

BILL ANALYSIS

Senate Research Center
80R20269 PB-F

C.S.H.B. 2762
By: Eiland (Averitt)
State Affairs
5/15/2007
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In its biennial report to the 80th Legislature, Regular Session, 2007, the Texas Department of Insurance (TDI) noted that the replacement of life insurance policies and certain annuity transactions may require further examination. The National Association of Insurance Commissioners (NAIC) has established a model regulation that serves as a basis for state replacement regulations and is designed to ensure that insurers and agents provide consumers with fair and accurate information about life insurance and annuity products.

This model advocates full disclosure of as much relevant information as possible to the consumer without interfering in the consumer's right to make the final decision. This level of disclosure may aid in preventing unethical practices such as "twisting," which involves a failure to make complete comparisons of contracts for the purpose of persuading an insured to cancel an existing contract and to purchase another contract, or "churning," which involves the persuasion of a life insurance policy holder to purchase a higher death benefit policy.

C.S.H.B. 2762 requires insurers to ensure that a consumer is provided with relevant information and adequate protection against a "twist" or a "churn" during a replacement. This bill requires Texas insurance carriers to disclose certain replacement insurance policy elements through forms approved by the commissioner of insurance or forms pre-approved by TDI.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 (Sections 1114.006, 1114.007, and 1114.053, Insurance Code) and SECTION 2 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle A, Title 7, Insurance Code, by adding Chapter 114, as follows:

CHAPTER 114. REPLACEMENT OF CERTAIN LIFE INSURANCE POLICIES AND ANNUITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1114.001. PURPOSE. Sets forth certain purposes of this chapter.

Sec. 1114.002. GENERAL DEFINITIONS. Defines "agent," "direct-response solicitation," "existing insurer," "existing policy or contract," "financed purchase," "illustration," "registered contract," "replacement," "replacing insurer," and "sales material."

Sec. 1114.003. DEFINITION OF POLICY SUMMARY. (a) Defines "policy summary" for purposes of this chapter.

(b) Defines "policy summary" for a policy or contract other than a universal life insurance policy.

(c) Defines "policy summary" for a universal life insurance policy.

Sec. 1114.004. APPLICABILITY; EXEMPTIONS. (a) Provides that this chapter does not apply to transactions involving certain types of insurance or applications relating to insurance, except as otherwise provided by this chapter.

(b) Provides that this chapter, notwithstanding Subsection (a)(6), applies to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis if the insurer has been notified that plan participants are authorized to choose from among two or more insurers and there is a direct solicitation of an individual employee by an insurance agent for the purchase of a contract or policy.

(c) Provides that group life insurance or group annuity certificates marketed through direct response solicitations are subject to Section 1114.055.

(d) Provides that immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this chapter, notwithstanding Subsection (a)(9).

(e) Defines "direct solicitation" for purpose of Subsections (a), (b), and (c).

Sec. 1114.005. FINANCED PURCHASE. (a) Provides that a withdrawal, surrender, or borrowing involving the policy values of an existing policy that is used to pay premiums on a new policy that is owned by the same policyholder and is issued by the same insurer not earlier than four months before the effective date of the new policy or 13 months after the effective date of the new policy, is deemed prima facie evidence of the policyholder's intent to finance the purchase of a new policy with existing policy values.

(b) Provides that Subsection (a) only applies to regulatory review of an individual transaction.

(c) Provides that the prima facie standard under Subsection (a) is not intended to increase or decrease the monitoring obligations contained in Section 1114.052(g).

Sec. 1114.006. CONSUMER NOTICE DOCUMENTS. (a) Requires the commissioner of insurance (commissioner) by rule to adopt or approve model documents to be used for consumer notices under this chapter (model documents).

(b) Authorizes the Texas Department of Insurance (TDI) to develop model documents, or the commissioner to approve model documents developed by insurers or published by national organizations recognized by the commissioner.

Sec. 1114.007. RULES. Authorizes the commissioner to adopt reasonable rules in the manner prescribed by Subchapter A (Rules), Chapter 26, to accomplish and enforce the purpose of this chapter.

[Reserves Sections 1114.008-1114.050 for expansion.]

SUBCHAPTER B. DUTIES OF INSURERS AND AGENTS

Sec. 1114.051. DUTIES OF AGENT; NOTICE. (a) Requires an agent who initiates an application for a life insurance policy or annuity contract to submit a statement to the insurer, with or as a part of the application, signed by both the applicant and the agent as to whether the applicant has existing policies or contracts.

(b) Provides that the agent's duties with respect to replacement, after compliance with Subsection (a), are complete if the applicant states that the applicant does not have existing policies or contracts.

(c) Requires the agent, if the applicant states that the applicant does have existing policies or contracts, to present and read a notice regarding replacements as

provided by Subsection (d) to the applicant not later than at the time of taking the application.

