

1-1 By: Oliverson (Senate Sponsor - Hancock) H.B. No. 1777
 1-2 (In the Senate - Received from the House May 3, 2021;
 1-3 May 4, 2021, read first time and referred to Committee on Business
 1-4 & Commerce; May 13, 2021, reported favorably by the following vote:
 1-5 Yeas 8, Nays 0; May 13, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7 Hancock	X			
1-8 Nichols	X			
1-9 Campbell	X			
1-10 Creighton			X	
1-11 Johnson	X			
1-12 Menéndez	X			
1-13 Paxton	X			
1-14 Schwertner	X			
1-15 Whitmire	X			

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to disclosures and standards required for certain annuity
 1-20 transactions and benefits under certain annuity contracts.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 1107.055, Insurance Code, is amended to
 1-23 read as follows:

1-24 Sec. 1107.055. INTEREST RATE. The interest rate used in
 1-25 determining minimum nonforfeiture amounts shall be an annual rate
 1-26 of interest determined as the lesser of three percent per annum and
 1-27 the following, which must be specified in the contract if the
 1-28 interest rate will be redetermined:

1-29 (1) the five-year Constant Maturity Treasury Rate
 1-30 reported by the Federal Reserve as of a date, or average over a
 1-31 period, rounded to the nearest 1/20th of one percent, specified in
 1-32 the contract no longer than 15 months prior to the contract issue
 1-33 date or redetermination date under Subdivision (4);

1-34 (2) reduced by 125 basis points;

1-35 (3) where the resulting interest rate is not less than
 1-36 0.15 [~~one~~] percent; and

1-37 (4) the interest rate shall apply for an initial
 1-38 period and may be redetermined for additional periods. The
 1-39 redetermination date, basis, and period, if any, shall be stated in
 1-40 the contract. As used in this section, basis is the date, or
 1-41 average over a specified period, which produces the five-year
 1-42 Constant Maturity Treasury Rate to be used at each redetermination
 1-43 date.

1-44 SECTION 2. Section 1115.001, Insurance Code, is amended to
 1-45 read as follows:

1-46 Sec. 1115.001. PURPOSE. The purpose of this chapter is to
 1-47 require an agent to act in the best interest of the consumer when
 1-48 making a recommendation of an [establish standards and procedures
 1-49 regarding recommendations made to a consumer that result in a
 1-50 transaction involving] annuity [products,] and to require insurers
 1-51 to establish and maintain a system to supervise those
 1-52 recommendations so [, to ensure] that the insurance needs and
 1-53 financial objectives of the consumer as of the time of the
 1-54 transaction are effectively [appropriately] addressed.

1-55 SECTION 3. Section 1115.002, Insurance Code, is amended by
 1-56 amending Subdivisions (2-a), (3), (4), and (5) and adding
 1-57 Subdivisions (2-b), (2-c), (3-a), (3-b), (3-c), and (3-d) to read
 1-58 as follows:

1-59 (2-a) "Cash compensation" means a discount,
 1-60 concession, fee, service fee, commission, sales charge, loan,
 1-61 override, or cash benefit received by an agent from an insurer,

2-1 intermediary, or consumer in connection with the recommendation or
 2-2 sale of an annuity.

2-3 (2-b) "Consumer profile information" means
 2-4 information that is reasonably appropriate to determine whether a
 2-5 recommendation addresses the consumer's financial situation,
 2-6 insurance needs, and financial objectives, including the
 2-7 following:

2-8 (A) age;

2-9 (B) annual income;

2-10 (C) existing assets and financial products,
 2-11 including investment, annuity, and insurance holdings;

2-12 (D) financial situation and needs, including
 2-13 debts and other obligations;

2-14 (E) financial experience;

2-15 (F) financial objectives;

2-16 (G) financial resources used to fund the annuity;

2-17 (H) financial time horizon;

2-18 (I) insurance needs;

2-19 (J) intended use of the annuity;

2-20 (K) liquid net worth;

2-21 (L) liquidity needs;

2-22 (M) risk tolerance, including willingness to
 2-23 accept non-guaranteed elements in the annuity; and

2-24 (N) tax status.

2-25 (2-c) "Continuing education provider" means a person
 2-26 authorized to offer continuing education courses under Chapter
 2-27 4004.

2-28 (3) "Insurer" means a company authorized to engage in
 2-29 the business of life insurance and annuities in this state, and
 2-30 includes a fraternal benefit society operating under Chapter 885.

2-31 (3-a) "Intermediary" means an entity contracted
 2-32 directly with an insurer or with another entity contracted with an
 2-33 insurer to facilitate the sale of the insurer's annuities by
 2-34 agents.

2-35 (3-b) "Material conflict of interest" means a
 2-36 financial interest of an agent in the sale of an annuity that a
 2-37 reasonable person would expect to influence the impartiality of a
 2-38 recommendation. The term does not include cash or noncash
 2-39 compensation paid to an agent.

