

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS COMMITTEE

The meeting was called to order by Chairman Ray Cox at 3:30 p.m. on February 18, 2004 in Room 527-S of the Capitol.

All members were present except:

Representative Vaughn Flora- excused

Committee staff present:

Bruce Kinzie, Revisor's Office
Bill Wolff Legislative Research Department
Maggie Breen, Secretary

Conferees appearing before the committee:

Chris Biggs, Securities Commissioner
Rick Fleming, Security Commissioner's Office
Amy Lee, Security Benefit Group
Scott Colby, Ks. Assn. of Insurance and Financial Advisors
Larry MacGill, Kansas Association of Insurance Agents
James Hall, The American Council of Life Insurers

Others attending:

See Attached List.

Chairman Cox opened the hearing on **HB 2613 - A security includes a variable annuity.**

Proponents:

Chris Biggs, Securities Commissioner, said the issue is whether or not we're going to treat variable annuities as a security; they are a hybrid product which has both an insurance and an investment component. They are sold as investments and many times they are not appropriate for the clients they are sold to. As with any security, they have to be suitable for the customer. Even though they don't have jurisdiction over them and despite all the different kinds of securities they regulate, about a third of the complaints he receives in his office involve allegations of abuse in variable annuity sales. All they can do now is refer them to the Insurance Commissioner's office. And unlike the Insurance Department, his office doesn't rely on the support of the industry they regulate. He emphasized that they want to regulate the sales and not the product. He requested the committee move **HB 2613** forward. (**Attachment 1**)

Rick Fleming, Security Commissioner's Office. In the simplest of terms a variable annuity is basically a mutual fund in an insurance wrapper. It's subject to market risk and is considered to be a security at the federal level. Even though the bill would define a variable annuity as a security, the product would be considered a "federal covered security" that is not required to be registered at the state level. The bill doesn't give the Securities Commissioner the authority to review the terms of the variable annuity contracts or interfere with an insurance company's ability to develop new products. It merely gives the Security Commissioner the authority to take action against the seller when the product is sold in an unethical manner. The bill is an effort to strike an appropriate balance and to keep securities regulation in the Securities Department and to subject the people who sell variable annuities to the same type of ethical rules that they have to live by if they sell a mutual fund. (**Attachment 2**)

Kathy Diehl, Assistant Director of Compliance, Security Commissioner's Office - Written Only (**Attachment 3**)

Opponents:

Amy Lee, Vice President and Associate General Counsel of Security Benefit Life Insurance Company, said that what she thinks is really needed is communication between the Insurance and Securities Departments. There is broad authority for the Insurance Commissioner to investigate unfair or deceptive acts on the part of insurance companies and their agents. She also said that she thought it would be relative simple to make the series 63 a requirement for the variable insurance license. She said she thought it would be an easy regulatory fix. She said that this bill would be an add on regulator. Do we really want two

CONTINUATION SHEET

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state regulators, or one? In light of the Insurance Commissioner's regulatory authority, they do not see compelling reasons for an additional regulator of variable insurance products and believe that shared regulations of the sale of such products would present problems. **(Attachment 4)**

Scott Colby, Kansas Association of Insurance and Financial Advisors, said he was a sales person who is going to be regulated by these laws and licenses and who is going to have to pay these fees. He now has to have a license in every state where he sells variable annuities and is currently paying \$1,000 annually for these licenses. This bill adds on an additional \$50. His organization believes that additional regulation of these products by state securities commissioners is unnecessary. Variable Life Insurance and Variable Contracts are already among the most regulated products in the financial marketplace with numerous layers of both state and federal regulation. **(Attachment 5)**

Larry MacGill, Kansas Association of Insurance Agents, said his association is opposed to this bill and has been opposed to its predecessors. **(No Written Testimony)**

James Hall, The American Council of Life Insurers (ACLI), handed out copies of testimony, a chart of states statutory rules affecting this area of the law, a resolution from the American Legislative Exchange Council, a resolution from the National Conference of Insurance Legislators, and chart that shows the current suitability regulations. ACLI strongly opposes **HB 2613** because it redefines security and takes Kansas from the majority to the minority of states and also because it would remove the Insurance Commissioner's jurisdiction over insurance agents selling variable annuities. That's a new twist to a long standing debate and he feels the final paragraph on page 6 is quite out of bounds. **(Attachments 6 thru 10)**

Kevin Davis, American Family Insurance - Written Only **(Attachment 11)**

Kathy Damron, Prudential Insurance - Written Only **(Attachment 12)**

Chairman Cox closed the hearing on **HB 2613** and said the committee would work the bill.

Representative Campbell made a motion to move **HB 2613** with no recommendation. Representative Lane seconded the motion. The motion carried.

Meeting adjourned at 4:55 p.m.

Date of the next meeting is undetermined at this time.