

H.B. No. 1293

1 AN ACT

2 relating to the sale and marketing of life insurance and annuities.

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

4 SECTION 1. Subtitle A, Title 7, Insurance Code, is amended
5 by adding Chapter 1116 to read as follows:

CHAPTER 1116. DISCLOSURE OF INFORMATION REGARDING ANNUITY

TRANSACTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1116.001. PURPOSES. The purpose of this chapter is to:

(1) protect consumers and foster consumer education by

11 providing standards for the disclosure of certain minimum
12 information about annuity contracts; and

15 Sec. 1116.002. GENERAL DEFINITIONS. In this chapter:

1 payments at future dates in amounts that are not based on mortality
2 or morbidity contingencies.

3 (5) "Generic name" means a short title descriptive of
4 the annuity contract being illustrated or for which an applicant is
5 applying, such as "single premium deferred annuity."

6 (6) "Structured settlement annuity" means:

7 (A) a "qualified funding asset," as defined by
8 Section 130(d), Internal Revenue Code of 1986; or
9 (B) an annuity that would be a qualified funding
10 asset but for the fact that the annuity is not owned by an assignee
11 under a qualified assignment.

12 Sec. 1116.003. DETERMINABLE ELEMENTS. (a) For purposes of
13 this chapter, "determinable elements" means elements derived from
14 processes or methods that are guaranteed at issue and are not
15 subject to company discretion, but for which the values or amounts
16 cannot be determined until some point after issue. The term
17 includes:

18 (1) premiums;
19 (2) credited interest rates, including any bonus;
20 (3) benefits;
21 (4) values;
22 (5) noninterest based credits;
23 (6) charges; and
24 (7) elements of formulas used to determine any element
25 described by Subdivisions (1)-(6).

26 (b) Determinable elements may be described as guaranteed
27 but not determined at issue. An element is considered determinable

1 if the element was computed from only underlying determinable
2 elements, or from both determinable and guaranteed elements.

3 Sec. 1116.004. GUARANTEED AND NONGUARANTEED ELEMENTS. (a)
4 For purposes of this chapter, "guaranteed element" means an element
5 listed in Sections 1116.003(a)(1)-(7) that is guaranteed and
6 determined at issue. An element is considered guaranteed if all of
7 the underlying elements used in its computation are guaranteed.

8 (b) For purposes of this chapter, "nonguaranteed element"
9 means an element listed in Sections 1116.003(a)(1)-(7) that is
10 subject to the insurer's discretion and is not guaranteed at issue.
11 An element is considered nonguaranteed if any underlying element
12 used in its computation is nonguaranteed.

13 Sec. 1116.005. APPLICABILITY; SCOPE. (a) Except as
14 provided by Subsection (b), this chapter applies to all group and
15 individual annuity contracts and certificates.

16 (b) This chapter does not apply to:

17 (1) immediate and deferred annuities that do not
18 contain elements that are nonguaranteed;

19 (2) annuities used to fund:

20 (A) an employee pension plan subject to the
21 Employee Retirement Income Security Act of 1974 (29 U.S.C. Section
22 1001 et seq.);

23 (B) a plan described by Section 401(a), 401(k),
24 or 403(b), Internal Revenue Code of 1986, in which the plan, for
25 purposes of the Employee Retirement Income Security Act of 1974 (29
26 U.S.C. Section 1001 et seq.), is established or maintained by an
27 employer;

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5 (D) a nonqualified deferred compensation
6 arrangement established or maintained by an employer or plan
7 sponsor;

11 (5) a funding agreement; or

24 Sec. 1116.006. BUYER'S GUIDES. (a) The commissioner by
25 rule shall adopt buyer's guides for consumers who are considering
26 purchasing an annuity contract or certificate.

