

3365

2011-2012 Regular Sessions

I N   S E N A T E

February 17, 2011

---

Introduced by Sen. SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to authorizing the issuance of certain annuity contracts

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Subparagraph (H) of paragraph 1 of subsection (b) of  
2     section 4223 of the insurance law is relettered subparagraph (I) and a  
3     new subparagraph (H) is added to read as follows:

4     (H) GROUP OR INDIVIDUAL ANNUITY CONTRACT OR CERTIFICATE AUTHORIZED BY  
5     SUBSECTION (G) OF SECTION FOUR THOUSAND TWO HUNDRED FORTY OF THIS ARTI-  
6     CLE.

7     S 2. Section 4240 of the insurance law is amended by adding a new  
8     subsection (g) to read as follows:

9     (G) A DOMESTIC OR AUTHORIZED LIFE INSURER MAY ISSUE GROUP OR INDIVID-  
10    UAL ANNUITY CONTRACTS AND CERTIFICATES THAT PROVIDE BENEFITS BASED UPON  
11    THE VALUE OR DECLINE IN VALUE OF ASSETS HELD IN OR RELATING TO AN ALTER-  
12    NATIVE ACCOUNT AT ANY TIME THE CONTRACT OR CERTIFICATE IS OUTSTANDING.  
13    FOR PURPOSES OF THIS ARTICLE, "ALTERNATIVE ACCOUNT" MEANS A TRUST  
14    ACCOUNT, CUSTODIAL ACCOUNT, SECURITIES BROKERAGE ACCOUNT, MANAGED  
15    ACCOUNT, ACTUAL OR SYNTHETIC INVESTMENT PORTFOLIO, OR, IF APPROVED BY  
16    THE SUPERINTENDENT, ANY OTHER ACCOUNT OR INVESTMENT ARRANGEMENT, THE  
17    INVESTMENTS IN OR RELATED TO WHICH SHALL BE AS AUTHORIZED OR APPROVED BY  
18    THE DOMESTIC OR AUTHORIZED LIFE INSURER ISSUING SUCH CONTRACT OR CERTIF-  
19    ICATE. FOR PURPOSES OF THIS SUBSECTION, "ACTUAL OR SYNTHETIC INVESTMENT  
20    PORTFOLIO" SHALL MEAN A PORTFOLIO OF INVESTED ASSETS LEGALLY OR BENEFI-  
21    CIALY OWNED BY THE OWNER OR BENEFICIARY OF SUCH CONTRACT OR CERTIF-  
22    ICATE, OR A NOTIONAL PORTFOLIO OF INVESTED ASSETS THAT NEED NOT BE OWNED  
23    BY THE OWNER OR BENEFICIARY OF SUCH CONTRACT OR CERTIFICATE BUT THE  
24    ADDITION OR REMOVAL OF ASSETS FROM SUCH NOTIONAL PORTFOLIO ARE SUBJECT  
25    TO THE CONTROL OF THE OWNER OR BENEFICIARY OF SUCH CONTRACT OR CERTIF-

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

LBD08908-01-1

1 ICATE. ALTERNATIVE ACCOUNTS SHALL NOT BE DEEMED SEPARATE ACCOUNTS OR  
2 SUBJECT TO REGULATIONS APPLYING TO SEPARATE ACCOUNTS AND THE GROUP AND  
3 INDIVIDUAL ANNUITY CONTRACTS AND CERTIFICATES DESCRIBED IN THIS  
4 SUBSECTION SHALL NOT BE SUBJECT TO REGULATIONS CONCERNING SEPARATE  
5 ACCOUNT PRODUCTS.

6 THE SUPERINTENDENT MAY PROMULGATE REGULATIONS TO:

7 (1) DEFINE TERMS USED IN THIS SUBSECTION THAT ARE NOT OTHERWISE  
8 DEFINED;

9 (2) REQUIRE THAT THE DOMESTIC OR AUTHORIZED LIFE INSURER ESTABLISH  
10 ADEQUATE SYSTEMS OF CONTROL AND REPORTING TO ENSURE THAT THE ASSETS HELD  
11 IN OR RELATED TO AN ALTERNATIVE ACCOUNT ARE AUTHORIZED OR APPROVED BY  
12 SUCH INSURER, AND THAT A SUMMARY OF SUCH SYSTEMS BE FILED WITH THE  
13 SUPERINTENDENT, AND UPON FILING SHALL BE DEEMED APPROVED UNLESS WITHIN  
14 THIRTY CALENDAR DAYS AFTER FILING THE SUPERINTENDENT DISAPPROVES SUCH  
15 SUMMARY AND PROVIDES TO THE FILING INSURER A DETAILED EXPLANATION OF THE  
16 BASIS FOR SUCH DISAPPROVAL; AND

17 (3) THE PROVISIONS OF THIS SUBSECTION SHALL NOT BE DEEMED TO AUTHORIZE  
18 THE SUPERINTENDENT TO PROMULGATE ANY RULE OR REGULATION, CIRCULAR LETTER  
19 OR DIRECTIVE, THAT IN ANY WAY EXPANDS THE SUPERINTENDENT'S AUTHORITY TO  
20 (I) APPROVE OR REGULATE THE INSURER'S ENTIRE INVESTMENT PORTFOLIO OR  
21 INVESTMENT STRATEGY OR THE ASSETS HELD IN OR RELATED TO THE ALTERNATIVE  
22 ACCOUNT, OR (II) IMPOSE STANDARDS ON CORPORATE GOVERNANCE THAT ARE  
23 EITHER STRICTER OR CONTRARY TO THE PROVISIONS CONTAINED IN THIS ARTICLE  
24 OR THE BUSINESS CORPORATION LAW.

25 S 3. Clause (V) of item (ii) of subparagraph (J) of paragraph 2 of  
26 subsection (a) of section 6901 of the insurance law, as added by chapter  
27 605 of the laws of 2004, is amended to read as follows:

28 (V) the financial guaranty insurance policies provide that if, prior  
29 to payment by the insurer under the financial guaranty insurance poli-  
30 cies, the guaranty fund has paid a claim under such contracts for an  
31 amount that, when added to the amount payable under the financial guar-  
32 anty insurance policies, would exceed the amount owed under such  
33 contracts, then the financial guaranty insurer shall pay the portion of  
34 the amount payable in excess of the contract amounts to the guaranty  
35 fund instead of to the beneficiary under such contracts; [or]

36 S 4. Subparagraph (K) of paragraph 2 of subsection (a) of section 6901  
37 of the insurance law, as relettered by chapter 605 of the laws of 2004,  
38 is relettered subparagraph (L) and a new subparagraph (K) is added to  
39 read as follows:

40 (K) GROUP OR INDIVIDUAL ANNUITY CONTRACTS OR CERTIFICATES AUTHORIZED  
41 BY SUBSECTION (G) OF SECTION FOUR THOUSAND TWO HUNDRED FORTY OF THIS  
42 CHAPTER; OR

43 S 5. This act shall take effect immediately.