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ROLL NUMBER

DESCRIPTION

2155

2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2155

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2155**

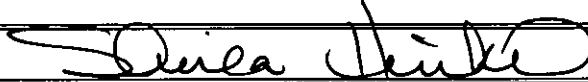
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 15, 2007**

Recorder Job Number: **1092**

Committee Clerk Signature



Minutes:

S Hacker: Grand Forks District 42 – In Favor

Bill for consumer protection . As annuities become more and more popular, there is need for more individuals. More expertise in the room.

Jim Poolman – Commisioner ND Insurance Department – In Favor

TESTIMONY #1

Covered Testimony and Amendment. [m :00 to 10:29]

S Klein: this is all new language, what is a fixed annuity?

J Poolman: Affixed S&P \$500, Long term care benefits. Thank you for drafting the bill which focused on senior population. In best interests. The bill has common sense guidelines and action on sales with advice and recommendation on products. Question: What if customer doesn't want to give information, just want to purchase? The agent is not held accountable.

This is protection for agent and the consumer. 1. Protects consumer 2. Protects agent.

See page 3, #4. Unsuitable sales? We'll be able to look at the company and work with the agents. Many of the annuities have a significant surrender charges – 0-15%.

Recommend Do Pass.

S Klein: Is this under provision of law? Is it regulated or not?

J Poolman: We were regulating very little on suitability standards, had no specific standards.

S Klein: Is this a model?

J Poolman: It has been used nationally in 14 states.

S Andrist: There is a TV commercial where you can get health insurance for \$1 a day.

J Poolman: We've seen the ad and are investigating the ad. It is marketed as insurance, but it is a medical discount plan and not an insurance, not even close; it is setting up vision and pharmaceutical benefits and market them for \$1 a day. If you look who is signed up for them, there are no hospitals, no clinics in ND, so they are mismarketing that product. We have issued 5 "cease and desist" orders against companies that are marketing those products. This bill forces the agents and companies, that the promise they're making up front JIVES with the needs of the people who needs that particular product.

S Potter: You have suitability standards on long term care?

J Poolman: No, long term care is the only specific insurance product that has suitability standards on the books.

S Potter: Are there other products that you feel ought to be other than annuities?

J Poolman: Being looked at across the country.

S Wanzek: Does the first section exempt these cases from this legislation?

J Poolman: there are specific exemptions in this bill. There are recommendations.

Joel Gilbertson, Vogel Law Firm - *In Favor* [m 17:00]

TESTIMONY # 2

S Klein: Do we have agents who aren't trained, so you agree they should be. What is the issue?

J Gilbertson: Some of both. There are more and more annuities which are more popular, why do we need it? Annuities are more complex and the older population doesn't understand the difference between insurance and annuities. This is an effort to set up rules.

S Hacker: Do a lot of the nationwide agencies, do they already have rules and regulations? Do they already have to qualify their customers?

J Gilbertson: Different companies have different requirements.

S Wanzek: Annuity – do they look at statistical tables and try to determine the life expectancy of the individual and how many years they might need and go ahead and set the rates at that rate?

J Gilbertson: Annuities are different than a CD.

S Wanzek: If a purchaser of an annuity guesses and passes away, the money is gone.

J Gilbertson: Depends on the type of annuity.

Q? Favor?

Pat Ward – Bismarck representing several insurance entities – *In Favor*

In favor of the bill.

S Hacker: Does American Family have policies that forces the agents to qualify?

P Ward: Each have their own requirements

Linda Wurtz – Associate state director of AARP – *In Favor*

Like the oversight strengthened. It is a step in the right direction.

S Klein: do they have a lot of issues?

L Wurtz: The annuities are new. This is the right road to present annuities

Favor?

Terry Weis – representing NDAIFA – *In Favor*

Most all companies have regulations on variables, but when it comes to fixed annuities, some agents don't understand annuities, want to do right thing.

S Behm: What is the different between annuity and life insurance?

T Weis: Life insurance has a death benefit, Annuities also have a death benefit, you get money back with interest – "life insurance option" [explains difference m 25:00]

S Wanzek: On a retirement annuity, if you die, does it go into an estate and pass on to your heirs if there is any value left?

