

Bill as
Introduced

HB 400 - AS INTRODUCED

2013 SESSION

13-0340
01/05

HOUSE BILL

400

AN ACT

relative to funding agreements issued by life insurance companies.

SPONSORS:

Rep. Butler, Carr 7; Rep. John Hunt, Ches 11; Rep. Flanders, Belk 3

COMMITTEE:

Commerce and Consumer Affairs

ANALYSIS

This bill authorizes life insurance companies to issue funding agreements.

This bill was requested by the insurance department.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT relative to funding agreements issued by life insurance companies.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Chapter; Funding Agreements. Amend RSA by inserting after chapter 408-D the
2 following new chapter:

3 CHAPTER 408-E

4 FUNDING AGREEMENTS

5 408-E:1 Purpose and Scope. This chapter specifically permits life insurance companies to issue
6 funding agreements as a type of insurance business permitted under authority of RSA 401:1, III and
7 establishes standards for the regulation of funding agreements.

8 408-E:2 Definitions. In this chapter:

9 I. "Funding agreement" means an agreement issued by a life insurance company, not based
10 on mortality or morbidity, providing for the accumulation of funds by the insurer for the purpose of
11 making one or more payments to the holder, where the initial premium paid is \$1,000,000 or more.
12 Except as provided in this chapter, a "funding agreement" does not constitute life insurance, an
13 annuity, or other insurance authorized by the provisions of RSA 401:1, III, and does not constitute a
14 security, as defined by RSA 421-B:2, XX.

15 II. "Holder" means a person described in RSA 408-E:4 to whom the life insurance company
16 may issue a funding agreement.

17 III. "Life insurance company" means a life insurance company authorized to do business
18 pursuant to RSA 401:1, III.

19 IV. "Optional modes of settlement" means the manner in which the funding agreement is
20 structured to make payments to the holder.

21 408-E:3 Authorization and Regulation of Funding Agreements.

22 I. Any licensed life insurance company may deliver or issue for delivery one or more funding
23 agreements.

24 II. For the purposes of RSA 402-C:44, funding agreements shall be treated as insurance
25 contracts, and holders of funding agreements shall be entitled to the same priority of distribution as
26 policyholders.

27 III. Except as provided in this chapter, funding agreements shall not be subject to consumer
28 protections that apply to annuity contracts including free-look requirements that permit consumers
29 to void an issued contract and receive a return of premium by returning the contract within a
30 specified time frame.

1 IV. Funding agreements shall be filed for approval by the commissioner consistent with this
2 chapter.

3 408-E:4 Permissible Holders of Funding Agreements. Funding agreements may be issued to:

4 I. Persons authorized by a state or foreign country to engage in an insurance business or to
5 subsidiaries of such persons.

6 II. Entities other than persons authorized to engage in an insurance business and to
7 individuals for the purpose of funding:

8 (a) Benefits under any employee benefit plan as defined in the federal Employee
9 Retirement Income Security Act of 1974, 29 U.S.C. section 1001 et seq, maintained in the
10 United States or in a foreign country;

11 (b) Activities of any organization exempt from taxation under section 501(c) of the
12 Internal Revenue Code or of any similar organization in any foreign country;

13 (c) Any program of the government of the United States, the government of any state,
14 foreign country or political subdivision thereof, or any agency or instrumentality thereof;

15 (d) Any agreement providing for one or more payments in satisfaction of a claim;

16 (e) Any program of an institution which has assets in excess of \$25,000,000; or

17 (f) Any program of an institution for the purposes of providing collateral security for
18 securities registered with the federal Securities and Exchange Commission.

19 408-E:5 Amounts Guaranteed or Credited Under Funding Agreements. An amount shall not be
20 guaranteed or credited under a funding agreement except upon:

21 I. Reasonable assumptions as to investment income and expenses; and

22 II. A basis equitable to all holders of funding agreements of a given class.

23 408-E:6 Allocation to Separate Accounts. Amounts paid to the insurer, and proceeds applied
24 under optional modes of settlement under the funding agreement may be allocated by the insurer to
25 one or more separate accounts pursuant to the provisions in RSA 408 addressing separate accounts.

26 408-E:7 Reserve Requirements. In establishing minimum reserve requirements for funding
27 agreements the commissioner may use any relevant actuarial guidelines, regulations,
28 interpretations or papers as well as standards set forth in the Valuation Manual of the National
29 Association of Insurance Commissioners for deposit-type contracts.

