

BILL ANALYSIS

Senate Research Center
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H.B. 2765
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

It is a common practice for insurance providers to offer to their customers numerous types of separate accounts that are sometimes referred to as sub-accounts. Some sub-accounts may include "exempt" sub-accounts that are sometimes referred to as "private placements." These exempt sub-accounts may have restricted the marketability of assets in the underlying portfolio.

Private placements are exempt from the Securities and Exchange Commission (SEC) registration. Only a "qualified investor" as defined in federal law can purchase or select private placements. Qualified investor is determined by net worth and annual income. Most policyholders that select these accounts have substantial amounts that are being placed into the exempt accounts. The selected exempt account may involve several million dollars worth of funds placed through the variable policy.

Exempt sub-accounts typically have liquidity restrictions that are fully disclosed to policyholders before they are selected. The full liquidity date for an exempt sub-account may be on an annual basis, which would be longer than certain statutory and regulatory provisions requiring payment of cash values or death benefits.

Insurers have filed policy forms for approval in Texas which provide that the liquidity reserve value will be paid no later than 30 days after the completion of the annual audit of the exempt sub-account. This may be longer than time period in Texas law. The Texas Department of Insurance will not approve policy forms that allow for delays in payment that would permit the use of private placements in variable contracts without a change in Texas law. As a result, insurers cannot offer exempt sub-accounts in variable policies in Texas.

Consumers desiring to purchase a variable life or annuity product with an exempt sub-account may be able to purchase a product through trusts in other states.

H.B. 2765 authorizes the use and sale of private placement contracts.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to any state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter C, Chapter 1152, Insurance Code, by adding Section 1152.110, as follows:

Sec. 1152.110. PRIVATE PLACEMENT CONTRACTS. (a) Defines "private placement contract."

(b) Authorizes a private placement contract (contract) to provide that the insurer issuing the contract may defer payments of advances for loans, cash surrender values, or death benefits until the separate accounts assets, or any portion of the separate account assets, comprising rights to loans, cash surrender values, or death benefits can be converted to cash under any applicable terms.

(c) Provides that Section 1103.104 (Interest on Proceeds) does not apply to the computation of the interest on the proceeds of a private placement contract.

SECTION 2. Amends Section 1101.011, Insurance Code, as follows:

Sec. 1101.011. TIME FOR SETTLEMENT OF CLAIM. (a) Includes an exception provided by Subsection (b) to the requirement that a life insurance policy provide that settlement under the policy after the death of the insured will be made in a certain timeframe.

(b) Authorizes a contract issued under Section 1152.110 to provide that settlement of that portion of the contract attributable to separate account assets is subject to the liquidity of those assets, and that the portion of the contract is required to be settled by the insurer when the separate account assets are converted to cash under any applicable terms, which may be a period longer than the two-month period described by Subsection (a).

SECTION 3. Amends Section 1103.102, Insurance Code, by amending Subsection (a) and adding Subsection (c), to make conforming changes.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2007.