27 (b) In adopting buyer's guides under this section, the

1 commissioner may adopt the buyer's guides published by the National
2 Association of Insurance Commissioners or similar comprehensive
3 guides produced by the department or published by national
4 insurance organizations recognized by the commissioner. If a
5 buyer's guide to a particular type of annuity has not been adopted
6 nationally, the commissioner may not adopt a buyer's guide for that
7 type of annuity.

8 Sec. 1116.007. EFFECT ON OTHER LAW. Compliance with this
9 chapter or rules implementing this chapter is not an affirmative
10 defense in any action brought by or for the department alleging a
11 violation of Chapter 541, 1114, or 1115.

12 [Sections 1116.008-1116.050 reserved for expansion]

13 SUBCHAPTER B. DISCLOSURES AND DISCLOSURE STANDARDS

14 Sec. 1116.051. STANDARDS FOR DISCLOSURE DOCUMENT AND
15 BUYER'S GUIDE. (a) If an application for an annuity contract or
16 certificate is taken in a face-to-face meeting, the applicant shall
17 be given, at or before the time of application, both the disclosure
18 document described by Section 1116.052 and the appropriate buyer's
19 guide.

20 (b) If the application is taken by means other than in a
21 face-to-face meeting, the applicant shall be sent both the
22 disclosure document and the appropriate buyer's guide not later
23 than the fifth business day after the date on which the completed
24 application is received by the insurer.

25 (c) If the application is received as a result of a direct
26 solicitation through the mail, providing the appropriate buyer's
27 guide and the disclosure document in a mailing inviting prospective

1 applicants to apply for an annuity contract or certificate is
2 considered to satisfy the requirement that the appropriate buyer's
3 guide and the disclosure document be provided not later than the
4 fifth business day after the date of receipt of the application.

5 (d) If the application is received through the Internet,
6 taking reasonable steps to ensure that the appropriate buyer's
7 guide and the disclosure document are available for viewing and
8 printing on the insurer's website is considered to satisfy the
9 requirement that the appropriate buyer's guide and the disclosure
10 document be provided not later than the fifth business day after the
11 date of receipt of the application.

12 (e) A solicitation for an annuity contract that is provided
13 in a manner other than a face-to-face meeting must include a
14 statement that the proposed applicant may contact the department
15 for a free annuity buyer's guide or that the prospective applicant
16 may contact the insurer for a free annuity buyer's guide.

17 (f) If the appropriate buyer's guide and the disclosure
18 document are not provided at or before the time of application, a
19 free look period of at least 15 days must be provided during which
20 the applicant may return the annuity contract without penalty.
21 This period shall run concurrently with any other free look period
22 required under this code or another law of this state. An
23 unconditional refund without penalty for purposes of this
24 subsection for variable or modified guaranteed annuity contracts
25 shall mean a refund equal to the cash surrender value provided in
26 the annuity contract, plus any fees or charges deducted from the
27 premiums or imposed under the contract. The refund and free look

1 period in this subsection do not apply if the prospective owner is
2 an accredited investor, as defined in Regulation D as adopted by the
3 United States Securities and Exchange Commission.

4 Sec. 1116.052. DISCLOSURE DOCUMENT. (a) At a minimum, the
5 following information must be included in the disclosure document
6 required to be provided under this chapter:

7 (1) the generic name of the contract, the insurer
8 product name, if different from the generic name, the insurer's
9 form number, and a statement of the fact that the contract is an
10 annuity;

11 (2) the insurer's name and address;
12 (3) a description of the contract and the benefits
13 provided under the contract, emphasizing the contract's long-term
14 nature, and including examples as appropriate;

15 (4) the guaranteed, nonguaranteed, and determinable
16 elements of the contract, any limitations of those elements, and an
17 explanation of how those elements operate;

18 (5) an explanation of the initial crediting rate,
19 specifying any bonus or introductory portion, the duration of the
20 initial crediting rate, and the fact that rates may change from time
21 to time and are not guaranteed;

22 (6) periodic income options, both on a guaranteed and
23 nonguaranteed basis;