30 408-E:8 Rules. The commissioner may adopt rules, pursuant to RSA 541-A, relative to:

31 I. The standards to be followed in the approval of forms of funding agreements;

32 II. The reserves to be maintained by insurers issuing funding agreements;

33 III. The accounting and reporting of funds credited under funding agreements; and

34 IV. The disclosure of information to be given to holders or third parties that purchase
35 funding agreements.

36 2 Life and Health Insurance Guaranty Association of 1996; Coverage and Limitations. Amend
37 RSA 408-B:5, II(a) to read as follows:

HB 400 - AS INTRODUCED

- Page 3 -

1 (a) This chapter shall provide coverage to the persons specified in paragraph I for direct,
2 non-group life, health, annuity, and supplemental policies or contracts, for certificates under direct
3 group policies and contracts, and for unallocated annuity contracts issued by member insurers,
4 except as limited by this chapter. Annuity contracts and certificates under group annuity contracts
5 include, but are not limited to, guaranteed investment contracts, deposit administration contracts,
6 ~~unallocated funding agreements, allocated funding agreements,~~ structured settlement agreements,
7 lottery contracts, and any immediate or deferred annuity contracts.

8 3 Effective Date. This act shall take effect 60 days after its passage.

Amendments

Rep. K. Williams, Hills. 4
February 26, 2013
2013-0574h
01/09

Amendment to HB 400

1 Amend RSA 408-E:2, I as inserted by section 1 of the bill by replacing it with the following:

2

3 I. "Funding agreement" means an agreement issued by a life insurance company, not based
4 on mortality or morbidity, providing for the accumulation of funds by the insurer for the purpose of
5 making one or more payments to the holder, where the initial premium paid is \$1,000,000 or more.
6 Except as provided in this chapter, a "funding agreement" does not constitute life insurance or an
7 annuity and does not constitute a security, as defined by RSA 421-B:2, XX.

8

9 Amend the bill by deleting section 2 and renumbering the original section 3 to read as 2.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON HB 400

BILL TITLE: relative to funding agreements issued by life insurance companies.

DATE: 2-12-13

LOB ROOM: 302 Time Public Hearing Called to Order: 10:04 am

Time Adjourned: 10:40 am

(please circle if present)

Committee Members: Reps. Butler, Schlachman, Kopka, Hammond, Mulholland, Gidge, Muns, Williams, Heden, Scarlotto, McNamara, John Hunt, Flanders, Doolan, Keith Murphy, Sandblade, Jones, Rice, Tucker and R. Belanger. MANLEY

Bill Sponsors: Reps. Butler, Hunt and Flanders

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Ed Butler, prime sponsor – Introducing the bill and amendment.

Chiara Dolcino, NH Insurance Department - Department approached by a domestic insurance company. Premium for a funding agreement must be at least \$ 1 million. They provide guaranteed payments. Used to fund sophisticated investments like retirement fund. Guarantee

Q: Rep. Laura Jones - Are there potential customers for this product in the state today.

A: Yes.

Q: Rep. Kermit Williams - Is this a variation of a structured settlement?

A: Yes it is.

Q: Rep. Chris Muns - Does the SOS – Securities Division have an opinion?

A: Yes and they are here.

Fred Tedeschi (Liberty Life) and George Roussos, NH Assn. of Domestic Life Insurance Companies - Support the bill. **Mr. Roussos** - Not many funding

agreements are written because they are for large transactions. No law for funding agreements in New Hampshire. Most states allow them. At least 5 or 6 states have statutes. Statute will make sure that investors know that it's OK to offer.

Mr. Tedeschi: Customer wanted to buy a construction company, they were going to borrow the money for this transaction, wanted to pay out the money to the people they were buying it from over time, so they invested in a funding agreement that then paid out over time. Lots of environmental settlements where a defendant has to pay out an ongoing amount. Liberty did it. Takes advantage of life insurance companies investment expertise. Not business that they look for, they let people come to them.

Q: Rep. Laura Jones - Has similar legislation been introduced before?

A: No.

Q: Rep. Kermit Williams - Why Delete Section 2 of the bill?

A: Amendment restores original wording.

Q: Rep. Chris Muns - Can only life insurance only sell these; what about other investment managers?

A: No, other financial firms can sell these instruments but right now only life insurance companies do.

Q: Rep. Muns - Not Life insurance, not a security, not an annuity, what is it?

A: It is unique, but since it is offered by life insurance, insurance department would regulate.

Q: Rep. Shafer Hammond - In the construction example, where does the money go if everyone in the selling family dies?

A: Would go to the successors of the family.

Q: What if the market tanks, are you still obligated to make the payout?

A: Yes.

