

**SUBJECT:** Revising procedures for certain annuity transactions and benefits

**COMMITTEE:** Insurance — committee substitute recommended

**VOTE:** 9 ayes — Oliverson, Vo, J. González, Hull, Israel, Middleton, Paul, Romero, Sanford

0 nays

**WITNESSES:** For — Jason Talley, National Association of Insurance & Financial Advisors-Texas; Jay Thompson, Talhi

Against — None

On — (*Registered, but did not testify:* Jenny Blakey, Office of Public Insurance Counsel; Luke Bellsnyder, Texas Department of Insurance)

**BACKGROUND:** Insurance Code ch. 1115 establishes standards and procedures regarding recommendations made to a consumer that result in a transaction involving annuity products and requires insurers to establish a system to supervise those recommendations.

Some have called for the state to update its law to align with federal standards to enhance consumer protections in the sale of all annuity products.

**DIGEST:** CSHB 1777 would amend certain standards and procedures regarding life insurance annuity transactions and benefits.

**Applicability.** The bill would amend the purpose of Insurance Code ch. 1115 by requiring an agent to act in a consumer's best interest when making a recommendation of an annuity. An agent would be presumed to have acted in the best interest of the consumer if the agent satisfied the care, disclosure, conflict of interest, and documentation obligations as specified in the bill.

The bill would make provisions governing recommendations by an insurance agent or insurer to a consumer to purchase, replace, or exchange a life insurance annuity that resulted in the recommended purchase, replacement, or exchange applicable instead to any sale of an annuity, while retaining certain existing exemptions.

**Definitions.** The bill would define several terms related to annuities. "Material conflict of interest" would mean a financial interest of an agent in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation. The term would not include cash or noncash compensation paid to an agent.

"Consumer profile information" would mean information that was reasonably appropriate to determine whether a recommendation addressed the consumer's financial situation, insurance needs, and financial objectives, using criteria as specified in the bill.

"Recommendation" would mean advice provided by an agent, or an insurer if no agent was involved, to a consumer that was intended to result or did result in a purchase, exchange, or replacement of an annuity made in accordance with that advice. The term would not include a general communication to the public or other general information or customer service.

**Duties and other obligations of insurers and agents.** The bill would establish certain duties of insurers and agents with respect to life insurance annuity transactions applicable to each agent who exercised material control or influence in making a recommendation or sale, regardless of whether the agent had direct contact with the consumer.

In making a recommendation, an agent would be required to exercise reasonable diligence, care, and skill to:

- obtain consumer profile information from the consumer before making the recommendation of an annuity;
- know the consumer's financial situation, insurance needs, and

- financial objectives;
- understand the available recommendation options available to the agent;
  - consider the types of products the agent was authorized and licensed to recommend or sell that would address the consumer's financial situation, insurance needs, and financial objectives;
  - have a reasonable basis to believe the recommendation would address the consumer's financial situation, insurance needs, and financial objectives over the life of the product, in light of the consumer profile information;
  - have a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, a death or living benefit, or other insurance-related feature; and
  - communicate the basis of the recommendation.

CSHB 1777 would outline certain other obligations of agents, including obligations related to disclosures, documentation, and training requirements.

The bill would require an agent to take reasonable steps to discover a material conflict of interest, including a material conflict of interest related to an ownership interest. An agent would be required to either identify and avoid a material conflict of interest or reasonably manage and disclose the conflict.

Except in certain circumstances, an insurer could not issue an annuity recommended to a consumer unless there was a reasonable basis to believe the annuity would effectively address the consumer's financial situation, insurance needs, and financial objectives based on the consumer's profile information.

An agent or insurer would be prohibited from dissuading or attempting to dissuade a consumer from truthfully responding to an insurer's request for confirmation of consumer profile information, filing a complaint, or cooperating with the investigation of a complaint.

**Safe harbor.** Recommendations and sales of annuities made in compliance with comparable standards would satisfy the requirements of the bill. This would apply to recommendations and sales of annuities made by a financial professional in compliance with business rules, controls, and procedures that satisfied a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue.

**Other provisions.** The bill would decrease the minimum permissible interest rate used in determining minimum nonforfeiture amounts for a paid-up annuity, cash surrender, or death benefit from 1 percent to 0.15 percent.

The bill would apply only to an annuity contract issued or renewed on or after January 1, 2022.

The bill would take effect September 1, 2021, and would apply only to an annuity transaction that occurred on or after the effective date.