

## **BILL ANALYSIS**

Senate Research Center  
81R31702 PB-F

C.S.H.B. 1294  
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State Affairs  
5/12/2009  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Texas Department of Insurance 2009 biennial report says, "Certain insurance products are so complex that the general agent licensing and continuing education requirements are insufficient to ensure the level of agent expertise necessary to safeguard consumer interests...Requiring additional agent training or demonstration of knowledge before selling particularly complex products would mitigate the negative impact caused by agents selling complex products without the training and knowledge necessary to sell them in a manner fair and beneficial to insureds" (p. 39).

This legislation will require a standard minimum of annuity-specific education for an agent to complete, and thereafter maintain, in order to sell, solicit, or negotiate a contract for an annuity in this state. This will elevate the threshold of competency and familiarity with annuities that agents must possess; this, in turn, will protect consumers from misinformed or uninformed opinions or inappropriate or unethical behavior from agents. This bill will require insurance agents licensed to sell annuities to complete four hours of annuity-related education initially and four hours annually, as part of an agent's required continuing education courses. Also, an agent shall not use misleading or fraudulent senior-specific designations or certifications when selling life insurance or annuities.

C.S.H.B. 1294 relates to certain certifications, professional designations, and education requirements regarding the sale of life insurance and annuities.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1.002 (Sections 4004.202 and 4004.203, Insurance Code) and SECTION 1.003 of this bill.

### **SECTION BY SECTION ANALYSIS**

#### **ARTICLE 1. AGENT EDUCATION REQUIREMENTS**

SECTION 1.001. Amends Subchapter B, Chapter 1115, Insurance Code, by adding Section 1115.056, as follows:

Sec. 1115.056. AGENT EDUCATION REQUIREMENTS. (a) Requires a resident agent that intends to sell, solicit, or negotiate a contract for an annuity in this state or to represent an insurer in relation to such an annuity to submit evidence satisfactory to the Texas Department of Insurance (TDI) of completion of at least four hours of training relating to annuities before soliciting individual consumers for the purpose of selling annuities.

(b) Authorizes the training required under Subsection (a) to be used to satisfy the continuing education requirements imposed under this code and rules adopted under this code for issuance of a license under this code.

SECTION 1.002. Amends Chapter 4004, Insurance Code, by adding Subchapter E, as follows:

#### **SUBCHAPTER E. CONTINUING EDUCATION REQUIREMENTS FOR SALE OF ANNUITIES**

Sec. 4004.201. DEFINITION. Defines "annuity."

Sec. 4004.202. REQUIRED CONTINUING EDUCATION REGARDING ANNUITIES. (a) Provides that this section applies to a resident agent who sells, solicits, or negotiates a contract for an annuity in this state, or represents or purports to represent an insurer in relation to such an annuity.

(b) Requires each agent described by Subsection (a) to complete four hours of continuing education annually that specifically relates to annuities. Requires that the annual period under this section be based on the agent's license expiration date or another date specified by the commissioner of insurance (commissioner) by rule, and requires that the education requirement under this subsection be met within that annual period, notwithstanding Section 4004.051(b).

(c) Authorizes the continuing education required under this section to be used to satisfy the continuing education requirements under Subchapter B (Agent Continuing Education Requirements).

Sec. 4004.203. PROGRAM CERTIFICATION REQUIREMENTS (a) Requires the commissioner by rule to adopt criteria for continuing education programs used to satisfy the requirements of Section 4004.202. Requires that the criteria include topics related specifically to annuities; state laws and rules related to annuities, including requirements adopted under Chapter 1115 (Suitability of Certain Annuity Transactions); prohibited sales practices regarding annuities; recognition of indicators that a prospective insured may lack the short-term memory or judgment to knowingly purchase an annuity; and fraudulent and unfair trade practices regarding the sale of annuities.

(b) Provides that subject matter determined by the commissioner to be primarily intended to promote the sale or marketing of annuities does not qualify as continuing education for purposes of this subchapter.

(c) Provides that Subchapter C (Continuing Education Programs) applies to continuing education programs described by Subsection (a) and training under Section 1115.056. Requires that any training program disapproved under Subsection (b) be presumed invalid for certification under Subchapter C unless the program is approved in writing by the commissioner.

SECTION 1.003. Requires the commissioner to adopt rules as required by Section 4004.203, Insurance Code, as added by this article, not later than December 1, 2009.

SECTION 1.004. Provides that Subchapter E, Chapter 4004, Insurance Code, as added by this article, applies to continuing education requirements for insurance agents for a license issued or renewed on or after April 1, 2010.

