

By: Oliverson

H.B. No. 1777

A BILL TO BE ENTITLED

AN ACT

relating to disclosures and standards required for 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 require an agent to act in the best interest of the consumer when making a recommendation of an ~~establish standards and procedures regarding recommendations made to a consumer that result in a transaction involving~~ annuity ~~products,~~ and to require insurers to establish and maintain a system to supervise those recommendations so ~~, to ensure~~ that the insurance needs and financial objectives of the consumer as of the time of the transaction are effectively ~~appropriately~~ addressed.

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

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

1 (2-b) "Consumer profile information" means
2 information that is reasonably appropriate to determine whether a
3 recommendation addresses the consumer's financial situation,
4 insurance needs, and financial objectives, including the
5 following:

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

23 (2-c) "Continuing education provider" means a person
24 authorized to offer continuing education courses under Chapter
25 4004.

26 (3) "Insurer" means a company authorized to engage in
27 the business of life insurance and annuities in this state, and

1 includes a fraternal benefit society operating under Chapter 885.

2 (3-a) "Intermediary" means an entity contracted
3 directly with an insurer or with another entity contracted with an
4 insurer to facilitate the sale of the insurer's annuities by
5 agents.

6 (3-b) "Material conflict of interest" means a
7 financial interest of an agent in the sale of an annuity that a
8 reasonable person would expect to influence the impartiality of a
9 recommendation. The term does not include cash or noncash
10 compensation paid to an agent.

11 (3-c) "Noncash compensation" means any form of
12 compensation that is not cash compensation, including health
13 insurance, office rent, office support, and retirement benefits.

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

22 (4) "Recommendation" means advice provided by an
23 agent, or an insurer if no agent is involved, to an individual
24 consumer that is intended to result or does result [~~results~~] in a
25 purchase, exchange, or replacement of an annuity made in accordance
26 with that advice. The term does not include a general communication
27 to the public, any generalized customer service assistance or

1 administrative support, any general educational information or
2 tools, a prospectus, or any other product or sales material.

3 (5) "Replacement" means a transaction in which a new
4 annuity [~~policy or contract~~] is to be purchased and the proposing
5 agent, or the proposing insurer regardless of whether [~~if~~] an agent
6 is [~~not~~] involved, knows or should know that, by reason of the
7 transaction, an existing annuity or other insurance policy [~~or~~
8 ~~contract~~] has been or is to be:

9 (A) lapsed, forfeited, surrendered or partially
10 surrendered, assigned to the replacing insurer, or otherwise
11 terminated;

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

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

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

19 (E) used in a financed purchase.

20 SECTION 3. Section [1115.003](#), Insurance Code, is amended to
21 read as follows:

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

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

27 [~~(2) results in the recommended purchase,~~

1 ~~replacement, or exchange~~].

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

4 (1) direct response solicitations if there is no
5 recommendation based on information collected from the consumer
6 under this chapter; ~~or~~

7 (2) contracts used to fund:

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

11 (B) a plan described by Section 401(a), 401(k),
12 403(b), 408(k), or 408(p), Internal Revenue Code of 1986, if
13 established or maintained by an employer;

14 (C) a government or church plan, as defined by
15 Section 414, Internal Revenue Code of 1986, a government or church
16 welfare benefit plan, or a deferred compensation plan of a state or
17 local government or tax exempt organization described under Section
18 457, Internal Revenue Code of 1986; or

19 (D) a nonqualified deferred compensation
20 arrangement established or maintained by an employer or plan
21 sponsor;

22 (3) ~~(E)~~ settlements of or assumptions of
23 liabilities associated with personal injury litigation or any
24 dispute or claim resolution process; or

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

27 SECTION 4. Section 1115.004, Insurance Code, is amended to

1 read as follows:

2 Sec. 1115.004. NO CAUSE OF ACTION CREATED. This chapter may
3 not be construed to create or imply a private cause of action
4 against an agent or insurer for a violation of:

5 (1) this chapter or a rule adopted under this chapter;
6 or

7 (2) a standard governing the conduct of a fiduciary or
8 a fiduciary relationship.

9 SECTION 5. Subchapter B, Chapter 1115, Insurance Code, is
10 amended by adding Sections 1115.0505, 1115.0506, 1115.0507, and
11 1115.0508 to read as follows:

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

14 (1) exercises material control or influence in making
15 a recommendation or sale; and

16 (2) receives direct compensation as a result of the
17 recommendation or sale, regardless of whether the agent has direct
18 contact with the consumer.

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

23 Sec. 1115.0506. EXEMPTIONS FROM AGENT OBLIGATIONS. An
24 agent does not have an obligation to a consumer under Section
25 1115.0513 if:

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

27 (2) the agent makes a recommendation based on

1 materially inaccurate information provided by the consumer;

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

4 (4) the consumer enters into an annuity transaction
5 that is not based on the recommendation.

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

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

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

17 SECTION 6. The heading to Section 1115.051, Insurance Code,
18 is amended to read as follows:

19 Sec. 1115.051. BEST-INTEREST OBLIGATION [~~SUITABILITY OF~~
20 ~~ANNUITY PRODUCT REQUIRED~~].

21 SECTION 7. Sections 1115.051(a) and (b), Insurance Code,
22 are amended to read as follows:

23 (a) When making a recommendation of an annuity, an agent
24 shall act in the best interest of the consumer under the
25 circumstances known to the agent at the time the recommendation is
26 made, without placing the agent's or the insurer's financial
27 interest ahead of the consumer's interest [~~In recommending to a~~

1 ~~consumer the purchase of an annuity or the exchange of an annuity~~
2 ~~that results in another insurance transaction or series of~~
3 ~~insurance transactions, the agent, or the insurer if an agent is not~~
4 ~~involved, must have a reasonable basis to believe that:~~

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

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

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

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

27 ~~[(5) in the case of an exchange or replacement of an~~

1 ~~annuity, the exchange or replacement is suitable, including taking~~
2 ~~into consideration whether the consumer:~~

3 ~~[(A) will incur a surrender charge, be subject to~~
4 ~~the commencement of a new surrender period, lose existing benefits~~
5 ~~such as death, living, or other contractual benefits, or be subject~~
6 ~~to increased fees, investment advisory fees, or charges for riders~~
7 ~~or similar product enhancements;~~

8 ~~[(B) would benefit from product enhancements and~~
9 ~~improvements; and~~

10 ~~[(C) has had another annuity exchange or~~
11 ~~replacement, and in particular, an exchange or replacement in the~~
12 ~~preceding 36 months].~~

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

21 SECTION 8. Subchapter B, Chapter 1115, Insurance Code, is
22 amended by adding Sections 1115.0513, 1115.0514, 1115.0515, and
23 1115.0516 to read as follows:

24 Sec. 1115.0513. CARE OBLIGATION. (a) In making a
25 recommendation, an agent shall exercise reasonable diligence,
26 care, and skill to:

27 (1) obtain consumer profile information from the

1 consumer before making the recommendation of an annuity;

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

4 (3) understand the available recommendation options
5 available to the agent;

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

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

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

17 (7) communicate the basis of the recommendation.

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

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

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

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

25 (4) ongoing monitoring of the consumer's financial
26 situation.

27 (c) The agent shall consider consumer profile information,

1 characteristics of the insurer, and product costs, rates, benefits,
2 and features in determining whether an annuity effectively
3 addresses the consumer's financial situation, insurance needs, and
4 financial objectives. The agent may place varying levels of
5 importance on each of those factors based on the facts and
6 circumstances of a particular case, but may not consider one factor
7 in isolation.

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

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

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

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

20 (e) This section applies to an annuity as a whole,
21 including:

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

24 (2) any riders and similar product enhancements.

25 (f) An agent shall be held to standards applicable to an
26 agent with similar authority and licensure with respect to the
27 requirements of this section. This section does not create a

1 fiduciary obligation or relationship and only creates a regulatory
2 obligation. This section does not affect any ongoing monitoring
3 obligation an agent may have under a fiduciary, consulting,
4 investment advising, or financial planning agreement between the
5 consumer and the agent.

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

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

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

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

17 (A) fixed annuities;

18 (B) fixed indexed annuities;

19 (C) variable annuities;

20 (D) life insurance;

21 (E) mutual funds;

22 (F) stocks and bonds; or

23 (G) certificates of deposit;

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

27 (A) one insurer;

1 (B) two or more insurers; or

2 (C) two or more insurers though primarily
3 contracted with one insurer;

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

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

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

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

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

23 (d) An agent may sell or recommend an annuity only if the
24 agent has a reasonable basis to believe the consumer has been
25 informed of the features of the annuity, including:

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

1 (2) the potential tax penalty if the consumer sells
2 exchanges, surrenders, or annuitizes the annuity;

3 (3) mortality and expense fees;

4 (4) investment advisory fees;

5 (5) annual fees;

6 (6) potential charges for and features of riders or
7 other options of the annuity;

8 (7) limitations on interest returns;

9 (8) potential changes in non-guaranteed elements of
10 the annuity;

11 (9) insurance and investment components; and

12 (10) market risk.

13 (e) The commissioner by rule may adopt additional
14 disclosure requirements.

15 Sec. 1115.0515. CONFLICT OF INTEREST OBLIGATION. (a) An
16 agent shall take reasonable steps to discover a material conflict
17 of interest.

18 (b) If an agent discovers a material conflict of interest,
19 the agent shall:

20 (1) avoid or reasonably manage the conflict; and

21 (2) disclose the conflict.

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

24 (1) make a written record of the recommendation and
25 the basis for the recommendation;

26 (2) obtain a statement signed by the consumer on a form
27 prescribed by the commissioner by rule that is substantially

1 similar to the National Association of Insurance Commissioners
2 Consumer Refusal to Provide Information form; and

3 (3) provide other relevant documentation, including,
4 if applicable:

5 (A) a consumer's refusal to provide consumer
6 profile information;

7 (B) a consumer's understanding of the
8 ramifications of failing to provide consumer profile information or
9 providing insufficient consumer profile information; and

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

17 SECTION 9. Section 1115.052, Insurance Code, is amended by
18 amending Subsections (a), (b), (c), and (d) and adding Subsections
19 (b-1) and (c-1) to read as follows:

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

27 (b) Each [~~An~~] insurer shall establish and maintain a [~~may~~

1 ~~comply with Subsection (a) by establishing and maintaining the~~
2 ~~insurer's own] supervision system that is reasonably designed to~~
3 ~~achieve the insurer's and the insurer's agent's compliance with this~~
4 ~~chapter, including [under which, at a minimum, the insurer]:~~

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

9 (2) establishing and maintaining [~~establishes~~]
10 standards for agent product training and establishing and
11 maintaining [~~maintains~~] reasonable procedures to require the
12 insurer's agents to comply with the requirements of Section
13 [1115.056](#);

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

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

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

24 (B) may:

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

27 (ii) be designed to require additional

1 review only of those transactions identified for additional review
2 by the selection criteria;

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

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

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

19 (8) establishing and maintaining reasonable
20 procedures to identify and eliminate:

21 (A) sales contests or quotas; or

22 (B) the award of bonuses or noncash compensation
23 that is based on the sale of specific annuities within a limited
24 period of time; and

25 (9) annually providing [~~provides~~] a written report to
26 the insurer's senior management, including to the senior manager
27 responsible for audit functions, that details a review, with

1 appropriate testing, reasonably designed to determine the
2 effectiveness of the supervision system, the exceptions found, and
3 any corrective action taken or recommended.

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

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

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

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

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

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

27 (1) an agent's recommendations to consumers of

1 products other than the annuities offered by the insurer; or
2 (2) consideration of or comparison to options
3 available to the agent or compensation relating to those options
4 other than annuities or other products offered by the insurer.

5 SECTION 10. Subchapter B, Chapter 1115, Insurance Code, is
6 amended by adding Section 1115.0521 to read as follows:

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

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

11 (2) filing a complaint; or

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

13 SECTION 11. Section 1115.053, Insurance Code, is amended to
14 read as follows:

15 Sec. 1115.053. CERTIFICATION REQUIREMENTS. A person may
16 not provide a certification under Section 1115.052(c-1)(1)
17 [~~1115.052(c)(1)~~] unless the person:

18 (1) is a senior manager with responsibility for the
19 delegated functions; and

20 (2) has a reasonable basis for making the
21 certification.

