and (b), Insurance Code,
19 are amended to read as follows:

20 (a) When making a recommendation of an annuity, an agent
21 shall act in the best interest of the consumer under the
22 circumstances known to the agent at the time the recommendation is
23 made, without placing the agent's or the insurer's financial
24 interest ahead of the consumer's interest [~~In recommending to a~~
25 ~~consumer the purchase of an annuity or the exchange of an annuity~~
26 ~~that results in another insurance transaction or series of~~
27 ~~insurance transactions, the agent, or the insurer if an agent is not~~

1 ~~involved, must have a reasonable basis to believe that:~~

2 ~~[(1) the recommendation is suitable for the consumer~~
3 ~~on the basis of the facts disclosed by the consumer as to the~~
4 ~~consumer's investments and other insurance products and as to the~~
5 ~~consumer's financial situation and needs, including the consumer's~~
6 ~~suitability information;~~

7 ~~[(2) the consumer has been reasonably informed of~~
8 ~~various features of the annuity, such as the potential surrender~~
9 ~~period and the surrender charge, any potential tax penalty if the~~
10 ~~consumer sells, exchanges, surrenders, or annuitizes the annuity,~~
11 ~~mortality and expense fees, investment advisory fees, potential~~
12 ~~charges for and features of riders, limitations on interest~~
13 ~~returns, insurance and investment components, and market risk;~~

14 ~~[(3) the consumer would benefit from certain features~~
15 ~~of the annuity, such as tax-deferred growth, annuitization, or a~~
16 ~~death or living benefit;~~

17 ~~[(4) the particular annuity as a whole, the underlying~~
18 ~~subaccounts to which funds are allocated at the time of the purchase~~
19 ~~or exchange of the annuity, and any riders or similar product~~
20 ~~enhancements are suitable, and, in the case of an exchange or~~
21 ~~replacement, the transaction as a whole is suitable, for the~~
22 ~~particular consumer based on the consumer's suitability~~
23 ~~information; and~~

24 ~~[(5) in the case of an exchange or replacement of an~~
25 ~~annuity, the exchange or replacement is suitable, including taking~~
26 ~~into consideration whether the consumer:~~

27 ~~[(A) will incur a surrender charge, be subject to~~

1 ~~the commencement of a new surrender period, lose existing benefits~~
2 ~~such as death, living, or other contractual benefits, or be subject~~
3 ~~to increased fees, investment advisory fees, or charges for riders~~
4 ~~or similar product enhancements;~~

5 ~~[(B) would benefit from product enhancements and~~
6 ~~improvements; and~~

7 ~~[(C) has had another annuity exchange or~~
8 ~~replacement, and in particular, an exchange or replacement in the~~
9 ~~preceding 36 months].~~

10 (b) An agent is presumed to act in the best interest of the
11 consumer if the agent satisfies the care, disclosure, conflict of
12 interest, and documentation obligations described by this
13 subchapter [~~Before the execution of a purchase, exchange, or~~
14 ~~replacement of an annuity resulting from a recommendation, an~~
15 ~~agent, or an insurer if an agent is not involved, shall make~~
16 ~~reasonable efforts to obtain the consumer's suitability~~
17 ~~information].~~

18 SECTION 9. Subchapter B, Chapter 1115, Insurance Code, is
19 amended by adding Sections 1115.0513, 1115.0514, 1115.0515, and
20 1115.0516 to read as follows:

21 Sec. 1115.0513. CARE OBLIGATION. (a) In making a
22 recommendation, an agent shall exercise reasonable diligence,
23 care, and skill to:

24 (1) obtain consumer profile information from the
25 consumer before making the recommendation of an annuity;

26 (2) know the consumer's financial situation, insurance
27 needs, and financial objectives;

1 (3) understand the available recommendation options
2 available to the agent;

3 (4) consider the types of products the agent is
4 authorized and licensed to recommend or sell that address the
5 consumer's financial situation, insurance needs, and financial
6 objectives;

7 (5) have a reasonable basis to believe the
8 recommendation addresses the consumer's financial situation,
9 insurance needs, and financial objectives over the life of the
10 product, in light of the consumer profile information;

11 (6) have a reasonable basis to believe the consumer
12 would benefit from certain features of the annuity, such as
13 annuitization, a death or living benefit, or other
14 insurance-related feature; and

15 (7) communicate the basis of the recommendation.