(d) Requires the notice required by this section to be given in a form adopted or approved by the commissioner except as provided by Subsection (e). Sets forth certain requirements regarding the reading of the notice by the agent to the applicant and certain information to be included on the notice. Requires the notice to be left with the applicant unless it is presented to the applicant by electronic means and signed electronically, in which case the insurer is required to mail a copy of the notice to the applicant not later than the third business day after the date the application was received by the insurer. Requires a statement to be included in the notice as to whether each existing policy or contract will be replaced or whether an existing policy will be used as a source of financing for the new policy or contract.

(e) Provides that commissioner approval of a notice is not required if a notice adopted or approved by the commissioner is used and amendments to that notice are limited to the omission of references not applicable to the product being sold or replaced.

(f) Requires the agent to leave the original of all sales material or a copy of that material with the applicant at the time an application for a new policy or contract is completed in connection with a replacement transaction. Requires electronically presented sales material to be provided to the policy or contract owner in printed form not later than the date that the policy or contract is delivered.

(g) Requires the agent to submit a copy of each document required by this section, a statement identifying any preprinted or electronically presented insurer-approved sales materials used, and copies of certain individualized sales materials to the insurer to which an application for a policy or contract is presented, except as provided by Section 1114.053(g).

Sec. 1114.052. DUTIES OF INSURERS THAT USE AGENTS. (a) Requires an insurer that uses an agent to comply with this section.

(b) Requires each insurer to maintain a system of supervision and control to ensure compliance with the requirements of this chapter. Sets forth minimum required duties of such a system.

(c) Authorizes the inclusion of systematic customer surveys, interviews, confirmation letters, or programs of internal monitoring in compliance with Subsection (a)(5) (regarding implementation of procedures to detect unreported transactions that replace existing policies).

(d) Requires each insurer to have the capacity to monitor each agent's policy and contract replacements for the insurer. Requires the insurer to maintain records regarding the monitoring and to produce and make the records available to the Texas Department of Insurance (TDI) on request. Sets forth certain types of records required to be maintained to constitute the capacity to monitor agents.

(e) Requires each insurer to require a signed statement by both the applicant and the agent as to whether the applicant has existing policies or contracts with or as a part of each application for life insurance or an annuity.

(f) Requires each insurer to require a completed notice regarding replacements with each application for life insurance or an annuity that indicates an existing policy or contract.

(g) Requires each insurer to produce the basic illustration and any supplemental illustration related to the specific policy or contract that is purchased, and the

agent's and applicant's signed statements with respect to financing and replacement, for at least five years after the date of termination or expiration of the proposed policy or contract.

(h) Requires the insurer to ascertain that the sales material and illustrations required by Section 1114.051(f) meet the requirements of the chapter and are complete and accurate for the proposed policy or contract.

(i) Requires the insurer to notify the agent and applicant and to fulfill outstanding requirements of an application if that application does not meet the requirements of this chapter.

(j) Requires the insurer to maintain records required by this section through certain methods that accurately reproduce the actual document.

Sec. 1114.053. DUTIES OF REPLACING INSURERS THAT USE AGENTS. (a) Requires a replacing insurer to comply with this section if a transaction under this chapter involves a replacement.

(b) Requires the replacing insurer to verify that the required forms are received and are in compliance with this chapter.

(c) Requires the replacing insurer to notify any existing insurer that may be affected by the proposed replacement not later than the fifth business day after the date that replacement is indicated in a certain manner, and to mail a copy of the available illustration or policy summary for the proposed policy or available disclosure document for the proposed contract to the existing insurer not later than the fifth business day after the date of a request from the existing insurer.

(d) Requires the replacing insurer to be able to produce copies of the notification regarding replacement required by Section 1114.051(d), indexed by agent, until the later of the fifth anniversary of the date of the notification or the date of the replacing insurer's next regular examination by the insurance regulatory authority of the insurer's state of domicile.

(e) Requires the replacing insurer to provide to the policy or contract owner of the owner's right to return the policy or contract within 30 days of the delivery of said policy or contract and to receive an unconditional full refund of certain premiums or considerations paid on the policy or contract. Authorizes the combination of this notice with other notices required under this chapter in accordance with the rules of the commissioner.

(f) Requires the replacing insurer to allow credit for the period that has elapsed under the replaced policy's or contract's incontestability and suicide period up to the face amount of the existing policy or contract in transactions in which the replacing insurer and the existing insurer are the same or are subsidiaries or affiliates under common ownership or control. Authorizes, with regard to financed purchases, the limitation of this credit to the amount that the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

(g) Sets forth certain required actions as an alternative to the requirements of an insurer under Section 1114.051(g), if the insurer prohibits the use of sales material other than that approved by the insurer.

Sec. 1114.054. DUTIES OF EXISTING INSURER. (a) Requires the existing insurer to comply with this section if a transaction involves a replacement.