22 SECTION 12. Section 1115.054, Insurance Code, is amended to
23 read as follows:

24 Sec. 1115.054. SAFE HARBOR [~~COMPLIANCE WITH CERTAIN~~
25 ~~NATIONAL STANDARDS~~]. (a) Recommendations and [~~Subject to~~
26 ~~Subsection (c),~~] sales of annuities made in compliance with
27 comparable standards [~~the conduct rules of the Financial Industry~~

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

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

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

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

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

26 (2) provides to the entity responsible for supervising
27 the financial professional, such as the financial professional's

1 ~~[FINRA member]~~ broker-dealer or investment adviser registered
2 under federal or state securities laws, information and reports
3 that are reasonably appropriate to assist the entity in maintaining
4 ~~[broker-dealer to maintain]~~ the entity's ~~[broker-dealer's]~~
5 supervision system.

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

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

10 (2) an investment adviser registered under federal or
11 state securities laws or an investment adviser representative
12 associated with the federal or state registered investment adviser;
13 or

14 (3) a plan fiduciary under Section 3(21), Employee
15 Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(21))
16 or a fiduciary under Section 4975(e)(3), Internal Revenue Code of
17 1986.

18 (f) For purposes of this section, "comparable standards"
19 means:

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

1 (2) with respect to an investment adviser registered
2 under federal or state securities laws or an investment adviser
3 representative, the fiduciary duties and all other requirements
4 imposed on those investment advisers or investment adviser
5 representatives by contract or under the Investment Advisers Act of
6 1940 (15 U.S.C. Section 80b-1 et seq.) or applicable state
7 securities law or regulations, including Form ADV (17 C.F.R.
8 Section 279.1), and interpretations; and

9 (3) with respect to a plan fiduciary or a fiduciary,
10 the duties, obligations, prohibitions, and all other requirements
11 attendant to that status under the Employee Retirement Income
12 Security Act of 1974 (29 U.S.C. Section 1001 et seq.) or the
13 Internal Revenue Code of 1986.

14 SECTION 13. Section 1115.055(a), Insurance Code, is amended
15 to read as follows:

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

24 SECTION 14. Section 1115.056, Insurance Code, is amended by
25 amending Subsections (a), (b), (d), and (f) and adding Subsection
26 (i-1) to read as follows:

27 (a) An agent may not solicit the sale of an annuity product

1 unless the agent has adequate knowledge of the product to recommend
2 the annuity and the agent is in compliance with the insurer's
3 standards for product training. An agent may rely on
4 insurer-provided, product-specific training standards and
5 materials to comply with this subsection.

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

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

11 (1) the types of annuities and various classifications
12 of annuities;

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

14 (3) how fixed, variable, and indexed annuity contract
15 provisions affect consumers;

16 (4) the application of income taxation of qualified
17 and nonqualified annuities;

18 (5) the primary uses of annuities; and

19 (6) appropriate standard of conduct sales practices,
20 replacement, and disclosure requirements.

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

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

1 SECTION 15. The heading to Subchapter C, Chapter 1115,
2 Insurance Code, is amended to read as follows:

3 SUBCHAPTER C. MITIGATION; ENFORCEMENT

4 SECTION 16. Section 1115.101, Insurance Code, is amended to
5 read as follows:

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

10 (1) order:

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

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

19 (2) impose appropriate sanctions as provided by
20 Section 1115.102.

21 SECTION 17. The following sections of the Insurance Code
22 are repealed:

23 (1) Section 1115.002(6);

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

25 (3) Section 1115.052(e).

26 SECTION 18. (a) Not later than December 1, 2021, the Texas
27 Department of Insurance shall approve a training course for

1 purposes of Section 1115.056, Insurance Code, as amended by this
2 Act.

3 (b) Section 1115.056, Insurance Code, as amended by this
4 Act, applies only to the sale of an annuity on or after January 1,
5 2022. The sale of an annuity before that date is governed by the law
6 as it existed immediately before the effective date of this Act, and
7 that law is continued in effect for that purpose.

8 (c) An agent who has completed an annuity training course
9 for purposes of Section 1115.056, Insurance Code, before January 1,
10 2022, may comply with Section 1115.056, Insurance Code, as amended
11 by this Act, by completing either:

12 (1) a new four-credit training course approved by the
13 Texas Department of Insurance under Subsection (a) of this section;
14 or

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

20 SECTION 19. The changes in law made by this Act apply to an
21 annuity transaction that occurs on or after the effective date of
22 this Act. An annuity transaction that occurs before the effective
23 date of this Act is governed by the law as it existed immediately
24 before the effective date of this Act, and that law is continued in
25 effect for that purpose.

26 SECTION 20. This Act takes effect September 1, 2021.