Q: Rep. Heden - What kind of oversight would the insurance department offer

A: Extensive. Insurance department would look at reserves and the type and quantity of investments; market conduct.

Q: Rep. Ruth Heden - Does the insurance department have the regulation.

A: Yes they do.

A: Sophisticated investors, they have the money to buy the protection.

Q: Rep. Fred Rice - Is this new business for New Hampshire?

A: Yes.

Q: New source of compensation?

A: Yes; but no agents involved. This is a company-to-company transaction.

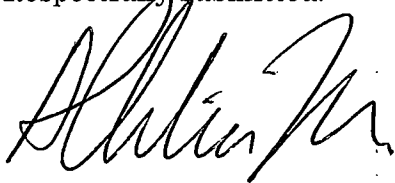
Kevin Moquin from the SOS, NH Securities Bureau - Funding Agreements can be used as collateral for security that is registered with the SEC. Since these are offered by Life Insurance, they will be highly regulated. Checked with National Securities Association - not on their radar screen.

Q: Rep Muns - Do you consider this a security?

A: No, but if it were not offered by a life insurance company, they would probably consider it as an investment

Subcommittee appointed: None

Respectfully submitted:

A handwritten signature in cursive script, appearing to read "Chris Muns".

Chris Muns, Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON HB 400

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(please circle if present)

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Bill Sponsors: Reps. Butler, Hunt and Flanders

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

HB 400
Hearing on February 12, 2013

Speaker

Rep Butler – Introducing the bill and amendment

Questions

Q. None

Speaker

Chiara Dolcino – Insurance Department.

Dept approached by a domestic insurance company. Premium for a funding agreement must be at least \$ 1 million. They provide guaranteed payments. Used to fund sophisticated investments like retirement fund. Guarantee

Questions

Q. Rep Jones: Are there potential customers for this product in the state today.

A. Yes

Q. Rep Williams: Is this a variation of a structured settlement

A. Yes it is.

Q. Rep Muns: Does the SOS – Securities Division have an opinion

A. Yes and they are here.

Speaker

Fred Tedeschi (Liberty Life) and George Roussos (NH Assoc of Domestic Life Insurance Companies)

George: Not many funding agreements are written because they are for large transactions. No law for funding agreements in New Hampshire. Most states allow them. At least 5 or 6 states have statutes. Statute will make sure that investors know that it's OK to offer.

Fred: Customer wanted to buy a construction company, they were going to borrow the money for this transaction, wanted to pay out the money to the people they were buying it from over time, so they invested in a funding agreement that then paid out over time. Lots of environmental settlements where a defendant has to pay out an ongoing amount. Liberty did it. Takes advantage of life insurance companies investment expertise. Not business that they look for, they let people come to them.

Questions

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A. Amendment restores original wording.

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Q. Rep Hammo : In the construction example, where does the money go if everyone in the selling family dies.

A. Would go to the successors of the family

Q. Rep Hammond: What if the market tanks, are you still obligated to make the payout.

A. Yes.

Q. Rep Heden: What kind of oversight would the insurance department offer.

A. Extensive. Insurance department would look at reserves and the type and quantity of investments; market conduct.

Q. Rep Heden: Does the insurance department have the regulation.

A. Yes they do.

Q. Rep Muns: Why eliminate Consumer Protection

A Sophisticated investors, they have the money to buy the protection.

Q. Rep Rice: Is this new business for New Hampshire

A. Yes

Q. Rep Rice: New source of compensation

A. Yes; but no agents involved. This is a company-to-company transaction.

Speaker

Kevin Moquin from the SOS – Securities Bureau.

Funding Agreements can be used as collateral for security that is registered with the SEC.

Since these are offered by Life Insurance, they will be highly regulated. Checked with National Securities Association – not on their radar screen.

Questions:

A. Rep Muns: Do you consider this a security

A. No, but if it were not offered by a life insurance company, they would probably consider it as an investment

Subcommittee appointed: None

Respectfully submitted by:

Chris Muns

Testimony

State of New Hampshire

HOUSE OF REPRESENTATIVES
Legislative Office Building, 33 North State Street
Concord, NH 03301-6328

FAX

Date: 2-28-13
Number of pages
(including cover sheet): 2

To:

DON BALDINI

Liberty Mutual

Fax No.:

617-574-5783

From:

Carol

Home Tel. No.:

Home FAX No.:

LOB Tel. No.:

271-3369

LOB Fax No.:

(603) 271-6689

REMARKS:

Urgent

For your review

Reply ASAP

Please comment

Proposed HB 400 amendment

PLEASE DIRECT ANY TRANSMISSION PROBLEMS TO (603) 271-2480.