2-40 (3-c) "Noncash compensation" means any form of
 2-41 compensation that is not cash compensation, including health
 2-42 insurance, office rent, office support, and retirement benefits.

2-43 (3-d) "Non-guaranteed element" means a premium,
 2-44 credited interest rate, including any bonus, benefit, value,
 2-45 dividend, non-interest based credit, or charge, or an element of a
 2-46 formula used to determine any of those elements, that is determined
 2-47 at the discretion of the insurer and is not guaranteed at issue. The
 2-48 term includes an element that is calculated using an element that is
 2-49 determined at the discretion of the insurer and is not guaranteed at
 2-50 issue.

2-51 (4) "Recommendation" means advice provided by an
 2-52 agent, or an insurer if no agent is involved, to an individual
 2-53 consumer that is intended to result or does result ~~results~~ in a
 2-54 purchase, exchange, or replacement of an annuity made in accordance
 2-55 with that advice. The term does not include a general communication
 2-56 to the public, any generalized customer service assistance or
 2-57 administrative support, any general educational information or
 2-58 tools, a prospectus, or any other product or sales material.

2-59 (5) "Replacement" means a transaction in which a new
 2-60 annuity ~~[policy or contract]~~ is to be purchased and the proposing
 2-61 agent, or the proposing insurer regardless of whether ~~[if]~~ an agent
 2-62 is ~~[not]~~ involved, knows or should know that, by reason of the
 2-63 transaction, an existing annuity or other insurance policy ~~[or~~
 2-64 ~~contract]~~ has been or is to be:

2-65 (A) lapsed, forfeited, surrendered or partially
 2-66 surrendered, assigned to the replacing insurer, or otherwise
 2-67 terminated;

2-68 (B) converted to reduced paid-up insurance,
 2-69 continued as extended term insurance, or otherwise reduced in value

3-1 by the use of nonforfeiture benefits or other policy values;
 3-2 (C) amended so as to effect either a reduction in
 3-3 benefits or in the term for which coverage would otherwise remain in
 3-4 force or for which benefits would be paid;

3-5 (D) reissued with any reduction in cash value; or
 3-6 (E) used in a financed purchase.

3-7 SECTION 4. Section 1115.003, Insurance Code, is amended to
 3-8 read as follows:

3-9 Sec. 1115.003. APPLICABILITY; EXEMPTIONS. (a) This
 3-10 chapter applies to any sale of ~~[recommendation to purchase,~~
 3-11 ~~replace, or exchange]~~ an annuity ~~[that:~~

3-12 ~~[(1) is made to a consumer by an agent, or an insurer~~
 3-13 ~~if an agent is not involved; and~~

3-14 ~~[(2) results in the recommended purchase,~~
 3-15 ~~replacement, or exchange].~~

3-16 (b) Unless otherwise specifically included, this chapter
 3-17 does not apply to transactions involving:

3-18 (1) direct response solicitations if there is no
 3-19 recommendation based on information collected from the consumer
 3-20 under this chapter; ~~[or]~~

3-21 (2) contracts used to fund:

3-22 (A) an employee pension benefit plan or employee
 3-23 welfare benefit plan covered by the Employee Retirement Income
 3-24 Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

3-25 (B) a plan described by Section 401(a), 401(k),
 3-26 403(b), 408(k), or 408(p), Internal Revenue Code of 1986, if
 3-27 established or maintained by an employer;

3-28 (C) a government or church plan, as defined by
 3-29 Section 414, Internal Revenue Code of 1986, a government or church
 3-30 welfare benefit plan, or a deferred compensation plan of a state or
 3-31 local government or tax exempt organization described under Section
 3-32 457, Internal Revenue Code of 1986; or

3-33 (D) a nonqualified deferred compensation
 3-34 arrangement established or maintained by an employer or plan
 3-35 sponsor;

3-36 (3) ~~[(E)]~~ settlements of or assumptions of
 3-37 liabilities associated with personal injury litigation or any
 3-38 dispute or claim resolution process; or

3-39 (4) ~~[(F)]~~ prepaid funeral benefits contracts, as
 3-40 defined by Chapter 154, Finance Code.

3-41 SECTION 5. Section 1115.004, Insurance Code, is amended to
 3-42 read as follows:

3-43 Sec. 1115.004. NO CAUSE OF ACTION CREATED. This chapter may
 3-44 not be construed to create or imply a private cause of action
 3-45 against an agent or insurer or to subject an agent or insurer to
 3-46 civil liability for a violation of:

3-47 (1) this chapter or a rule adopted under this chapter;
 3-48 or

3-49 (2) a standard governing the conduct of a fiduciary or
 3-50 a fiduciary relationship.