16 (b) Subsection (a) does not require:

17 (1) analysis or consideration of a product outside the
18 authority and license of the agent;

19 (2) analysis or consideration of a product or strategy
20 that is an alternative to an annuity;

21 (3) recommendation of the annuity with the lowest
22 one-time or multiple occurrence compensation structure; or

23 (4) ongoing monitoring of the consumer's financial
24 situation.

25 (c) The agent shall consider consumer profile information,
26 characteristics of the insurer, and product costs, rates, benefits,
27 and features in determining whether an annuity effectively

1 addresses the consumer's financial situation, insurance needs, and
2 financial objectives. The agent may place varying levels of
3 importance on each of those factors based on the facts and
4 circumstances of a particular case, but may not consider one factor
5 in isolation.

6 (d) In the case of an exchange or replacement of an annuity,
7 the agent shall consider the whole transaction, including whether:

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

13 (2) the replacing product would substantially benefit
14 the consumer in comparison to the replaced product over the life of
15 the product; and

16 (3) the consumer has had an annuity exchange or
17 replacement in the preceding 60 months.

18 (e) This section applies to an annuity as a whole,
19 including:

20 (1) underlying subaccounts to which money is allocated
21 at the time of the purchase or exchange of an annuity; and

22 (2) any riders and similar product enhancements.

23 (f) An agent shall be held to standards applicable to an
24 agent with similar authority and licensure with respect to the
25 requirements of this section. This section does not create a
26 fiduciary obligation or relationship and only creates a regulatory
27 obligation. This section does not affect any ongoing monitoring

1 obligation an agent may have under a fiduciary, consulting,
2 investment advising, or financial planning agreement between the
3 consumer and the agent.

4 Sec. 1115.0514. DISCLOSURE OBLIGATION. (a) Before the
5 recommendation or sale of an annuity, an agent shall provide a
6 disclosure to the consumer on a form prescribed by the commissioner
7 by rule.

8 (b) The prescribed form must be substantially similar to the
9 National Association of Insurance Commissioners Insurance Agent
10 Disclosure for Annuities form. The form must include:

11 (1) a description of the scope and terms of the agent's
12 relationship with the consumer and role in the transaction;

13 (2) an affirmative statement on whether the agent is
14 licensed and authorized to sell:

15 (A) fixed annuities;

16 (B) fixed indexed annuities;

17 (C) variable annuities;

18 (D) life insurance;

19 (E) mutual funds;

20 (F) stocks and bonds; or

21 (G) certificates of deposit;

22 (3) a statement describing the insurers for whom the
23 agent is authorized, contracted or appointed, or otherwise able to
24 sell insurance products, described as follows:

25 (A) one insurer;

26 (B) two or more insurers; or

27 (C) two or more insurers though primarily

1 contracted with one insurer;

2 (4) a description of the sources and types of cash
3 compensation and noncash compensation to be received by the agent,
4 including whether the agent is to be compensated for the sale of a
5 recommended annuity by commission as part of premium or other
6 remuneration received from the insurer, intermediary, or other
7 agent or by fee as a result of a contract for advice or consulting
8 services; and

9 (5) a notice of the consumer's right to request
10 additional information regarding cash compensation under
11 Subsection (c).

12 (c) On request of the consumer or the consumer's designated
13 representative, an agent shall disclose:

14 (1) a reasonable estimate of the amount of cash
15 compensation to be received by the agent, which may be stated as a
16 range of amounts or percentages; and

17 (2) whether the cash compensation is a one-time or
18 multiple occurrence amount, and if a multiple occurrence amount,
19 the frequency and amount of occurrence, which may be stated as a
20 range of amounts or percentages.

21 (d) Prior to or at the time of the recommendation or sale of
22 an annuity, the agent must have a reasonable basis to believe the
23 consumer has been informed of the features of the annuity,
24 including:

25 (1) the potential surrender period and surrender
26 charge;

27 (2) the potential tax penalty if the consumer sells

- 1 exchanges, surrenders, or annuitizes the annuity;
- 2 (3) mortality and expense fees;
- 3 (4) investment advisory fees;
- 4 (5) annual fees;
- 5 (6) potential charges for and features of riders or
- 6 other options of the annuity;
- 7 (7) limitations on interest returns;
- 8 (8) potential changes in non-guaranteed elements of
- 9 the annuity;
- 10 (9) insurance and investment components; and
- 11 (10) market risk.

12 Sec. 1115.0515. CONFLICT OF INTEREST OBLIGATION. (a) An
13 agent shall take reasonable steps to discover a material conflict
14 of interest, including a material conflict of interest related to
15 an ownership interest.

16 (b) An agent shall:

- 17 (1) identify and avoid a material conflict of
- 18 interest; or
- 19 (2) reasonably manage and disclose the conflict.

20 Sec. 1115.0516. DOCUMENTATION OBLIGATION. At the time of
21 the recommendation or sale, an agent shall:

- 22 (1) make a written record of the recommendation and
- 23 the basis for the recommendation;
- 24 (2) if applicable, obtain a statement signed by the
- 25 consumer on a form prescribed by the commissioner by rule that is
- 26 substantially similar to the National Association of Insurance
- 27 Commissioners Consumer Refusal to Provide Information form

1 documenting:

2 (A) a consumer's refusal to provide consumer
3 profile information; and

4 (B) a consumer's understanding of the
5 ramifications of failing to provide consumer profile information or
6 providing insufficient consumer profile information; and

7 (3) if a consumer decides to enter into an annuity
8 transaction that is not based on the agent's recommendation, obtain
9 a statement signed by the consumer on a form prescribed by the
10 commissioner by rule that is substantially similar to the National
11 Association of Insurance Commissioners Consumer Decision to
12 Purchase an Annuity Not Based on a Recommendation, acknowledging
13 that the annuity transaction is not recommended.

14 SECTION 10. Section 1115.052, Insurance Code, is amended by
15 amending Subsections (a), (b), (c), and (d) and adding Subsections
16 (b-1) and (c-1) to read as follows:

17 (a) Except as provided in Section 1115.0506, an insurer may
18 not issue an annuity recommended to a consumer unless there is a
19 reasonable basis to believe the annuity would effectively address
20 the consumer's financial situation, insurance needs, and financial
21 objectives based on the consumer's consumer profile information
22 ~~[Each insurer shall establish supervision that is reasonably~~
23 ~~designed to achieve the insurer's and the insurer's agents'~~
24 ~~compliance with this chapter].~~

25 (b) Each ~~[An]~~ insurer shall establish and maintain a ~~[may~~
26 ~~comply with Subsection (a) by establishing and maintaining the~~
27 ~~insurer's own]~~ supervision system that is reasonably designed to

1 achieve the insurer's and the insurer's agent's compliance with this
2 chapter, including [~~under which, at a minimum, the insurer~~]:

3 (1) establishing and maintaining [~~maintains~~]
4 reasonable procedures to inform the insurer's agents of the
5 requirements of this chapter and incorporating [~~incorporates~~] the
6 requirements of this chapter into relevant agent training manuals;

7 (2) establishing and maintaining [~~establishes~~]
8 standards for agent product training and establishing and
9 maintaining [~~maintains~~] reasonable procedures to require the
10 insurer's agents to comply with the requirements of Section
11 [1115.056](#);

12 (3) providing [~~provides~~] product-specific training
13 and training materials that explain all material features of the
14 insurer's annuity products to the insurer's agents;

15 (4) establishing and maintaining [~~maintains~~]
16 procedures to review each recommendation electronically,
17 physically, or otherwise before the issuance of an annuity that:

18 (A) are designed to ensure that there is a
19 reasonable basis to determine that the recommended annuity would
20 effectively address the consumer's financial situation, insurance
21 needs, and financial objectives [~~a recommendation is suitable~~]; and

22 (B) may:

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

25 (ii) be designed to require additional
26 review only of those transactions identified for additional review
27 by the selection criteria;

1 (5) establishing and maintaining ~~[maintains]~~
2 reasonable procedures, such as confirmation of consumer profile
3 ~~[suitability]~~ information, systematic customer surveys, agent and
4 consumer interviews, confirmation letters, agent statements or
5 attestations, and programs of internal monitoring, to detect
6 recommendations that are not in compliance with Sections 1115.0505
7 through 1115.051 and Sections 1115.0521 and 1115.054 ~~[suitable]~~,
8 which may include ~~[involve]~~ applying sampling procedures or
9 confirming consumer profile ~~[suitability]~~ information after the
10 issuance or delivery of the annuity; ~~[and]~~

11 (6) establishing and maintaining reasonable
12 procedures to assess, before or on issuance or delivery of an
13 annuity, whether an agent has provided to the consumer the
14 information required to be provided under this subchapter;

15 (7) establishing and maintaining reasonable
16 procedures to identify and address suspicious consumer refusals to
17 provide consumer profile information;

18 (8) establishing and maintaining reasonable
19 procedures to identify and eliminate sales contests, sales quotas,
20 bonuses, or noncash compensation that are based on the sale of
21 specific annuities within a limited period of time; and

22 (9) annually providing ~~[provides]~~ a written report to
23 the insurer's senior management, including to the senior manager
24 responsible for audit functions, that details a review, with
25 appropriate testing, reasonably designed to determine the
26 effectiveness of the supervision system, the exceptions found, and
27 any corrective action taken or recommended.

1 (b-1) Subsection (b)(8) does not prohibit the receipt by
2 employees of health insurance, office rent, office support,
3 retirement benefits, or other employee benefits so long as those
4 benefits are not based on the volume of sales of a specific annuity
5 within a limited period of time.

6 (c) This subsection and Subsection (c-1) do ~~[does]~~ not
7 prohibit an insurer from contracting for the performance of a
8 function, including maintenance of procedures, required by
9 Subsection (b). An insurer is responsible for taking appropriate
10 corrective action and may be subject to sanctions and penalties
11 under Section 1115.102 regardless of whether the insurer contracts
12 for performance of a function and regardless of whether the insurer
13 complies with Subsection (c-1).

14 (c-1) An insurer's supervision system under Subsection (b)
15 must include the supervision of contractual performance under this
16 subsection that includes, at a minimum:

17 (1) annually obtaining certification that complies
18 with Section 1115.053 from a senior manager who represents that the
19 contracted function is properly performed; and

20 (2) monitoring and, as appropriate, conducting audits
21 to ensure that the contracted function is properly performed.

22 (d) An insurer is not required by this section to include in
23 the supervision system:

24 (1) an agent's recommendations to consumers of
25 products other than the annuities offered by the insurer; or

26 (2) consideration of or comparison to options
27 available to the agent or compensation relating to those options

1 other than annuities or other products offered by the insurer.

2 SECTION 11. Subchapter B, Chapter 1115, Insurance Code, is
3 amended by adding Section 1115.0521 to read as follows:

4 Sec. 1115.0521. PROHIBITED PRACTICES. An agent or insurer
5 may not dissuade or attempt to dissuade a consumer from:

6 (1) truthfully responding to an insurer's request for
7 confirmation of consumer profile information;

8 (2) filing a complaint; or

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

10 SECTION 12. Section 1115.053, Insurance Code, is amended to
11 read as follows:

12 Sec. 1115.053. CERTIFICATION REQUIREMENTS. A person may
13 not provide a certification under Section 1115.052(c-1)(1)
14 [~~1115.052(c)(1)~~] unless the person:

15 (1) is a senior manager with responsibility for the
16 delegated functions; and

17 (2) has a reasonable basis for making the
18 certification.