T Weis: Annuities have a death benefit for the most part. It is paid directly to the beneficiary, unless the beneficiary is the estate. That is another advantage of an annuity.

Q? Favor? Opposition?

CLOSE

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2155 B

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 15, 2007**

Recorder Job Number: **#1093**

Committee Clerk Signature

Minutes:

Move the amendment 7 - 0 - 0

M - Heitkamp

S - S. Potter

Do Pass - Amendment on 2155

Vote on the Do Pass - 7 - 0 - 0

M - S. Wanzek

S - S. Behm

C - S Andrist

January 15, 2006

PROPOSED AMENDMENTS TO SENATE BILL NO. 2155

Page 5, line 16, replace "The penalty provision of section 26.1-01-03.3 applies to a violation of this chapter." with "Any applicable penalty under section 26.1-01-03.3 for a violation of subsection 1 or 2 or subdivision c of subsection 3 of section 26.1-34.2-03 may be reduced or eliminated, according to a schedule adopted by the commissioner, if corrective action for the consumer was taken promptly after a violation was discovered."

Renumber accordingly

1B
2155

REPORT OF STANDING COMMITTEE

SB 2155: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2155 was placed on the Sixth order on the calendar.

Page 5, line 16, replace "The penalty provision of section 26.1-01-03.3 applies to a violation of this chapter" with "Any applicable penalty under section 26.1-01-03.3 for a violation of subsection 1 or 2 or subdivision b of subsection 3 of section 26.1-34.2-03 may be reduced or eliminated, according to a schedule adopted by the commissioner, if corrective action for the consumer was taken promptly after a violation was discovered"

Renumber accordingly

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2155

2007 HOUSE STANDING COMMITTEE MINUTES


Bill/Resolution No. SB 2155

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 21, 2007

Recorder Job Number: 3603

Committee Clerk Signature	
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Minutes:

Chair Keiser opened the hearing on SB 2155.

Sen. Nick Hacker, District 42: SB 2155 is a consumer protection piece of legislation dealing with some of those horror stories you might hear of brokering annuity transactions, individuals who will never recognize, or see the benefit. Very simply put a 30 year annuity transaction being sold to a 70 year old individual, they're never going to see the benefit of that annuity develop, so this lays out some guidelines. It just takes into account that the broker, or the person issuing the annuity should have some knowledge of the individuals financial position, such as a natural status, tax status, and different investment objectives, just some real basic things that are kind of common sense.

Jim Poolman, Insurance Commissioner: Support SB 2155. See written testimony #1.

Rep. Johnson: Who would be someone that would purchase an annuity?

Jim: It could be a variety of people. They can be, and are very legitimate products for people to purchase in a variety of different ages. They're perfect for state planning; they're perfect for retirement planning if people want a steady stream of income. Then they can buy a variable annuity that if they want to add some investment risk to their portfolio, they could buy an annuity that provides that investment risk, or they could buy a safer annuity that will provide

them a guaranteed stream of income where they can budget, and still make money off of their insurance for investment.

Rep. Kasper: On page 2, lines 14, 15, and 16 where a producer recommends a purchase of annuity, and then the insurance producer of the insurer will know the producers involved must have reasonable grounds for believing that the recommendation is suitable. How do you define reasonable grounds?

Jim: Basically, this gets the producer off the hook, because the producer is not involved, so it's a reasonable assumption by the company. If they're exchanging an annuity, somebody is working directly with the company, or somebody else, and not a producer to exchange an annuity by a different annuity, whatever, and then it is assumed by the company that sale is suitable.

Rep. Kasper: Then item #2, where before the execution of a purchase of an annuity, the insurance producer who must gather this information that's listed A, B, C, D, and that's the status for consumer's tax status, and so on. Then it goes on to say that the purchaser, since I'm not going to give it to you, then it's OK, the producer is off the hook, so to speak. Then we go on page 3 and again we're saying that an insurer, or insurance producer's recommendation subject to subdivision A, must be reasonable. So, again I get to the question I am a producer, so how do I determine under this statute what is reasonable? There is no definition in here of what is reasonable.