3-51 SECTION 6. Subchapter B, Chapter 1115, Insurance Code, is
 3-52 amended by adding Sections 1115.0505, 1115.0506, 1115.0507, and
 3-53 1115.0508 to read as follows:

3-54 Sec. 1115.0505. AGENTS EXERCISING MATERIAL CONTROL. (a)
 3-55 This subchapter applies to each agent who:

3-56 (1) exercises material control or influence in making
 3-57 a recommendation or sale; and

3-58 (2) receives direct compensation as a result of the
 3-59 recommendation or sale, regardless of whether the agent has direct
 3-60 contact with the consumer.

3-61 (b) Activities that do not constitute material control or
 3-62 influence include providing or delivering marketing or educational
 3-63 materials, product wholesaling or other back office product
 3-64 support, general supervision of an agent, and similar activities.

3-65 Sec. 1115.0506. TRANSACTIONS NOT BASED ON RECOMMENDATION;
 3-66 CERTAIN EXEMPTIONS FROM SUBCHAPTER. An agent does not have an
 3-67 obligation to a consumer under Section 1115.0513 if:

3-68 (1) the agent does not make a recommendation;

3-69 (2) the agent makes a recommendation based on

4-1 materially inaccurate information provided by the consumer;

4-2 (3) the consumer refuses to provide consumer profile
4-3 information; or

4-4 (4) the consumer enters into an annuity transaction
4-5 that is not based on the recommendation from the agent or the
4-6 insurer.

4-7 Sec. 1115.0507. INSURER OBLIGATIONS. (a) Notwithstanding
4-8 Section 1115.0506, an insurer's issuance of an annuity must be
4-9 reasonable under the circumstances known to the insurer at the time
4-10 the annuity is issued.

4-11 (b) If there is no agent involved in an annuity transaction,
4-12 the obligations described in this subchapter apply to the insurer
4-13 that recommends or sells the annuity in the same way those
4-14 obligations would apply to an agent.

4-15 Sec. 1115.0508. ADDITIONAL LICENSURE NOT REQUIRED. Nothing
4-16 in this subchapter may be construed to require an agent to obtain a
4-17 license other than the license described by Chapter 4054.

4-18 SECTION 7. The heading to Section 1115.051, Insurance Code,
4-19 is amended to read as follows:

4-20 Sec. 1115.051. BEST-INTEREST OBLIGATION [~~SUITABILITY OF~~
4-21 ANNUITY PRODUCT REQUIRED].

4-22 SECTION 8. Sections 1115.051(a) and (b), Insurance Code,
4-23 are amended to read as follows:

4-24 (a) When making a recommendation of an annuity, an agent
4-25 shall act in the best interest of the consumer under the
4-26 circumstances known to the agent at the time the recommendation is
4-27 made, without placing the agent's or the insurer's financial
4-28 interest ahead of the consumer's interest [~~In recommending to a~~
4-29 consumer the purchase of an annuity or the exchange of an annuity
4-30 that results in another insurance transaction or series of
4-31 insurance transactions, the agent, or the insurer if an agent is not
4-32 involved, must have a reasonable basis to believe that:

4-33 [~~(1) the recommendation is suitable for the consumer~~
4-34 on the basis of the facts disclosed by the consumer as to the
4-35 consumer's investments and other insurance products and as to the
4-36 consumer's financial situation and needs, including the consumer's
4-37 suitability information;

4-38 [~~(2) the consumer has been reasonably informed of~~
4-39 various features of the annuity, such as the potential surrender
4-40 period and the surrender charge, any potential tax penalty if the
4-41 consumer sells, exchanges, surrenders, or annuitizes the annuity,
4-42 mortality and expense fees, investment advisory fees, potential
4-43 charges for and features of riders, limitations on interest
4-44 returns, insurance and investment components, and market risk;

4-45 [~~(3) the consumer would benefit from certain features~~
4-46 of the annuity, such as tax-deferred growth, annuitization, or a
4-47 death or living benefit;

4-48 [~~(4) the particular annuity as a whole, the underlying~~
4-49 subaccounts to which funds are allocated at the time of the purchase
4-50 or exchange of the annuity, and any riders or similar product
4-51 enhancements are suitable, and, in the case of an exchange or
4-52 replacement, the transaction as a whole is suitable, for the
4-53 particular consumer based on the consumer's suitability
4-54 information; and

4-55 [~~(5) in the case of an exchange or replacement of an~~
4-56 annuity, the exchange or replacement is suitable, including taking
4-57 into consideration whether the consumer:

4-58 [~~(A) will incur a surrender charge, be subject to~~
4-59 the commencement of a new surrender period, lose existing benefits
4-60 such as death, living, or other contractual benefits, or be subject
4-61 to increased fees, investment advisory fees, or charges for riders
4-62 or similar product enhancements;

4-63 [~~(B) would benefit from product enhancements and~~
4-64 improvements; and

4-65 [~~(C) has had another annuity exchange or~~
4-66 replacement, and in particular, an exchange or replacement in the
4-67 preceding 36 months].

