

2009 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2380

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2380

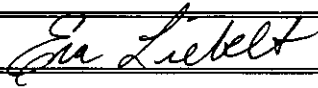
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 9, 2009

Recorder Job Number: 8963

Committee Clerk Signature



Minutes:

Chairman Klein: We will bring the IBL committee to order.

Joel Gilbertson, American Council of Life Insurance: Written testimony in support of the bill.

Senator Potter: Are index annuities already regulated by the securities commissioner?

Joel: Security Commissioner can respond to that. The question is whether they are securities or if they are insurance. And the SCC has said, effective January 1, 2011, they will be determined to be securities.

Michael Fix, Director of the Life and Health Division for the Insurance Department: We support the bill and also the amendments that Joel has just offered to the committee. Everything I would say, Joel has said in terms of why the change is necessary.

Chairman Klein: You still have oversight, to the degree you have always had?

Mike: That's right as Joel has mentioned the annuities through the law exempted variable annuities and now since equity index annuities are under the jurisdiction of the securities department. It also exempts them as well, from that suitability. It is really just a technical correction.

Senator Potter: Can you take me back through last session. Why did we do this in the first place why did put the Insurance Commissioner in to the regulations?

Mike: A couple sessions ago there was discussion about having protection for seniors that buy annuities. So there was something called a senior protection and annuities act. North Dakota didn't adopt that and no one had proposed it. The question was if it's good for seniors why it is not good for everyone. It held both the agents and the companies responsible. It protected the agents in the sense if the agent did all of their things correctly and potential purchaser didn't follow their recommendations the agent was not responsible. It didn't need to include variable annuities because that is already covered.

Discussion and questions followed.

Karen Tyler, North Dakota Securities Commissioner: Annuities have been gray area for about ten years. This past year they concluded there analyzes and decided they were securities. The rule does not go into effect until July 2011. As far as the SCC track record in holding up when sued over their rule making, the last three times the SCC has lost. The need for the suitability rule is in question. Suitability is really a minimum standard. Suitability has existed in security structure since 1934 act 22. There is also a higher standard if you are an investment advisor. Over time it was necessary for them to adjust their regulatory structure. Suitability standards were adopted in the standard as well. There was a debate who should be regulating variable annuities. At the federal level they are securities, at the state level they are securities. We're concerned when see proposal such as what you have in front of you and the suitability rule that was passed last session. We don't want to see are authority or ability to protect investors interrupted. I would like you to consider another amendment to this bill. This is a safe harbor clause for the securities regulatory authority that applies to variable equities if this rule should take effect.

Senator Potter: These are securities they've always been securities and they are under your authority. The insurance commissioner felt he needed to make sure agents operating in North

Dakota at least met the suitability standards in these. Which they already had to meet, under yours but only investment advisors have to meet. What are agents doing selling some of these products?

Karen: Their license allows them to sell these products. To sell a variable annuity you must have at a minimum a series six. It is a license that allows you to sell mutual funds and variable annuities. On the insurance I believe it's a variable life and annuity insurance line that you would have to have as well. Investment advisors are allowed to charge you a fee for their advice. They don't collect commissions for their transactions; they charge you a flat fee for their advice. They have to put your interests ahead of their own, their held to that duty and a higher standard.

Senator Potter: The agents that are selling these products are they regulated by your agency?

Karen: That's correct. On the sale side these must be sold by a broker dealer and they must be sold to an agent with a securities license. If there are abuses we can lift their license.

Senator Nodland: Will this change or expand agents?

Karen: I don't anticipate that it would have an effect of expanding. It may have the opposite effect. What the SCC has determined that equity index annuities are securities. Will mean to sell the product you will have to have a series six or seven license. Will that then deter some of the insurance agents out there who are selling this product from taking that next step and getting licensed for security products? So it might mean there are fewer people out there who are able to sell the product.

Senator Nodland: Have you had issues this, with agents not really understanding what they are selling?