19 SECTION 13. Section 1115.054, Insurance Code, is amended to
20 read as follows:

21 Sec. 1115.054. SAFE HARBOR [~~COMPLIANCE WITH CERTAIN~~
22 ~~NATIONAL STANDARDS~~]. (a) Recommendations and [~~Subject to~~
23 ~~subsection (c),~~] sales of annuities made in compliance with
24 comparable standards [~~the conduct rules of the Financial Industry~~
25 ~~Regulatory Authority (FINRA) relating to suitability and~~
26 ~~supervision of annuity transactions, or the rules of another~~
27 ~~national organization recognized by the commissioner,~~] satisfy the

1 requirements of this chapter. This section applies to
2 recommendations and [~~FINRA member broker-dealer~~] sales of
3 [~~variable annuities and fixed~~] annuities made by a financial
4 professional in compliance with business rules, controls, and
5 procedures that satisfy a comparable standard even if such standard
6 would not otherwise apply to the product or recommendation at issue
7 [~~if the suitability and supervision conduct rules are similar to~~
8 ~~those applied to variable annuity sales~~].

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

11 (c) This section does not limit the insurer's obligation to
12 comply with Section 1115.052(a), although the insurer may base its
13 analysis on information received from either the financial
14 professional or the entity supervising the financial professional.

15 (d) Subsection (a) applies only if the insurer:

16 (1) using information collected in the normal course
17 of the insurer's business, monitors the relevant conduct of the
18 financial professional or the entity responsible for supervising
19 the financial professional, such as the financial professional's
20 [~~FINRA member~~] broker-dealer or an investment adviser registered
21 under federal or state securities laws [~~using information collected~~
22 ~~in the normal course of the insurer's business~~]; and

23 (2) provides to the entity responsible for supervising
24 the financial professional, such as the financial professional's
25 [~~FINRA member~~] broker-dealer or investment adviser registered
26 under federal or state securities laws, information and reports
27 that are reasonably appropriate to assist the entity in maintaining

1 ~~[broker-dealer to maintain]~~ the entity's ~~[broker-dealer's]~~
2 supervision system.

3 (e) For purposes of this section, "financial professional"
4 means an agent that is regulated and acting as:

5 (1) a broker-dealer registered under federal or state
6 securities laws or a registered representative of a broker-dealer;

7 (2) an investment adviser registered under federal or
8 state securities laws or an investment adviser representative
9 associated with the federal or state registered investment adviser;
10 or

11 (3) a plan fiduciary under Section 3(21), Employee
12 Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(21))
13 or a fiduciary under Section 4975(e)(3), Internal Revenue Code of
14 1986.

15 (f) For purposes of this section, "comparable standards"
16 means:

17 (1) with respect to a broker-dealer or a registered
18 representative of a broker-dealer, applicable rules of the
19 Financial Industry Regulatory Authority (FINRA) or a successor
20 agency and the United States Securities and Exchange Commission
21 pertaining to best interest obligations and supervision of annuity
22 recommendations and sales, including Regulation Best Interest (17
23 C.F.R. Section 240.151-1), including subsequent amendments or
24 successor regulations;

25 (2) with respect to an investment adviser registered
26 under federal or state securities laws or an investment adviser
27 representative, the fiduciary duties and all other requirements

1 imposed on those investment advisers or investment adviser
2 representatives by contract or under the Investment Advisers Act of
3 1940 (15 U.S.C. Section 80b-1 et seq.) or applicable state
4 securities law or regulations, including Form ADV (17 C.F.R.
5 Section 279.1), and interpretations; and
6 (3) with respect to a plan fiduciary or a fiduciary,
7 the duties, obligations, prohibitions, and all other requirements
8 attendant to that status under the Employee Retirement Income
9 Security Act of 1974 (29 U.S.C. Section 1001 et seq.) or the
10 Internal Revenue Code of 1986.

11 SECTION 14. Section 1115.055(a), Insurance Code, is amended
12 to read as follows:

13 (a) Each agent, general agent, independent agency, and
14 insurer shall maintain, or otherwise be able to make available to
15 the commissioner, records of the information collected from the
16 consumer, disclosures made to the consumer, including summaries of
17 oral disclosures, and other information used in making a
18 recommendation that was the basis for an insurance [a] transaction
19 subject to this chapter until the fifth anniversary of the date on
20 which the transaction is completed by the insurer.