Jim: If all of the information is given, and the recommendation is made in accordance to the provisions in the information that's given, yes, there is no specific, and the bottom line is you're covered.

Rep. Kasper: So, let's say I'm this producer, I'm sitting down with you, I'm trying to sell you an annuity, we discuss your financial affairs, I pull out my little book of annuities, and we get

charged, and there's 50 companies, and 200 annuities. Then say OK, let's take a look at what might work in your situation here, and then say well here is an annuity here, and it does this, and here is an annuity here and it does that, and here is the interest rate for annuity A, and surrender charges in the bonuses. Then annuity B has something different, and annuity C has something different. Which one do you think you would like to purchase? Let's say you choose B, and 5 years later you come back and say you should have sold me A. At the point of sale it was reasonable, because we both agreed it was reasonable, and now 5 years later something changed and it's not reasonable, then it's the insurance agents fault.

Jim: That is specifically one of the reasons why I support this bill, because if it is then that the producer has gotten all of the information up front, and the company has provided the necessary compliance procedures that are prescribed by this bill, you have an affirmative defense against a beneficiary that comes in later and says that the product that the agent sold me was not suitable up front. Without this bill, a beneficiary can come to you and say that you sold me an unsuitable product, then by definition, you're having to define what is suitable and not suitable, because you have followed the prescriptions under this bill. It protects the agent from being sued later, in terms of not necessarily gathering all of the information that would help in making a suitable sell. So, the company has prescribed the compliance procedures that can help provide a defense, and also then the insurance agent is protected. That is one of the reasons that the National Association Insurance and Financial Advisors support this.

Rep. Kasper: You switched to the beneficiary side, and I was still talking about you as the annuitant, so it would either be the beneficiary, or the annuitant as you were talking.

Jim: It works both ways.

Rep. Kasper: Then what does the producer obtain from the purchaser to prove down the road that these items were discussed. Is there a form that the department is going to require? How

will we as producers be able to say here's my documentation, and the annuitant signed this form that says this is what we did?

Jim: Under the bill the compliance procedures that the companies have to do, you are contracted, appointed in insurance terms by a company. They will have the compliance measures set up to do business in ND, as many of them are doing already, and they will already have the forms that are specifically related to the NESD standard, and now states do the suitable standard that are prescribed in this bill.

Rep. Kasper: Is there a statute of limitations in this bill, or under another section of the law that if you comply by the law where the insurance agent knows, I don't have to worry that some beneficiary 20 years from now is going to come to me and say if was unsuitable, and that causes action?

Jim: The bottom line is there doesn't need to be a statute of limitations if the necessary compliance procedures have been completed upfront, and that's the need for the suitability piece. It completes the necessary pieces upfront, which the company will do by creating compliance procedures, and the agent will do by gathering the necessary information. There is not need for statute of limitation, because you have already made the compliance upfront.

Rep. Kasper: What you just said is that if this bill were implemented, and all of the procedures were followed, there is no need down the road for the producer ever to worry about suitability cause of action, because all the areas were covered in the prime.

Jim: If all the necessary areas of the law were covered upfront. We may see a gross slip through the cracks of a sale that was unsuitable, but the likelihood of that happening under this bill is very remote if everything is followed to the letter of the law.

Rep. Kasper: If there was a slip through the cracks, and the way the hierarchy works in the insurance industry, you'll have the producer, the general agent, you might even have a

marketing agent, and then you have the insurance company. If they're all supposed to be supervising this transaction, where does the liability start, and where does it end?

Jim: If you notice in the bill, the company has the ability to contract out the provisions of compliance within this bill to let's say a general agency. So, then the liability would fall on the general agent as prescribed by the bill. If they have not done their job in providing the compliance, of course, that's where the liability would fall under the bill.

Rep. Keiser: On page 5 under the penalty section, would you just review from your perspective how A, B, and C work? If it would slip through the cracks, what would happen?