4-68 (b) An agent is presumed to act in the best interest of the
4-69 consumer if the agent satisfies the care, disclosure, conflict of

5-1 interest, and documentation obligations described by this
 5-2 subchapter [Before the execution of a purchase, exchange, or
 5-3 replacement of an annuity resulting from a recommendation, an
 5-4 agent, or an insurer if an agent is not involved, shall make
 5-5 reasonable efforts to obtain the consumer's suitability
 5-6 information].

5-7 SECTION 9. Subchapter B, Chapter 1115, Insurance Code, is
 5-8 amended by adding Sections 1115.0513, 1115.0514, 1115.0515, and
 5-9 1115.0516 to read as follows:

5-10 Sec. 1115.0513. CARE OBLIGATION. (a) In making a
 5-11 recommendation, an agent shall exercise reasonable diligence,
 5-12 care, and skill to:

5-13 (1) obtain consumer profile information from the
 5-14 consumer before making the recommendation of an annuity;

5-15 (2) know the consumer's financial situation, insurance
 5-16 needs, and financial objectives;

5-17 (3) understand the available recommendation options
 5-18 available to the agent;

5-19 (4) consider the types of products the agent is
 5-20 authorized and licensed to recommend or sell that address the
 5-21 consumer's financial situation, insurance needs, and financial
 5-22 objectives;

5-23 (5) have a reasonable basis to believe the
 5-24 recommendation addresses the consumer's financial situation,
 5-25 insurance needs, and financial objectives over the life of the
 5-26 product, in light of the consumer profile information;

5-27 (6) have a reasonable basis to believe the consumer
 5-28 would benefit from certain features of the annuity, such as
 5-29 annuitization, a death or living benefit, or other
 5-30 insurance-related feature; and

5-31 (7) communicate the basis of the recommendation.

5-32 (b) Subsection (a) does not require:

5-33 (1) analysis or consideration of a product outside the
 5-34 authority and license of the agent;

5-35 (2) analysis or consideration of a product or strategy
 5-36 that is an alternative to an annuity;

5-37 (3) recommendation of the annuity with the lowest
 5-38 one-time or multiple occurrence compensation structure; or

5-39 (4) ongoing monitoring of the consumer's financial
 5-40 situation.

5-41 (c) The agent shall consider consumer profile information,
 5-42 characteristics of the insurer, and product costs, rates, benefits,
 5-43 and features in determining whether an annuity effectively
 5-44 addresses the consumer's financial situation, insurance needs, and
 5-45 financial objectives. The agent may place varying levels of
 5-46 importance on each of those factors based on the facts and
 5-47 circumstances of a particular case, but may not consider one factor
 5-48 in isolation.

5-49 (d) In the case of an exchange or replacement of an annuity,
 5-50 the agent shall consider the whole transaction, including whether:

5-51 (1) the consumer will incur a surrender charge, be
 5-52 subjected to the commencement of a new surrender period, lose
 5-53 existing benefits such as death, living, or other contractual
 5-54 benefits, or be subject to increased fees, investment advisory
 5-55 fees, or charges for riders and similar product enhancements;

5-56 (2) the replacing product would substantially benefit
 5-57 the consumer in comparison to the replaced product over the life of
 5-58 the product; and

5-59 (3) the consumer has had an annuity exchange or
 5-60 replacement in the preceding 60 months.

5-61 (e) This section applies to an annuity as a whole,
 5-62 including:

5-63 (1) underlying subaccounts to which money is allocated
 5-64 at the time of the purchase or exchange of an annuity; and

5-65 (2) any riders and similar product enhancements.

5-66 (f) An agent shall be held to standards applicable to an
 5-67 agent with similar authority and licensure with respect to the
 5-68 requirements of this section. This section does not create a
 5-69 fiduciary obligation or relationship and only creates a regulatory

6-1 obligation. This section does not affect any ongoing monitoring
 6-2 obligation an agent may have under a fiduciary, consulting,
 6-3 investment advising, or financial planning agreement between the
 6-4 consumer and the agent.

6-5 Sec. 1115.0514. DISCLOSURE OBLIGATION. (a) Before the
 6-6 recommendation or sale of an annuity, an agent shall provide a
 6-7 disclosure to the consumer on a form prescribed by the commissioner
 6-8 by rule.

