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



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

- (1) Misleading advertising;
- (2) Unsuitable recommendations;
- (3) Switching and churning of customer accounts to increase sales commissions; and
- (4) Failure to disclose fees and other important characteristics of these contracts; and

WHEREAS, there is uncertainty over the most effective means of regulating sales of variable annuity contracts; and

WHEREAS, according to the National Association of Securities Dealers, which was established under authority granted by the Securities Exchange Act of 1934, and which regulates almost 5,200 securities firms employing more than 663,000 registered securities professionals, the sales-related problems of variable annuity contracts parallel those of mutual funds and other securities and the National Association of Securities Dealers believe that "it is incongruous for agents and sales practices involved in variable [annuity] contracts not to be covered by state securities laws"; and

WHEREAS, it was reported by the North American Securities Administrators Association, which was organized in 1919 and is a voluntary association whose goal is investor protection, that the Securities Enforcement Branch of the Department of Commerce and Consumer Affairs is currently investigating fourteen enforcement cases regarding variable annuities contracts involving thirty-one consumers; and

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

WHEREAS, the American Council of Life Insurers, a national trade association that is composed of three hundred seventy-seven member companies, pointed out that the continued inclusion of variable annuity contracts as a security in Hawaii would:



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- 2 (1) Perpetuate an additional layer of unnecessary and
- 3 duplicative regulation;
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- 5 (2) Perpetuate existing conflict between the insurance and
- 6 securities regulators and create an uncertain
- 7 regulatory environment for life insurers and others
- 8 who sell variable annuity contracts; and
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- 10 (3) Conflict with existing law that the Council says
- 11 confers exclusive authority to regulate variable
- 12 annuity contracts to the Insurance Commissioner; and
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14 WHEREAS, the American Council of Life Insurers states that,
 15 in response to widely publicized complaints from consumers
 16 dealing with unsuitable annuity sales, particularly to seniors
 17 due to their age and penalty charges assessed upon early
 18 withdrawal or surrender, in 2003, the National Association of
 19 Insurance Commissioners adopted two models of insurance
 20 regulation, namely, the Annuity Disclosure Model Regulation and
 21 the Senior Protection in Annuity Transactions Model Regulation;
 22 and

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 24 WHEREAS, S.B. No. 3070, 2006, was introduced during the
 25 Regular Session of 2006 to delete "variable annuity contracts"
 26 from the definition of "security" thus removing variable annuity
 27 contracts from securities regulation; and

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 29 WHEREAS, S.B. No. 2225, 2006, was introduced during the
 30 Regular Session of 2006 to require insurers and insurance
 31 providers to make reasonable efforts to obtain relevant
 32 information from senior consumers prior to conducting annuities
 33 transactions; and

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 35 WHEREAS, the Legislature understands that some
 36 jurisdictions, the State of Indiana among them, regulate sales
 37 of variable annuities as insurance rather than as securities;
 38 now, therefore,

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 40 BE IT RESOLVED by the Senate of the Twenty-third
 41 Legislature of the State of Hawaii, Regular Session of 2006 that
 42 the Legislative Reference Bureau is requested to examine how
 43 other states, such as Indiana, are addressing the issue of



1 reclassifying a variable annuity contract as insurance rather
2 than as a security; and

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4 BE IT FURTHER RESOLVED that the Director of Commerce and
5 Consumer Affairs, the Insurance Commissioner, and the
6 Commissioner of the Business Registration Division are requested
7 to assist and fully cooperate with the Legislative Reference
8 Bureau in the conduct of the study; and

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10 BE IT FURTHER RESOLVED that the Legislative Reference
11 Bureau is requested to submit its report to the Legislature no
12 later than twenty days prior to the convening of the Regular
13 Session of 2007; and

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15 BE IT FURTHER RESOLVED that certified copies of this
16 Resolution be transmitted to the Director of Commerce and
17 Consumer Affairs, the Insurance Commissioner, the Commissioner
18 of the Business Registration Division, and the Director of the
19 Legislative Reference Bureau.

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OFFERED BY: 