Jim: Let me state first that #2 under the penalty section was added in the Senate, and that was a drafting oversight. If the violation has occurred, the penalty could be reduced or eliminated if the corrective action to resolve the unsuitable sale was basically handled quickly, we could reduce the penalty in the section. Under A, B, and C it is sure to take reasonably appropriate corrective action for consumer harmed by the insurers, or by concerned producers violation of this chapter. In other words, we can go after the insurance company, if they have sold an unsuitable sell to make the customer whole. Fortunately, so far when we have had grossly unsuitable sales, we've been able to go to the company and say clearly this should not have happened. If somebody has not gathered the appropriate information that's in the producing public, and has made a very gross suggestion to buy a product that is unsuitable, we need to have corrective action under somebody's license to be able to go after that producer.

Rep. Keiser: What is reasonably corrective action?

Jim: It could range to a fine of up to \$10,000, depending on the license of either the company, or the producer itself.

Rep. Keiser: So, the corrective action, the penalty on the company, it doesn't help the person who got wronged?

Jim: That's correct. Basically, under A it would allow us to really go after the company to make the consumer whole in this regard,

Rep. Keiser: So, if they sell a 30 year annuity to somebody who is 80 years old, and they look to 85 and the estate then says boy, this was wrong, then they could come to you, and you would go back to the company and say reimburse them.

Jim: Yes, to make them whole.

Rep. Zaiser: That would cover in all cases if the insurer or the party that was harmed would be able to seek some relief, in all cases where there was a faulty product.

Jim: If there was an unsuitable product sold, and the law was not followed, for corrective action it would give us the authority to go back to the company to make them whole.

Rep. Keiser: What would you do if the product is really unsuitable by professional members, but the customer said I don't care I still want it?

Jim: If the customer does not want to give the producer the necessary information to make a reasonable, suitable recommendation on buying a product, they specifically have to sign a waiver, and therefore the producer is off the hook, as well as the company.

Rep. Clark: How often do you get complaints that somebody has bought unsuitable products?

Jim: Not all the time, but we do get them. As the growth of the products is occurring, we are going to get more and more of these types of complaints, and thus the need for the bill.

Rep. Kasper: On the top of page 5, could you just explain what item 5 means?

Jim: The National Association of Securities Dealers has its own set of rules that companies have to abide by when it comes to selling specifically a variable annuities, but the suitability standards would apply for the purchase of all annuities. Interestingly enough, the NASD has

come out with a much stricter rule in the sale of some of these annuity products than this bill actually prescribes, so if you're meeting those standards already you are basically said to have met the standards within state law.

Rep. Kasper: If we're a security license we're selling a variable annuity or a fixed annuity under our broker dealer. We're meeting their suitability guidelines, if we've met the guidelines of this bill?

Jim: If the company that the broker dealer is using is following the NASD guidelines that you have to follow, and of course the company with which the annuity paper is written on is following the NASD guidelines, then they are basically accommodated by the bill.

Linda Johnson Wertz, AARP: Support SB 2155. We think this bill provides some good face line consumer protections, and we hope for your do pass recommendation.

Terry Weis, ND Association of Insurance & Financial Advisors: Support SB 2155. I've been in the business for over 34 years, and there isn't anything the same today as there was 34 years ago. The equity index annuities are a relatively recent discovery of the Insurance Commission, so to speak, and it's tied to the NASD, and is a fixed product, although the securities commissioners have decided that they would like to regulate it. Those of us that are registered reps, we do fall under broker dealers recommendations, and rules that are going to have influence on that EIA. So, this particular bill puts everything on the level playing field to those that aren't registered reps to be playing by the same rules as those of us that are registered reps. These are consumer protection items, and it is a very positive thing. Most all of the company's that I deal with already have a fact finder, and a suitability form designed specifically for this purpose. I see no issue with this bill.

Rep. Keiser: Where do you run into unsuitable sales?

Terry: Mostly it's the older folks, the elderly people with the surrender charges being long-term, and there timeframe isn't long-term necessarily, or when it comes to a registered product, you have the risk tolerance of certain types of investments that you shouldn't be in growth if your 80 years old, in my opinion. That is one thing this bill doesn't allow them to do.

Rep. Keiser: Are the people selling this product properly trained?

Terry: I would surely hope so. There's probably less problems when it comes to fixed annuities then there is in registered products, because the equity indexed annuity does have the guarantees on it. There have been issues like that which have probably caused, and driven this suitability regulation.