24 (7) any value reductions caused by withdrawals from or
25 surrender of the contract;

26 (8) how values in the contract can be accessed;
27 (9) the death benefit, if available, and how the death

1 benefit is computed;

2 (10) a summary of:

3 (A) the federal tax status of the contract; and

4 (B) any penalties applicable on withdrawal of
5 values from the contract;

6 (11) the impact of any rider, such as a long-term care
7 rider;

8 (12) a list of the specific dollar amount or
9 percentage charges and fees, with an explanation of how those
10 charges and fees apply; and

11 (13) information about the current guaranteed rate for
12 new contracts that contains a clear notice that the rate is subject
13 to change.

14 (b) An insurer shall define terms used in the disclosure
15 document in language that facilitates the understanding by a
16 typical person within the segment of the public to which the
17 disclosure document is directed.

18 (c) A disclosure document that complies with the Financial
19 Industry Regulatory Authority (FINRA) Conduct Rules and Securities
20 and Exchange Commission prospectus requirements satisfies the
21 requirements of this section for disclosure documents. This
22 subsection does not limit the commissioner's ability to enforce the
23 provisions of this section or require the use of a FINRA-approved
24 disclosure document. This subsection is intended to grant a safe
25 harbor under this chapter for an annuity contract that is regulated
26 by, and complies with, the FINRA Conduct Rules and the SEC
27 prospectus requirements pertaining to disclosure.

1 Sec. 1116.053. REPORT TO CONTRACT OWNERS. (a) For
2 annuities in the payout period with changes in nonguaranteed
3 elements and for the accumulation period of a deferred annuity, the
4 insurer shall provide each contract owner with a report, at least
5 annually, on the status of the contract.

6 (b) The report must contain at least the following
7 information:

8 (1) the beginning and ending date of the current
9 reporting period;

10 (2) the accumulation and cash surrender value, if any,
11 at the end of:

12 (A) the previous reporting period; and

13 (B) the current reporting period;

14 (3) the total amounts, if any, that have been
15 credited, charged to the contract or certificate value, or paid
16 during the current reporting period; and

17 (4) the amount of any outstanding loans as of the end
18 of the current reporting period.

19 [Sections 1116.054-1116.100 reserved for expansion]

20 SUBCHAPTER C. ENFORCEMENT

21 Sec. 1116.101. VIOLATION. A violation of a requirement of
22 this chapter by an insurer or agent constitutes an unfair or
23 deceptive act or practice in the business of insurance for purposes
24 of Chapter 541.

25 SECTION 2. Section 1114.004(a), Insurance Code, is amended
26 to read as follows:

27 (a) Except as otherwise specifically provided by this

1 chapter, this chapter does not apply to transactions involving:

2 (1) credit life insurance;

3 (2) group life insurance or group annuities for which
4 there is no direct solicitation of individuals by an agent;

5 (3) [group] life insurance and annuities used to fund
6 prepaid funeral benefits contracts, as defined by Chapter 154,
7 Finance Code;

8 (4) an application to:

9 (A) exercise a contractual change or a conversion
10 privilege made to the insurer that issued the existing policy or
11 contract;

12 (B) replace an existing policy or contract by the
13 insurer that issued the existing policy or contract under a program
14 filed with and approved by the commissioner; or

15 (C) exercise a term conversion privilege among
16 corporate affiliates;

17 (5) life insurance proposed to replace life insurance
18 under a binding or conditional receipt issued by the same insurer;

19 (6) a policy or contract used to fund:

20 (A) an employee pension benefit plan or employee
21 welfare benefit plan that is covered by the Employee Retirement
22 Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

23 (B) a plan described by Section 401(a), 401(k),
24 or 403(b), Internal Revenue Code of 1986, if established or
25 maintained by an employer;

26 (C) a government or church plan, as defined by
27 Section 414, Internal Revenue Code of 1986, a government or church

1 welfare benefit plan, or a deferred compensation plan of a state or
2 local government or tax exempt organization described under Section
3 457, Internal Revenue Code of 1986; or