6-9 (b) The prescribed form must be substantially similar to the
 6-10 National Association of Insurance Commissioners Insurance Agent
 6-11 Disclosure for Annuities form. The form must include:

6-12 (1) a description of the scope and terms of the agent's
 6-13 relationship with the consumer and role in the transaction;

6-14 (2) an affirmative statement on whether the agent is
 6-15 licensed and authorized to sell:

6-16 (A) fixed annuities;

6-17 (B) fixed indexed annuities;

6-18 (C) variable annuities;

6-19 (D) life insurance;

6-20 (E) mutual funds;

6-21 (F) stocks and bonds; or

6-22 (G) certificates of deposit;

6-23 (3) a statement describing the insurers for whom the
 6-24 agent is authorized, contracted or appointed, or otherwise able to
 6-25 sell insurance products, described as follows:

6-26 (A) one insurer;

6-27 (B) two or more insurers; or

6-28 (C) two or more insurers though primarily
 6-29 contracted with one insurer;

6-30 (4) a description of the sources and types of cash
 6-31 compensation and noncash compensation to be received by the agent,
 6-32 including whether the agent is to be compensated for the sale of a
 6-33 recommended annuity by commission as part of premium or other
 6-34 remuneration received from the insurer, intermediary, or other
 6-35 agent or by fee as a result of a contract for advice or consulting
 6-36 services; and

6-37 (5) a notice of the consumer's right to request
 6-38 additional information regarding cash compensation under
 6-39 Subsection (c).

6-40 (c) On request of the consumer or the consumer's designated
 6-41 representative, an agent shall disclose:

6-42 (1) a reasonable estimate of the amount of cash
 6-43 compensation to be received by the agent, which may be stated as a
 6-44 range of amounts or percentages; and

6-45 (2) whether the cash compensation is a one-time or
 6-46 multiple occurrence amount, and if a multiple occurrence amount,
 6-47 the frequency and amount of occurrence, which may be stated as a
 6-48 range of amounts or percentages.

6-49 (d) Prior to or at the time of the recommendation or sale of
 6-50 an annuity, the agent must have a reasonable basis to believe the
 6-51 consumer has been informed of the features of the annuity,
 6-52 including:

6-53 (1) the potential surrender period and surrender
 6-54 charge;

6-55 (2) the potential tax penalty if the consumer sells
 6-56 exchanges, surrenders, or annuitizes the annuity;

6-57 (3) mortality and expense fees;

6-58 (4) investment advisory fees;

6-59 (5) annual fees;

6-60 (6) potential charges for and features of riders or
 6-61 other options of the annuity;

6-62 (7) limitations on interest returns;

6-63 (8) potential changes in non-guaranteed elements of
 6-64 the annuity;

6-65 (9) insurance and investment components; and

6-66 (10) market risk.

6-67 Sec. 1115.0515. CONFLICT OF INTEREST OBLIGATION. (a) An
 6-68 agent shall take reasonable steps to discover a material conflict
 6-69 of interest, including a material conflict of interest related to

7-1 an ownership interest.

7-2 (b) An agent shall:

7-3 (1) identify and avoid a material conflict of
7-4 interest; or

7-5 (2) reasonably manage and disclose the conflict.

7-6 Sec. 1115.0516. DOCUMENTATION OBLIGATION. At the time of
7-7 the recommendation or sale, an agent shall:

7-8 (1) make a written record of the recommendation and
7-9 the basis for the recommendation;

7-10 (2) if applicable, obtain a statement signed by the
7-11 consumer on a form prescribed by the commissioner by rule that is
7-12 substantially similar to the National Association of Insurance
7-13 Commissioners Consumer Refusal to Provide Information form
7-14 documenting:

7-15 (A) a consumer's refusal to provide consumer
7-16 profile information; and

7-17 (B) a consumer's understanding of the
7-18 ramifications of failing to provide consumer profile information or
7-19 providing insufficient consumer profile information; and

7-20 (3) if a consumer decides to enter into an annuity
7-21 transaction that is not based on the agent's recommendation, obtain
7-22 a statement signed by the consumer on a form prescribed by the
7-23 commissioner by rule that is substantially similar to the National
7-24 Association of Insurance Commissioners Consumer Decision to
7-25 Purchase an Annuity Not Based on a Recommendation, acknowledging
7-26 that the annuity transaction is not recommended.

7-27 SECTION 10. Section 1115.052, Insurance Code, is amended by
7-28 amending Subsections (a), (b), (c), and (d) and adding Subsections
7-29 (b-1) and (c-1) to read as follows:

7-30 (a) Except as provided in Section 1115.0506, an insurer may
7-31 not issue an annuity recommended to a consumer unless there is a
7-32 reasonable basis to believe the annuity would effectively address
7-33 the consumer's financial situation, insurance needs, and financial
7-34 objectives based on the consumer's consumer profile information
7-35 [Each insurer shall establish supervision that is reasonably
7-36 designed to achieve the insurer's and the insurer's agents'
7-37 compliance with this chapter].

