
SENATE CONCURRENT RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A STUDY
ON THE ISSUE OF RECLASSIFYING VARIABLE ANNUITY CONTRACTS AS
INSURANCE RATHER THAN SECURITIES.

1 WHEREAS, a variable annuity contract is a tax-deferred
2 investment that typically invests in stock and bond mutual funds
3 that provide the investor with an opportunity for potential
4 capital appreciation and income but also subjects the investor
5 to market risks and is primarily sold by insurance companies;
6 and

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8 WHEREAS, the insurance features of variable annuity
9 contracts permit the investor to receive a series of periodic
10 payments from the investment over the life of the contract and
11 provide a death benefit to the beneficiary should the investor
12 die during the accumulation phase; and

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14 WHEREAS, while these products are legitimate investments,
15 regulators are concerned about overzealous marketing of variable
16 annuity contracts, especially to senior consumers who require
17 particular protection from the risks involved in these
18 instruments; and

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20 WHEREAS, variable annuity contracts are generally thought
21 to be inappropriate for seniors unless they are fully informed
22 of the risks involved, such as short-term market movements given
23 that seniors generally cannot afford a long investing horizon,
24 and the restrictions involved, such as steep penalties for early
25 withdrawals, which may hamper seniors' access to their funds;
26 and

27
28 WHEREAS, there has been widespread publicity concerning
29 inappropriate sales of variable annuity contracts to the general
30 public, especially seniors and those approaching retirement, to
31 hold these annuities inside a 401(k) retirement account or
32 Individual Retirement Account, when the buyer would already be
33 getting tax-deferred growth in an Individual Retirement Account



1 or a 401(k) account, and the variable annuity simply adds an
2 additional layer of cost with no additional tax benefit; and

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4 WHEREAS, some of the complaints regarding the sales of
5 variable annuities include:

- 6
7 (1) Misleading advertising;
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9 (2) Unsuitable recommendations;
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11 (3) Switching and churning of customer accounts to
12 increase sales commissions; and
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14 (4) Failure to disclose fees and other important
15 characteristics of these contracts; and
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17 WHEREAS, there is uncertainty over the most effective means
18 of regulating sales of variable annuity contracts; and
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20 WHEREAS, according to the National Association of
21 Securities Dealers, which was established under authority
22 granted by the Securities Exchange Act of 1934, and which
23 regulates almost 5,200 securities firms employing more than
24 663,000 registered securities professionals, the sales-related
25 problems of variable annuity contracts parallel those of mutual
26 funds and other securities and the National Association of
27 Securities Dealers believe that "it is incongruous for agents
28 and sales practices involved in variable [annuity] contracts not
29 to be covered by state securities laws"; and
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31 WHEREAS, it was reported by the North American Securities
32 Administrators Association, which was organized in 1919 and is a
33 voluntary association whose goal is investor protection, that
34 the Securities Enforcement Branch of the Department of Commerce
35 and Consumer Affairs is currently investigating fourteen
36 enforcement cases regarding variable annuities contracts
37 involving thirty-one consumers; and
38

39 WHEREAS, the North American Securities Administrators
40 Association continually lists variable annuity contracts in its
41 "Top Ten Investment Scams" annually; and
42

43 WHEREAS, the American Council of Life Insurers, a national
44 trade association that is composed of three hundred seventy-



1 seven member companies, pointed out that the continued inclusion
2 of variable annuity contracts as a security in Hawaii would:

- 3
4 (1) Perpetuate an additional layer of unnecessary and
5 duplicative regulation;
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7 (2) Perpetuate existing conflict between the insurance and
8 securities regulators and create an uncertain
9 regulatory environment for life insurers and others
10 who sell variable annuity contracts; and
11
12 (3) Conflict with existing law that the Council says
13 confers exclusive authority to regulate variable
14 annuity contracts to the Insurance Commissioner; and
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16 WHEREAS, the American Council of Life Insurers states that,
17 in response to widely publicized complaints from consumers
18 dealing with unsuitable annuity sales, particularly to seniors
19 due to their age and penalty charges assessed upon early
20 withdrawal or surrender, in 2003, the National Association of
21 Insurance Commissioners adopted two models of insurance
22 regulation, namely, the Annuity Disclosure Model Regulation and
23 the Senior Protection in Annuity Transactions Model Regulation;
24 and
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26 WHEREAS, S.B. No. 3070, 2006, was introduced during the
27 Regular Session of 2006 to delete "variable annuity contracts"
28 from the definition of "security" thus removing variable annuity
29 contracts from securities regulation; and
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31 WHEREAS, S.B. No. 2225, 2006, was introduced during the
32 Regular Session of 2006 to require insurers and insurance
33 providers to make reasonable efforts to obtain relevant
34 information from senior consumers prior to conducting annuities
35 transactions; and
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37 WHEREAS, the Legislature understands that some
38 jurisdictions, the State of Indiana among them, regulate sales
39 of variable annuities as insurance rather than as securities;
40 now, therefore,
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42 BE IT RESOLVED by the Senate of the Twenty-third
43 Legislature of the State of Hawaii, Regular Session of 2006, the
44 House of Representatives concurring, that the Legislative



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1 Reference Bureau is requested to examine how other states, such
2 as Indiana, are addressing the issue of reclassifying a variable
3 annuity contract as insurance rather than as a security; and
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5 BE IT FURTHER RESOLVED that the Director of Commerce and
6 Consumer Affairs, the Insurance Commissioner, and the
7 Commissioner of the Business Registration Division are requested
8 to assist and fully cooperate with the Legislative Reference
9 Bureau in the conduct of the study; and
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11 BE IT FURTHER RESOLVED that the Legislative Reference
12 Bureau is requested to submit its report to the Legislature no
13 later than twenty days prior to the convening of the Regular
14 Session of 2007; and
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16 BE IT FURTHER RESOLVED that certified copies of this
17 Concurrent Resolution be transmitted to the Director of Commerce
18 and Consumer Affairs, the Insurance Commissioner, the
19 Commissioner of the Business Registration Division, and the
20 Director of the Legislative Reference Bureau.
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OFFERED BY: *Ron Menor*