(b) Requires the existing insurer to retain and be able to produce all replacement notifications until the later of the fifth anniversary of the date of the notification or

the date of the existing insurer's next regular examination by the insurance regulatory authority of the insurer's state of domicile.

(c) Requires the existing insurer to send a letter to the policy or contract owner regarding the owner's right to receive information regarding the existing policy or contract values. Requires the letter to include, if available, an in force illustration or a policy summary if such an illustration cannot be produced before the fifth business day after the date of receipt of a notice that an existing policy or contract is being replaced. Requires this information to be produced not later than the fifth business day after the date of receipt of the request from the policy or contract owner.

(d) Requires the existing insurer, on receipt of a request to borrow, surrender, or withdraw any policy values, to send a notice advising the policy owner that the release of policy value may affect certain values or elements of the policy from which the values are released.

Sec. 1114.055. DUTIES OF INSURERS REGARDING DIRECT RESPONSE SOLICITATIONS. (a) Requires an insurer, in the case of an application initiated as a result of a direct response solicitation, to require submission of a statement asking whether the applicant intends to replace, discontinue, or change an existing policy or contract by applying for the proposed policy or contract. Authorizes the inclusion of the statement with, or submission of the statement as a part of, each completed application for a policy or contract. Requires the insurer to send the applicant a notice, with the policy or contract and in a form adopted or approved by the commissioner, regarding replacement to the applicant if the applicant indicates that a replacement or change is not intended or if the applicant fails to respond to the statement.

(b) Requires the insurer, if the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, to provide the applicant or prospective applicant a notice adopted or approved by the commissioner with the policy or contract, and to require with certain requirements.

(c) Authorizes the insurer, in a situation described by Sub section (b)(1), to use a notice that deletes references to the agent, including the agent's signature, and references not applicable to the product being sold or replaced without having to obtain prior approval of the notice from the commissioner. Provides that the insurer's obligation to obtain the applicant's signature is satisfied if the insurer can demonstrate that the insurer has made a diligent effort to secure a signed copy of the notice. Provides that the requirement to make a diligent effort is deemed satisfied. if the insurer includes a self-addressed postage paid envelope with instructions for the return of the signed notice with the mailing.

Sec. 1114.056. REGISTERED CONTRACTS. Provides that a registered contract is exempt from the requirements of Sections 1114.053(c) and 1114.054(c) with respect to the provision of illustrations or policy summaries. Requires a registered contract to provide premium or contract contribution amounts and identification of the appropriate prospectus or offering circular.

[Reserves Sections 1114.057-1114.100 for expansion.]

SUBCHAPTER C. ENFORCEMENT

Sec. 1114.101. UNFAIR METHOD OF COMPETITION; SANCTIONS AND PENALTIES. (a) Provides that a failures by an insurer or agent to comply with this chapter constitutes a violation of Chapter 541 (Unfair Methods of Competition and Unfair or Deceptive Acts or Practices) and is subject to sanctions and penalties as provided by that chapter. Sets forth certain examples of violations for purposes of this section.

(b) Provides that a policy or contract owner has the right to replace an existing life insurance policy or annuity contract after indicating in or as a part of applications for new coverage that replacement is not the intention. Requires that patterns of such action by contract owners of the same agent be deemed prima facie evidence of the agent's knowledge that replacement was intended in connection with the identified transactions, and that those patterns of action be deemed prima facie evidence of the agent's intent to violate this chapter.

(c) Requires the replacing insurer to provide to the policy owner, if it is determined that the requirements of this chapter have not been met, an in force illustration or a policy summary, if such illustration is unavailable, for the replacement policy or an available disclosure document for the replacement contract, and the appropriate notice regarding replacements.

Sec. 1114.102. ADDITIONAL SANCTIONS. (a) Provides that, in addition to sanctions and penalties under Chapter 541 (Unfair Methods of Competition and Unfair or Deceptive Acts or Practices) as provided by Section 1114.101 for an insurer or agent that violates this chapter, the insurer or agent is subject to sanctions as provided by Chapter 82 (Sanctions), which may include the revocation or suspension of the agent's license or the insurer's certificate of authority, administrative penalties under Chapter 84 (Administrative Penalties), and forfeiture of any commissions or other compensation paid to an agent as a result of the transaction in connection with which the violations occurred.

(b) Provides that, if the commissioner has determined that the violations of this chapter were material to the sale, the insurer may be required to make restitutions in the manner provided by Section 82.053 (Restitution), to restore policy or contract values, and to pay interest at the rate set by Section 84.050 (Remittance of Penalty and Interest) on the amount refunded in cash.

SECTION 2. Requires the commissioner to adopt rules and adopt or approve model documents as necessary to implement Chapter 1114, Insurance Code, as added by this Act, not later than December 1, 2007.

SECTION 3. Makes application of this Act prospective to January 1, 2008.

SECTION 4. Effective date: September 1, 2007.