7-38 (b) Each [An] insurer shall establish and maintain a [may
7-39 comply with Subsection (a) by establishing and maintaining the
7-40 insurer's own] supervision system that is reasonably designed to
7-41 achieve the insurer's and the insurer's agent's compliance with this
7-42 chapter, including [under which, at a minimum, the insurer]:

7-43 (1) establishing and maintaining [maintains]
7-44 reasonable procedures to inform the insurer's agents of the
7-45 requirements of this chapter and incorporating [incorporates]
7-46 the requirements of this chapter into relevant agent training manuals;

7-47 (2) establishing and maintaining [establishes]
7-48 standards for agent product training and establishing and
7-49 maintaining [maintains] reasonable procedures to require the
7-50 insurer's agents to comply with the requirements of Section
7-51 1115.056;

7-52 (3) providing [provides] product-specific training
7-53 and training materials that explain all material features of the
7-54 insurer's annuity products to the insurer's agents;

7-55 (4) establishing and maintaining [maintains]
7-56 procedures to review each recommendation electronically,
7-57 physically, or otherwise before the issuance of an annuity that:

7-58 (A) are designed to ensure that there is a
7-59 reasonable basis to determine that the recommended annuity would
7-60 effectively address the consumer's financial situation, insurance
7-61 needs, and financial objectives [a recommendation is suitable]; and

7-62 (B) may:

7-63 (i) include the application of a screening
7-64 system to identify selected transactions for additional review; and

7-65 (ii) be designed to require additional
7-66 review only of those transactions identified for additional review
7-67 by the selection criteria;

7-68 (5) establishing and maintaining [maintains]
7-69 reasonable procedures, such as confirmation of consumer profile

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

8-9 (6) establishing and maintaining reasonable
 8-10 procedures to assess, before or on issuance or delivery of an
 8-11 annuity, whether an agent has provided to the consumer the
 8-12 information required to be provided under this subchapter;

8-13 (7) establishing and maintaining reasonable
 8-14 procedures to identify and address suspicious consumer refusals to
 8-15 provide consumer profile information;

8-16 (8) establishing and maintaining reasonable
 8-17 procedures to identify and eliminate sales contests, sales quotas,
 8-18 bonuses, or noncash compensation that are based on the sale of
 8-19 specific annuities within a limited period of time; and

8-20 (9) annually providing ~~[provides]~~ a written report to
 8-21 the insurer's senior management, including to the senior manager
 8-22 responsible for audit functions, that details a review, with
 8-23 appropriate testing, reasonably designed to determine the
 8-24 effectiveness of the supervision system, the exceptions found, and
 8-25 any corrective action taken or recommended.

8-26 (b-1) Subsection (b)(8) does not prohibit the receipt by
 8-27 employees of health insurance, office rent, office support,
 8-28 retirement benefits, or other employee benefits so long as those
 8-29 benefits are not based on the volume of sales of a specific annuity
 8-30 within a limited period of time.

8-31 (c) This subsection and Subsection (c-1) do ~~[does]~~ not
 8-32 prohibit an insurer from contracting for the performance of a
 8-33 function, including maintenance of procedures, required by
 8-34 Subsection (b). An insurer is responsible for taking appropriate
 8-35 corrective action and may be subject to sanctions and penalties
 8-36 under Section 1115.102 regardless of whether the insurer contracts
 8-37 for performance of a function and regardless of whether the insurer
 8-38 complies with Subsection (c-1).

8-39 (c-1) An insurer's supervision system under Subsection (b)
 8-40 must include the supervision of contractual performance under this
 8-41 subsection that includes, at a minimum:

8-42 (1) annually obtaining certification that complies
 8-43 with Section 1115.053 from a senior manager who represents that the
 8-44 contracted function is properly performed; and

8-45 (2) monitoring and, as appropriate, conducting audits
 8-46 to ensure that the contracted function is properly performed.

8-47 (d) An insurer is not required by this section to include in
 8-48 the supervision system:

8-49 (1) an agent's recommendations to consumers of
 8-50 products other than the annuities offered by the insurer; or

8-51 (2) consideration of or comparison to options
 8-52 available to the agent or compensation relating to those options
 8-53 other than annuities or other products offered by the insurer.

8-54 SECTION 11. Subchapter B, Chapter 1115, Insurance Code, is
 8-55 amended by adding Section 1115.0521 to read as follows:

8-56 Sec. 1115.0521. PROHIBITED PRACTICES. An agent or insurer
 8-57 may not dissuade or attempt to dissuade a consumer from:

8-58 (1) truthfully responding to an insurer's request for
 8-59 confirmation of consumer profile information;

8-60 (2) filing a complaint; or

8-61 (3) cooperating with the investigation of a complaint.

8-62 SECTION 12. Section 1115.053, Insurance Code, is amended to
 8-63 read as follows:

8-64 Sec. 1115.053. CERTIFICATION REQUIREMENTS. A person may
 8-65 not provide a certification under Section 1115.052(c-1)(1)
 8-66 [1115.052(c)(1)] unless the person:

8-67 (1) is a senior manager with responsibility for the
 8-68 delegated functions; and

8-69 (2) has a reasonable basis for making the

9-1 certification.

