BILL ANALYSIS

H.B. 2765
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Insurance
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Variable annuity contracts and variable life policies allow for differences in reserves based on investment performance in separate accounts selected by the individual purchaser. The insured takes the investment performance risk of the account.

It is a common practice for life insurers providing variable products 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 marketability of assets in the underlying portfolio.

Private placements are exempt from 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 which 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.

Some states, such as South Dakota, have placed exceptions in their Insurance Code to specifically recognize that private placements may need a longer period of time in order to determine the account value to pay cash surrender values or death benefits under the policy.

This Legislation is needed to allow Texas insurers and agents to sell these products. Allowing them to be sold in Texas will also result in premium taxes that may be lost to other states without this legislation

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 2765 relates to certain variable insurance contracts. The bill in SECTION 1 seeks to amend Subchapter C, Chapter 1152 of the Texas Insurance Code by adding Section 1152.110 which discusses private placement contracts. It states that, in this section, "private placement contract" means a variable annuity contract or variable life insurance policy that is issued exclusively to an accredited investor or qualified purchaser, or the regulations promulgated under either of those acts and offered for sale and sold in a transaction that is exempt from registration. Subsection (b) states that a private placement contract may provide that the insurer issuing the contract may defer payments or advances for loans, cash surrender values, or death benefits until the separate account 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. However, Section 1103.104 does not apply to the computation of the interest on the proceeds of private placement contract.

SECTION 2 of H.B. 2765 goes on to amend Section 1101.011 of the Texas Insurance Code. The substitute adds "Except as provided by Subsection (b), a" to Subsection (a) Section 1101.0011 of the Texas Insurance Code. Also, H.B. 2765 adds Subsection (b) to the Texas Insurance Code which states that a private placement contract issued under Section 1152.110 may provide that settlement of that portion of the contract attributable to separate account assets is subject to the liquidity of those assets; and the portion of the contract described by Subdivision (1) must 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).

Next, SECTION 3 amends Section 1103.102 of the Texas Insurance Code by adding "or c" to Subsection (a) and by adding Subsection (c) to Section 1103.102 which states that a private placement contract issued under Section 1152.110 may provide that settlement of that portion of the contract attributable to separate account assets is subject to the liquidity of those assets and the portion of the contract described by Subdivision (1) must 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 Section 1101.011(a).

EFFECTIVE DATE

September 1, 2007.