Karen: We have very serious concerns about equity index annuities. There extremely complex products in the way that their returns are calculated and the fact that the way they are

calculated can change on an annual basis. We find in the complaints we receive often times the complaint is that the agent doesn't understand the product either. There is a very high commission attached to them, so there was an incentive to sell the product.

Discussion and questions continued.

Senator Potter: Have you seen the amendment?

Karen: I haven't seen the final form but we had suggested that they expand what had happened is just the word registered. I didn't think it explained what the term registered meant.

Chairman Klein: We're going to close the hearing on 2380.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2380

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 11, 2009

Recorder Job Number: 9166

Committee Clerk Signature

Eric Liebelt

Minutes:

Chairman Klein: Committee back to order. Committee turn your books to 2380. I handed out some amendments. As you recall the amendments were more of a clarification in reference to the one on page one line eight. The second one is from the security commissioner, who wanted to make sure it didn't infringe on her duties as the securities regulator.

Senator Potter: Made a motion to move the amendments.

Senator Behm: Seconded the motion.

Row Call Vote: Yes:6 No: 0 Absent:1

Senator Potter: Moved to pass as amended.

Senator Nodland: Seconded the motion.

Row Call Vote: Yes: 6 No: 0 Absent: 1

Floor Assignment: Senator Potter

PROPOSED AMENDMENTS TO SENATE BILL NO. 2380

Page 1, line 1, after "to" insert "create and enact a new subsection to section 26.1-34.2-03; and to"

Page 1, line 8, remove "registered" and after "annuities" insert "registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.] or rules or regulations adopted under that Act"

Page 1, after line 10, insert:

"SECTION 2. A new subsection to section 26.1-34.2-03 of the North Dakota Century Code is created and enacted as follows:

"This chapter does not preempt, supersede, or limit any provision of any state securities law or any rule, order, or notice issued thereunder."

Renumber accordingly

Date: Feb 11, 2009

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2380

Senate

Committee

Industry, Business and Labor

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Pass Do Not Pass Amended

Motion Made By Senator Potter Seconded By Senator Behm

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓		Senator Arthur H. Behm	✓	
Senator Terry Wanzek - V.Chair			Senator Robert M. Horne	✓	
Senator John M. Andrist	✓		Senator Tracy Potter	✓	
Senator George Nodland	✓				

Total (Yes) 6 No 0

Absent 1

Floor Assignment _____

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

Date: Feb 11, 2009

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2380

Senate

Committee

Industry, Business and Labor

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken **Pass** **Do Not Pass** **Amended**

Motion Made By Senator Potter Seconded By Senator Nodland

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓		Senator Arthur H. Behm	✓	
Senator Terry Wanzek - V.Chair			Senator Robert M. Horne	✓	
Senator John M. Andrist	✓		Senator Tracy Potter	✓	
Senator George Nodland	✓				

Total (Yes) 6 No 0

Absent 1

Floor Assignment Senator Potter

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

REPORT OF STANDING COMMITTEE

SB 2380: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2380 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact a new subsection to section 26.1-34.2-03; and to"

Page 1, line 8, remove "registered" and after "annuities" insert "registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.] or rules or regulations adopted under that act"

Page 1, after line 10, insert:

"SECTION 2. A new subsection to section 26.1-34.2-03 of the North Dakota Century Code is created and enacted as follows:

This chapter does not preempt, supersede, or limit any provision of any securities law of this state or any rule, order, or notice issued thereunder."

Renumber accordingly

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2380

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2380

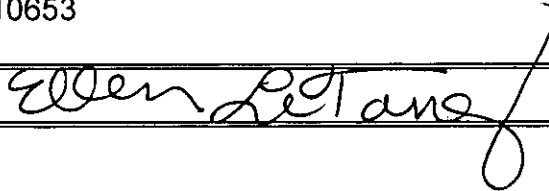
House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: March 11, 2009

Recorder Job Number: 10653

Committee Clerk Signature



Chairman Keiser: Opened the hearing on SB 2380 relating to registered annuities.

Bruce Ferguson~American Council of Life Insurers (ACLI). See testimony attachment.

Vice Chairman Kasper: On line seven of the bill, we are crossing of national association of securities and inserting financial industry regulatory authority. Would you clarify that?

Ferguson: That's more of a technical change. The commission changed its name.

Chairman Keiser: Anyone here to testify in opposition SB 2380, neutral? Closes the hearing on SB 2380, what are the wishes of the committee?

Representative Nottestad: Moves a Do Pass.

Representative Thorpe: Second.

Chairman Keiser: Further discussion?

Voting roll call was taken on SB 2380 for a Do Pass with 12 ayes, 0 nays, 1 absent and

Representative Sukut is the carrier.

Date: Mar 11 - 2009

Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2380

House House, Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass As Amended

Motion Made By Nottestad Seconded By Thorpe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	7		Representative Amerman	7	
Vice Chairman Kasper	7		Representative Boe		
Representative Clark	7		Representative Gruchalla	7	
Representative N Johnson	7		Representative Schneider	7	
Representative Nottestad	7		Representative Thorpe	7	
Representative Ruby	7				
Representative Sukut	7				
Representative Vigesaa	7				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Sukut

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

REPORT OF STANDING COMMITTEE

SB 2380, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2380 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

SB 2380

Suitability Law Update – SB 2380
Testimony in Support of Passage by Joel Gilbertson
On behalf of the American Council of Life Insurers (ACLI)

An amendment is needed to update the suitability law enacted in 2007 as a result of a recent Rule issued by the U.S. Securities and Exchange Commission (SEC) to require that a certain type of annuity – fixed index annuities – be registered with the SEC as securities. Prior to this decision by the SEC, fixed indexed annuities have been treated by insurers and state departments of insurance as insurance products, like other fixed annuities.

Under the current suitability law in North Dakota, variable annuity sales fall under a “safe harbor.” Specifically, the law provides that “Compliance with the [FINRA] conduct rules pertaining to suitability satisfies the requirements under this section for the recommendation of variable annuities.” This language is part of the suitability law passed in 2007 in recognition of the rigorous suitability process that has existed for many years for sales of registered securities products through broker dealers. That is the **only** distribution channel available for the sale of variable annuities and will now become the only distribution channel available for fixed index annuities as a result of the new SEC Rule.

In order to ensure that all products subject the FINRA Conduct Rules pertaining to suitability are treated the same, the existing suitability law needs to be updated. The amendment would simply provide that the so-called safe harbor of variable annuities will include other annuities (like indexed annuities) required to be registered with the SEC pursuant to the Securities Act of 1933 [15 U.S.C. 77a et seq.] or rules or regulations adopted under that Act. All annuities required to be registered with the SEC under the 1933 Act must be sold only through a broker dealer, and the broker dealer has existing responsibility for supervising the sale for suitability.

The other purpose of this bill is to update the correct and current name of the National Association of Securities Dealers. In 2007, NASD consolidated with the member regulation, enforcement and arbitration functions of the New York Stock Exchange to form the Financial Institution Regulatory Authority (FINRA). That change is reflected in SB 2380.

Q: What is the change being requested?

A: An amendment to the suitability law that will allow products that must be supervised for suitability by a broker dealer to be treated the same. Currently variable annuities are treated in this manner, and a recent decision by the SEC will require fixed indexed annuities to be registered with the SEC and only sold through broker dealers who will be required to supervise the sale of those products for suitability.

Q: Why is the change being requested?

A: A recent decision by the SEC will require insurers to register with the SEC fixed index annuities and will require that those products only be sold through a broker dealer. In order to treat all annuity products that a broker dealer is required to supervise for suitability the same, the change to the suitability law is required.

Q: *Will the insurance department continue to have responsibility?*

A: Absolutely. The current law provides that although a sale supervised by a broker dealer satisfies the requirements under the law, it also provides that "nothing in this subsection limits the insurance commissioner's ability to enforce the provisions of this chapter." This is not being changed by the proposed amendment.

Q: *How will the proposed change impact consumers?*

A: It will not change the protections afforded to consumers. A rigorous suitability system has existed for years for sales through broker dealers. It will allow a consumer to be treated the same way as they are for variable annuity purchases.

Proposed Amendments to SB 2380
Submitted by the American Council of Life Insurers (ACLI)
February 9, 2009

Page 1, line 8, remove "registered", and after "annuities" insert "registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.] or rules or regulations adopted under that Act."

PROPOSED AMENDMENTS TO SENATE BILL NO. 2380

Page 1, line 1, after "to" insert "create and enact subsection 6 to section 26.1-34.2-03, and to"

Page 1, after line10, insert:

"SECTION 2. Subsection 6 of section 26.1-34.2-03 of the North Dakota Century Code is created and enacted as follows:

6. This chapter does not preempt, supersede, or limit any provision of any state securities law or any rule, order, or notice issued thereunder."

Suitability Law Update – SB 2380
Testimony in Support of Passage by Bruce Ferguson
On behalf of the American Council of Life Insurers (ACLI)

An amendment is needed to update the suitability law enacted in 2007 as a result of a recent Rule issued by the U.S. Securities and Exchange Commission (SEC) to require that a certain type of annuity – fixed index annuities – be registered with the SEC as securities. Prior to this decision by the SEC, fixed indexed annuities have been treated by insurers and state departments of insurance as insurance products, like other fixed annuities.

Under the current suitability law in North Dakota, variable annuity sales fall under a “safe harbor.” Specifically, the law provides that “Compliance with the [FINRA] conduct rules pertaining to suitability satisfies the requirements under this section for the recommendation of variable annuities.” This language is part of the suitability law passed in 2007 in recognition of the rigorous suitability process that has existed for many years for sales of registered securities products through broker dealers. That is the only distribution channel available for the sale of variable annuities and will now become the only distribution channel available for fixed index annuities as a result of the new SEC Rule.

In order to ensure that all products subject the FINRA Conduct Rules pertaining to suitability are treated the same, the existing suitability law needs to be updated. The amendment would simply provide that the so-called safe harbor of variable annuities will include other annuities (like indexed annuities) required to be registered with the SEC pursuant to the Securities Act of 1933 [15 U.S.C. 77a et seq.] or rules or regulations adopted under that Act . All annuities required to be registered with the SEC under the 1933 Act must be sold only through a broker dealer, and the broker dealer has existing responsibility for supervising the sale for suitability.

The other purpose of this bill is to update the correct and current name of the National Association of Securities Dealers. In 2007, NASD consolidated with the member regulation, enforcement and arbitration functions of the New York Stock Exchange to form the Financial Institution Regulatory Authority (FINRA). That change is reflected in SB 2380.

Q: What is the change being requested?

A: An amendment to the suitability law that will allow products that must be supervised for suitability by a broker dealer to be treated the same. Currently variable annuities are treated in this manner, and a recent decision by the SEC will require fixed indexed annuities to be registered with the SEC and only sold through broker dealers who will be required to supervise the sale of those products for suitability.

Q: Why is the change being requested?

A: A recent decision by the SEC will require insurers to register with the SEC fixed index annuities and will require that those products only be sold through a broker dealer. In order to treat all annuity products that a broker dealer is required to supervise for suitability the same, the change to the suitability law is required.

Q: *Will the insurance department continue to have responsibility?*

A: Absolutely. The current law provides that although a sale supervised by a broker dealer satisfies the requirements under the law, it also provides that "nothing in this subsection limits the insurance commissioner's ability to enforce the provisions of this chapter." This is not being changed by the proposed amendment.

Q: *How will the proposed change impact consumers?*

A: It will not change the protections afforded to consumers. A rigorous suitability system has existed for years for sales through broker dealers. It will allow a consumer to be treated the same way as they are for variable annuity purchases.