9-2 SECTION 13. Section 1115.054, Insurance Code, is amended to
9-3 read as follows:

9-4 Sec. 1115.054. SAFE HARBOR [~~COMPLIANCE WITH CERTAIN~~
9-5 ~~NATIONAL STANDARDS~~]. (a) Recommendations and [~~Subject to~~
9-6 ~~Subsection (c),~~] sales of annuities made in compliance with
9-7 comparable standards [~~the conduct rules of the Financial Industry~~
9-8 ~~Regulatory Authority (FINRA) relating to suitability and~~
9-9 ~~supervision of annuity transactions, or the rules of another~~
9-10 ~~national organization recognized by the commissioner,~~] satisfy the
9-11 requirements of this chapter. This section applies to
9-12 recommendations and [~~FINRA member broker-dealer~~] sales of
9-13 [~~variable annuities and fixed~~] annuities made by a financial
9-14 professional in compliance with business rules, controls, and
9-15 procedures that satisfy a comparable standard even if such standard
9-16 would not otherwise apply to the product or recommendation at issue
9-17 [~~if the suitability and supervision conduct rules are similar to~~
9-18 ~~those applied to variable annuity sales~~].

9-19 (b) This section does not affect or limit the commissioner's
9-20 ability to enforce or investigate under this chapter.

9-21 (c) This section does not limit the insurer's obligation to
9-22 comply with Section 1115.052(a), although the insurer may base its
9-23 analysis on information received from either the financial
9-24 professional or the entity supervising the financial professional.

9-25 (d) Subsection (a) applies only if the insurer:

9-26 (1) using information collected in the normal course
9-27 of the insurer's business, monitors the relevant conduct of the
9-28 financial professional or the entity responsible for supervising
9-29 the financial professional, such as the financial professional's
9-30 [~~FINRA member~~] broker-dealer or an investment adviser registered
9-31 under federal or state securities laws [~~using information collected~~
9-32 ~~in the normal course of the insurer's business~~]; and

9-33 (2) provides to the entity responsible for supervising
9-34 the financial professional, such as the financial professional's
9-35 [~~FINRA member~~] broker-dealer or investment adviser registered
9-36 under federal or state securities laws, information and reports
9-37 that are reasonably appropriate to assist the entity in maintaining
9-38 [~~broker-dealer to maintain~~] the entity's [~~broker-dealer's~~]
9-39 supervision system.

9-40 (e) For purposes of this section, "financial professional"
9-41 means an agent that is regulated and acting as:

9-42 (1) a broker-dealer registered under federal or state
9-43 securities laws or a registered representative of a broker-dealer;

9-44 (2) an investment adviser registered under federal or
9-45 state securities laws or an investment adviser representative
9-46 associated with the federal or state registered investment adviser;
9-47 or

9-48 (3) a plan fiduciary under Section 3(21), Employee
9-49 Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(21))
9-50 or a fiduciary under Section 4975(e)(3), Internal Revenue Code of
9-51 1986.

9-52 (f) For purposes of this section, "comparable standards"
9-53 means:

9-54 (1) with respect to a broker-dealer or a registered
9-55 representative of a broker-dealer, applicable rules of the
9-56 Financial Industry Regulatory Authority (FINRA) or a successor
9-57 agency and the United States Securities and Exchange Commission
9-58 pertaining to best interest obligations and supervision of annuity
9-59 recommendations and sales, including Regulation Best Interest (17
9-60 C.F.R. Section 240.151-1), including subsequent amendments or
9-61 successor regulations;

9-62 (2) with respect to an investment adviser registered
9-63 under federal or state securities laws or an investment adviser
9-64 representative, the fiduciary duties and all other requirements
9-65 imposed on those investment advisers or investment adviser
9-66 representatives by contract or under the Investment Advisers Act of
9-67 1940 (15 U.S.C. Section 80b-1 et seq.) or applicable state
9-68 securities law or regulations, including Form ADV (17 C.F.R.
9-69 Section 279.1), and interpretations; and

10-1 (3) with respect to a plan fiduciary or a fiduciary,
 10-2 the duties, obligations, prohibitions, and all other requirements
 10-3 attendant to that status under the Employee Retirement Income
 10-4 Security Act of 1974 (29 U.S.C. Section 1001 et seq.) or the
 10-5 Internal Revenue Code of 1986.

10-6 SECTION 14. Section 1115.055(a), Insurance Code, is amended
 10-7 to read as follows:

10-8 (a) Each agent, general agent, independent agency, and
 10-9 insurer shall maintain, or otherwise be able to make available to
 10-10 the commissioner, records of the information collected from the
 10-11 consumer, disclosures made to the consumer, including summaries of
 10-12 oral disclosures, and other information used in making a
 10-13 recommendation that was the basis for an insurance [a] transaction
 10-14 subject to this chapter until the fifth anniversary of the date on
 10-15 which the transaction is completed by the insurer.

10-16 SECTION 15. Section 1115.056, Insurance Code, is amended by
 10-17 amending Subsections (a), (b), (d), and (f) and adding Subsection
 10-18 (i-1) to read as follows:

10-19 (a) An agent may not solicit the sale of an annuity product
 10-20 unless the agent has adequate knowledge of the product to recommend
 10-21 the annuity and the agent is in compliance with the insurer's
 10-22 standards for product training. An agent may rely on
 10-23 insurer-provided, product-specific training standards and
 10-24 materials to comply with this subsection.

10-25 (b) An agent who engages in the sale of annuity products
 10-26 must complete a one-time four-credit training course approved by
 10-27 the department and provided by a continuing education provider.

10-28 (d) The training required by Subsection (b) must include
 10-29 information on the following topics:

10-30 (1) the types of annuities and various classifications
 10-31 of annuities;

10-32 (2) identification of the parties to an annuity;

10-33 (3) how product-specific [fixed, variable, and
 10-34 indexed] annuity features [contract provisions] affect consumers;

10-35 (4) the application of income taxation of qualified
 10-36 and nonqualified annuities;

10-37 (5) the primary uses of annuities; and

10-38 (6) appropriate standard of conduct sales practices,
 10-39 replacement, and disclosure requirements.

10-40 (f) A provider of an annuity training [a] course intended to
 10-41 comply with Subsection (b) must register as a continuing education
 10-42 provider in this state and comply with the rules and guidelines
 10-43 applicable to agent continuing education courses provided by
 10-44 Chapter 4004.

10-45 (i-1) A course that is substantially similar to a course
 10-46 required by this section satisfies the requirement.

10-47 SECTION 16. The heading to Subchapter C, Chapter 1115,
 10-48 Insurance Code, is amended to read as follows:

10-49 SUBCHAPTER C. MITIGATION; ENFORCEMENT

10-50 SECTION 17. Section 1115.101, Insurance Code, is amended to
 10-51 read as follows:

10-52 Sec. 1115.101. MITIGATION. An insurer is responsible for
 10-53 compliance with this chapter. If a violation occurs because of the
 10-54 action or inaction of the insurer or the insurer's agent, the
 10-55 commissioner may:

10-56 (1) order:

10-57 (A) the insurer to take reasonable appropriate
 10-58 corrective action for any consumer harmed by a failure to comply
 10-59 with this chapter by the insurer, [or by] the insurer's agent, or an
 10-60 entity contracted to perform the insurer's supervisory duties
 10-61 [because of a violation of this chapter]; or

10-62 (B) a general agency, independent agency, or the
 10-63 agent to take reasonably appropriate corrective action for any
 10-64 consumer harmed by the agent's violation of this chapter; and

10-65 (2) impose appropriate sanctions as provided by
 10-66 Section 1115.102.

10-67 SECTION 18. The following sections of the Insurance Code
 10-68 are repealed:

10-69 (1) Section 1115.002(6);

11-1 (2) Sections 1115.051(c), (d), (e), and (f); and
11-2 (3) Section 1115.052(e).

11-3 SECTION 19. (a) Not later than December 1, 2021, the Texas
11-4 Department of Insurance shall approve a training course for
11-5 purposes of Section 1115.056, Insurance Code, as amended by this
11-6 Act.

11-7 (b) Section 1115.056, Insurance Code, as amended by this
11-8 Act, applies only to the sale of an annuity on or after January 1,
11-9 2022. The sale of an annuity before that date is governed by the law
11-10 as it existed immediately before the effective date of this Act, and
11-11 that law is continued in effect for that purpose.

11-12 (c) An agent who has completed an annuity training course
11-13 for purposes of Section 1115.056, Insurance Code, before January 1,
11-14 2022, may comply with Section 1115.056, Insurance Code, as amended
11-15 by this Act, by completing either:

11-16 (1) a new four-credit training course approved by the
11-17 Texas Department of Insurance under Subsection (a) of this section;
11-18 or

11-19 (2) an additional one-time one-credit training course
11-20 approved by the Texas Department of Insurance and provided by a
11-21 continuing education provider approved by the Texas Department of
11-22 Insurance on appropriate sales practices, replacement, and
11-23 disclosure requirements.

11-24 SECTION 20. (a) Section 1107.055, Insurance Code, as
11-25 amended by this Act, applies only to an annuity contract delivered,
11-26 issued for delivery, or renewed on or after January 1, 2022. An
11-27 annuity contract delivered, issued for delivery, or renewed before
11-28 January 1, 2022, is governed by the law as it existed immediately
11-29 before the effective date of this Act, and that law is continued in
11-30 effect for that purpose.

11-31 (b) Chapter 1115, Insurance Code, as amended by this Act,
11-32 applies only to an annuity transaction that occurs on or after the
11-33 effective date of this Act. An annuity transaction that occurs
11-34 before the effective date of this Act is governed by the law as it
11-35 existed immediately before the effective date of this Act, and that
11-36 law is continued in effect for that purpose.

11-37 SECTION 21. This Act takes effect September 1, 2021.

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