Joel Gilbertson, ACLI: Support SB 2155. See written testimony #2.

Hearing closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. SB 2155

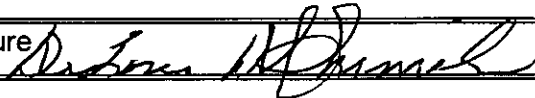
House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: March 13, 2007

Recorder Job Number: 4956

Committee Clerk Signature



Minutes:

Chairman Keiser reopened the hearing on SB 2155. The definition of what is reasonable. Reasonable occurs in several sections on Page 2, Subsection 1, Subsection B, and Line 7 on page 3 they talk about reasonable on all circumstances. They use the term reasonable throughout this bill and in our discussion that was the question. I don't have any amendments for that. We don't have to take action today, but do we want to address that issue. Rep. Kasper, you raised the majority of the concerns relative to that.

Rep. Kasper: I think in the sale of insurance annuities what is reasonable at the point of sale between the insurance agent and the buyer may be deemed to be unreasonable two, five or ten years down the road; either by that buyer or by the heirs or the spouse of the buyer, depending upon the circumstances that have changed. So my concern was how long is reasonable before the fact that you as an insurance agent made your best effort to sell the best product that you thought was suitable where some body comes back years down the road said it was not right; it was not reasonable and how do you define reasonable; is there a time period. We need to get the definition of reasonable. More than likely it would be the heirs that will come back and say you did not treat my parents reasonable.

Rep. Keiser: that instance happened to me. It happened with my best friend's father that my father actually sold an annuity to his good friend. Twenty five years later I am servicing a block business and the son calls me on the phone and says why did my dad buy that annuity twenty five years ago? This was really not what he should have bought. The son is stirring up a mess and did not know what he was talking about.

Decided to hold the bill.

Hearing closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. SB 2155

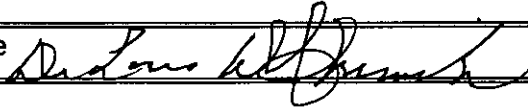
House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: March 14, 2007

Recorder Job Number: 5075

Committee Clerk Signature



Minutes:

Chairman Keiser opened the hearing on SB 2155.

Do Pass Motion Made by Rep. Vigesaa Seconded By Rep. Nancy Johnson

Discussion: None

Rep. Kesier informed Rep. Kasper who just came in that there is a time limit, is that correct.

Rep. Kasper: Yes, six years period. I went through the bill with Lorie Wilkin in the department and she pointed out that it is reasonable at the point of sale. How long the bill last, I am not familiar with that.

Vote: 13 Yes 0 No 1 Absent Carrier: Rep. Kasper

Hearing closed.

Date: 3-14-07
Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2155

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO Pass

Motion Made By Rep. Vigesaa Seconded By Rep. Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe	X	
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe	X	
Rep. Dosch	X		Rep. Zaiser		
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 13 No 0

Absent 1

Floor Assignment Rep. Kasper

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 14, 2007 3:22 p.m.

Module No: HR-48-5354
Carrier: Kasper
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2155, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2155 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2155

SENATE BILL NO. 2155

Presented by: Jim Poolman
Commissioner
North Dakota Insurance Department

Before: Senate Industry, Business and Labor Committee
Senator Jerry Klein, Chairman

Date: January 15, 2007

TESTIMONY

Mr. Chairman and members of the committee:

I appear before you today in support of Senate Bill No. 2155.

The proposed legislation regulates the sale of annuities. It is designed to protect consumers that purchase or exchange annuity policies.^o The intent of the proposed legislation is to ensure that the insurance needs and financial objectives of consumers are appropriately addressed.

Suitability has been discussed over a number of years at the national and state level. The proposed legislation holds both insurers and insurance producers responsible for the suitable sale of annuities (26.1-34.2-03(1)). It gives the Insurance Commissioner authority to take action against companies and/or insurance producers for improper annuity sales (26.1-34.2-04).

The proposed legislation sets forth standards for insurers and insurance producers relating to the sale of annuity products. Some of the standards include:

#1
2155