SECTION 1.005. Provides that Section 1115.056, Insurance Code, as added by this article, applies to training requirements for insurance agents for a license issued or renewed on or after April 1, 2010.

## ARTICLE 2. USE OF SENIOR-SPECIFIC CERTIFICATIONS OR PROFESSIONAL DESIGNATIONS

SECTION 2.001. Amends Subtitle A, Title 7, Insurance Code, by adding Chapter 1117, as follows:

### CHAPTER 1117. USE OF SENIOR-SPECIFIC CERTIFICATIONS OR PROFESSIONAL DESIGNATIONS

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1117.001. PURPOSE. Sets forth the purpose of this chapter.

Sec. 1117.002. DEFINITIONS. Defines "insurance agent" and "senior-specific certification or professional designation."

Sec. 1117.003. APPLICABILITY OF CHAPTER; CONSTRUCTION WITH OTHER LAW. (a) Provides that this chapter applies to any solicitation, sale, or purchase of, or advice made in connection with, a life insurance or annuity product by an insurance agent.

(b) Provides that nothing in this chapter may be construed to limit the commissioner's authority to enforce any other provision of this code or another law.

[Reserves Sections 1117.004-1117.050 for expansion.]

#### SUBCHAPTER B. USE OF SENIOR-SPECIFIC CERTIFICATIONS AND PROFESSIONAL DESIGNATIONS

Sec. 1117.051. CERTAIN USES OF SENIOR-SPECIFIC CERTIFICATIONS AND DESIGNATIONS PROHIBITED. (a) Prohibits an insurance agent from directly or indirectly using a senior-specific certification or professional designation in such a way as to mislead a purchaser or prospective purchaser that the agent has special certification or training in advising or servicing seniors in connection with the solicitation, sale, or purchase of a life insurance or annuity product or in the provision of advice as to the value of or the advisability of purchasing or selling a life insurance or annuity product through any writing or other publication or by issuing or disseminating analyses or reports related to a life insurance or annuity product.

(b) Provides that Subsection (a) prohibits the use of a senior-specific certification or professional designation only by an insurance agent using a certification or professional designation that the agent has not actually earned or for which the agent is ineligible; a nonexistent or self-conferred certification or professional designation; a certification or professional designation that indicates or implies a level of occupational qualification obtained through education, training, or experience that the agent has not obtained; and a certification or professional designation that was obtained from an organization that is primarily engaged in the business of instruction in sales or marketing, does not have reasonable standards or procedures for assuring the competency of individuals granted a certification or designation by the organization, or monitoring and disciplining individuals granted a certification or designation by the organization for improper or unethical conduct, or does not have reasonable continuing education requirements in order to maintain the certification or designation for individuals granted a certification or designation by the organization.

(c) Provides that a rebuttable presumption exists that a certification or professional designation granted by an organization described by Subsection (b)(4) (relating to a certification or professional designation that was obtained from certain organizations that do not have certain professional requirements) is not prohibited under Subsection (a) if the certification or designation issued by the organization does not primarily apply to sales or marketing and if the organization or the certification or designation has been accredited by the American National Standards Institute; the National Commission for Certifying Agencies; any organization that is included in "Accrediting Agencies Recognized for Title IV Purposes" published by the U.S. Department of Education; or any other national accrediting organization recognized by the commissioner.

(d) Requires the commissioner, in determining whether a word, a combination of words, or an acronym constitutes a senior-specific certification or professional designation, to consider the use of one or more words such as "senior," "retirement," "elder," or similar words combined with one or more words such as "certified," "registered," "chartered," "advisor," "specialist," "consultant,"

"planner," or similar words, in the name of the certification or professional designation, and the manner in which those words are combined.

Sec. 1117.052. APPLICABILITY TO CERTAIN FINANCIAL SERVICES. (a) Provides that notwithstanding Section 1117.003, for purposes of this chapter, a job title used within an organization that is licensed or registered by a state or federal financial services regulatory agency and that indicates seniority or standing within the organization, or that specifies an individual's area of specialization within the organization, is not a senior-specific certification or professional designation unless the title is used in a manner that is likely to confuse or mislead a reasonable consumer.

(b) Provides that for purposes of Subsection (a), "financial services regulatory agency" includes an agency that regulates insurers, insurance producers, broker-dealers, investment advisers, or investment companies, as defined by the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.).

SECTION 2.002. Makes application of this Act prospective to January 1, 2010.

### ARTICLE 3. EFFECTIVE DATE

SECTION 3.001. Effective date: September 1, 2009.