4 (D) a nonqualified deferred compensation
5 arrangement established or maintained by an employer or plan
6 sponsor;

7 (7) new coverage provided under a life insurance
8 policy or contract if the cost is borne wholly by the insured's
9 employer or by an association of which the insured is a member;

10 (8) an existing life insurance policy that is a
11 nonconvertible term life insurance policy scheduled to expire in
12 five years or less and that cannot be renewed;

13 (9) immediate annuities purchased with proceeds from
14 an existing contract; or

15 (10) structured settlements.

16 SECTION 3. Section 541.058(b), Insurance Code, is amended
17 to read as follows:

18 (b) It is not a rebate or discrimination prohibited by
19 Section 541.056(a) or 541.057:

20 (1) for a life insurance or life annuity contract, to
21 pay a bonus to a policyholder or otherwise abate the policyholder's
22 premiums in whole or in part out of surplus accumulated from
23 nonparticipating insurance policies if the bonus or abatement:

24 (A) is fair and equitable to policyholders; and

25 (B) is in the best interests of the insurer and
26 its policyholders;

27 (2) for a life insurance policy issued on the

1 industrial debit plan, to make to a policyholder who has
2 continuously for a specified period made premium payments directly
3 to the insurer's office an allowance in an amount that fairly
4 represents the saving in collection expenses;

5 (3) for a group insurance policy, to readjust the rate
6 of premium based on the loss or expense experience under the policy
7 at the end of a policy year if the adjustment is retroactive for
8 only that policy year;

9 (4) for a life annuity contract, to waive surrender
10 charges under the contract when the contract holder exchanges that
11 contract for another annuity contract issued by the same insurer or
12 an affiliate of the same insurer that is part of the same holding
13 company group if:

14 (A) the waiver and the exchange are fully,
15 fairly, and accurately explained to the contract holder in a manner
16 that is not deceptive or misleading; and

17 (B) the contract holder is given credit for the
18 time that the prior contract was held when determining any
19 surrender charges under the new contract;

20 (5) in connection with an accident and health
21 insurance policy, to provide to policy or certificate holders, in
22 addition to benefits under the terms of the insurance contract,
23 health-related services or health-related information, or to
24 disclose the availability of those additional services and
25 information to prospective policy or certificate holders; or

26 (6) in connection with a health maintenance
27 organization evidence of coverage, to provide to enrollees, in

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1 addition to benefits under the evidence of coverage, health-related
2 services or health-related information, or to disclose the
3 availability of those additional services and information to
4 prospective enrollees or contract holders.

5 SECTION 4. Subchapter B, Chapter 1114, Insurance Code, is
6 amended by adding Section 1114.057 to read as follows:

7 Sec. 1114.057. DISCLOSURE OF AVAILABILITY OF WAIVER OF
8 SURRENDER CHARGES. An insurer that offers to waiver surrender
9 charges consistent with Section 541.058(b)(4) of this code shall
10 provide reasonable notice of such offer to its prospective or
11 current contract holders. Such notice may be included through any
12 available means, including a disclosure document or displayed on a
13 link that is prominently placed on the insurer's web page.

14 SECTION 5. The change in law made by this Act applies only
15 to an application for an annuity contract or certificate, or a
16 solicitation for an annuity contract, made on or after January 1,
17 2010. An application for an annuity contract or certificate, or a
18 solicitation for an annuity contract, made before January 1, 2010,
19 is governed by the law in effect immediately before the effective
20 date of this Act, and that law is continued in effect for that
21 purpose.

22 SECTION 6. This Act takes effect September 1, 2009.

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President of the Senate

Speaker of the House

I certify that H.B. No. 1293 was passed by the House on April 22, 2009, by the following vote: Yeas 149, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1293 on May 25, 2009, by the following vote: Yeas 141, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1293 was passed by the Senate, with amendments, on May 21, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor