



**House
Legislative
Analysis
Section**

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MODIFIED GUARANTEED ANNUITY

**Senate Bill 729 as passed by the Senate
First Analysis (11-9-93)**

**Sponsor: Sen. Paul Wartner
Senate Committee: Commerce
House Committee: Insurance**

THE APPARENT PROBLEM:

Public Act 85 of 1991 placed a new chapter in the Insurance Code for the regulation of modified guaranteed annuities. These are annuities that guarantee a fixed rate of earnings on investments unless there is an early withdrawal, in which case the amount returned to the customer is based on the market value of the assets underlying the annuity contract. Such assets are required to be in "a separate account" during the period in which the contract holder can surrender the contract. This means, industry spokespersons say, these modified annuities are a blend of two traditional kinds, fixed annuities and variable annuities, and require separate regulation. The returns are fixed if the annuity is held to maturity, variable in cases of an early withdrawal.

The new chapter, Chapter 41, was based on a model act developed by the National Association of Insurance Commissioners. However, in one section, a key phrase from the NAIC model was left out of the section of the statute dealing with nonforfeiture values, that is, with the amount a purchaser gets back if he or she stops making payments or surrenders the contract early. That section specifies the provisions that any contract must contain regarding nonforfeiture, and says: "The portion of the assets of any separate account equal to the reserves and other contract liabilities with respect to such account are not chargeable with liabilities arising out of any other business the insurer conducts." An introductory phrase, "to the extent set out in the contract," was omitted from the statute. The result, say insurance industry representatives, is that without that phrase, the federal Securities and Exchange Commission regulates modified guaranteed annuities as a variable annuity product and requires companies selling them to register under the federal Investment Company Act of 1940. Such registration involves "onerous compliance requirements," according to the industry. If the statute contained the phrase, they say, then a company could decide whether to offer the annuity as an investment

company or to offer it as part of its general insurance product line, with the assets underlying the annuity considered part of the general asset mix of the insurance company, and not be subject to SEC investment company regulations.

THE CONTENT OF THE BILL:

The bill would amend Chapter 41 of the Insurance Code, which deals with modified guaranteed annuities, to specify that a contract for such an annuity contain a provision that "to the extent set out in the contract, the portion of the assets of any separate account that equal the reserves and other contract liabilities of the account shall not be chargeable with liabilities arising out of any other business of the insurer." The underlined portion is new language; the remainder is currently in the chapter as a freestanding provision rather than as a provision that must be contained in an annuity contract.

MCL 500.4113

FISCAL IMPLICATIONS:

The Senate Fiscal Agency has indicated that the bill would have no fiscal impact on the state. (9-29-93)

ARGUMENTS:

For:

The bill would permit a life insurance company to sell modified guaranteed annuities as part of its regular life insurance business and be regulated as a life insurer and not as an investment company by the federal Securities and Exchange Commission under investment company laws. The amendment makes state statute consistent with the provisions of the model act on this subject issued by the National Association of Insurance Companies and does not change the intent of the existing statute, which is based on the NAIC model.

Senate Bill 729 (11-8-93)

POSITIONS:

A representative of Manufacturers Life Insurance of Michigan testified in support of the bill. (11-4-93)

The Life Association of Michigan supports the bill. (11-8-93)

The Insurance Bureau has indicated support for the bill. (11-4-93)