21 SECTION 15. Section 1115.056, Insurance Code, is amended by
22 amending Subsections (a), (b), (d), and (f) and adding Subsection
23 (i-1) to read as follows:

24 (a) An agent may not solicit the sale of an annuity product
25 unless the agent has adequate knowledge of the product to recommend
26 the annuity and the agent is in compliance with the insurer's
27 standards for product training. An agent may rely on

1 insurer-provided, product-specific training standards and
2 materials to comply with this subsection.

3 (b) An agent who engages in the sale of annuity products
4 must complete a one-time four-credit training course approved by
5 the department and provided by a continuing education provider.

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

8 (1) the types of annuities and various classifications
9 of annuities;

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

11 (3) how product-specific [~~fixed, variable, and~~
12 ~~indexed~~] annuity features [~~contract provisions~~] affect consumers;

13 (4) the application of income taxation of qualified
14 and nonqualified annuities;

15 (5) the primary uses of annuities; and

16 (6) appropriate standard of conduct sales practices,
17 replacement, and disclosure requirements.

18 (f) A provider of an annuity training [~~a~~] course intended to
19 comply with Subsection (b) must register as a continuing education
20 provider in this state and comply with the rules and guidelines
21 applicable to agent continuing education courses provided by
22 Chapter 4004.

23 (i-1) A course that is substantially similar to a course
24 required by this section satisfies the requirement.

25 SECTION 16. The heading to Subchapter C, Chapter 1115,
26 Insurance Code, is amended to read as follows:

27 SUBCHAPTER C. MITIGATION; ENFORCEMENT

1 SECTION 17. Section 1115.101, Insurance Code, is amended to
2 read as follows:

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

7 (1) order:

8 (A) the insurer to take reasonable appropriate
9 corrective action for any consumer harmed by a failure to comply
10 with this chapter by the insurer, [or by] the insurer's agent, or an
11 entity contracted to perform the insurer's supervisory duties
12 ~~[because of a violation of this chapter]~~; or

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

16 (2) impose appropriate sanctions as provided by
17 Section 1115.102.

18 SECTION 18. The following sections of the Insurance Code
19 are repealed:

20 (1) Section 1115.002(6);

21 (2) Sections 1115.051(c), (d), (e), and (f); and

22 (3) Section 1115.052(e).

23 SECTION 19. (a) Not later than December 1, 2021, the Texas
24 Department of Insurance shall approve a training course for
25 purposes of Section 1115.056, Insurance Code, as amended by this
26 Act.

27 (b) Section 1115.056, Insurance Code, as amended by this

1 Act, applies only to the sale of an annuity on or after January 1,
2 2022. The sale of an annuity before that date is governed by the law
3 as it existed immediately before the effective date of this Act, and
4 that law is continued in effect for that purpose.

5 (c) An agent who has completed an annuity training course
6 for purposes of Section 1115.056, Insurance Code, before January 1,
7 2022, may comply with Section 1115.056, Insurance Code, as amended
8 by this Act, by completing either:

9 (1) a new four-credit training course approved by the
10 Texas Department of Insurance under Subsection (a) of this section;
11 or

12 (2) an additional one-time one-credit training course
13 approved by the Texas Department of Insurance and provided by a
14 continuing education provider approved by the Texas Department of
15 Insurance on appropriate sales practices, replacement, and
16 disclosure requirements.

17 SECTION 20. (a) Section 1107.055, Insurance Code, as
18 amended by this Act, applies only to an annuity contract delivered,
19 issued for delivery, or renewed on or after January 1, 2022. An
20 annuity contract delivered, issued for delivery, or renewed before
21 January 1, 2022, is governed by the law as it existed immediately
22 before the effective date of this Act, and that law is continued in
23 effect for that purpose.

24 (b) Chapter 1115, Insurance Code, as amended by this Act,
25 applies only to an annuity transaction that occurs on or after the
26 effective date of this Act. An annuity transaction that occurs
27 before the effective date of this Act is governed by the law as it

1 existed immediately before the effective date of this Act, and that
2 law is continued in effect for that purpose.

3 SECTION 21. This Act takes effect September 1, 2021.