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Proposed

- Amend Section 1, RSA 408-E:2 I., to read as follows:

408-E:2 Definitions. In this chapter:

I. "Funding agreement" means an agreement issued by a life insurance company, not based on mortality or morbidity, providing for the accumulation of funds by the insurer for the purpose of making one or more payments to the holder, where the initial premium paid is \$1,000,000 or more. Except as provided in this chapter, a "funding agreement" does not constitute life insurance[,] or an annuity[, or other insurance authorized by the provisions of RSA 401:1, III.] and does not constitute a security, as defined by RSA 421-B:2, XX.

- Delete Section 2 of the bill
- Renumber Section 3 of the bill to Section 2

call Deb O'Loughlin @ NH Ins. Dept, if you have
any questions -
271-7473(x253)

Voting Sheets

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on HB 400

BILL TITLE: relative to funding agreements issued by life insurance companies.

DATE: 2-26-13 Continued to 3-5-13

LOB ROOM: 302

Amendments:

Sponsor: Rep. Williams 2013 0574h OLS
Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Williams

Seconded by Rep. Doolin

Vote: 19-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Williams

Seconded by Rep. Doolan

Vote: 17-2 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: Consent or Regular (Circle One)

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Chris Muns, Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on *HB 400*

BILL TITLE:

DATE: *3/5/2013*

LOB ROOM: 302

Amendments:

Sponsor: Rep. *WILLIAMS*

OLS Document #: *2013-0574h*

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. *WILLIAMS*

Seconded by Rep. *DOOLAN*

Vote: (Please attach record of roll call vote.) *19-0*

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. *WILLIAMS*

Seconded by Rep. *DOOLAN*

Vote: (Please attach record of roll call vote.) *17-2*

CONSENT CALENDAR VOTE: Consent or Regular (Circle One)

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Chris Muns, Clerk



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/7/2013 4:06:57 PM
Roll Call Committee Registers
Report

2013 SESSION

COMMERCE AND CONSUMER AFFAIRS

Bill #: HB 400

Title: funding agreements issued by life ins. companies

PH Date: / /

Exec Session Date: ~~2-26-13~~ 3/5/13

Motion: _____

Amendment #: 2013-0574h.

MEMBER	YEAS	NAYS
Butler, Edward A, Chairman	✓	
Schlachman, Donna L, V Chairman	✓	
Kopka, Angeline A	✓	
Gidge, Kenneth N	✓	
Hammond, Jill S,	✓	
Mulholland, Catherine	✓	
Heden, Ruth S	✓	
McNamara, Richard D	✓	
Muns, Chris , Clerk	✓	
Scarlotto, Joe W	✓	
Williams, Kermit R	✓	
Hunt, John B	✓	
Flanders, Donald H		
Belanger, Ronald J		
Rice, Frederick C	✓	
Tucker, Pamela Z	✓	
Jones, Laura M	✓	
Murphy, Keith	✓	
Doolan, Ralph J	✓	
Sandblade, Emily C	✓	
TOTAL VOTE:	19	0

MARLEY
KADLER

✓
✓
19 0



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/7/2013 4:06:57 PM
Roll Call Committee Registers
Report

2013 SESSION

COMMERCE AND CONSUMER AFFAIRS

Bill #: HB 400 Title: funding agreements issued by life ins. companies

PH Date: 1/1/13 Exec Session Date: ~~2/26/13~~ 3/5/13

Motion: OTP/A Amendment #: _____

MEMBER	YEAS	NAYS
Butler, Edward A, Chairman	✓	
Schlachman, Donna L, V Chairman	✓	
Kopka, Angeline A	✓	
Gidge, Kenneth N	✓	
Hammond, Jill S,	✓	
Mulholland, Catherine	✓	✓ <i>WARRICK</i>
Heden, Ruth S	✓	
McNamara, Richard D	✓	
Muns, Chris, Clerk	✓	✓
Scarlotta, Joe W	✓	
Williams, Kermit R	✓	
Hunt, John B	✓	
Flanders, Donald H	✓	
Belanger, Ronald J	✓	
Rice, Frederick C	✓	
Tucker, Pamela Z	✓	
Jones, Laura M	✓	
Murphy, Keith	✓	
Doolan, Ralph J	✓	
Sandblade, Emily C	✓	
TOTAL VOTE:		

MARLEY
WARRICK

✓	
✓	
18	
17	
	2

Committee Report

CONSENT CALENDAR

March 13, 2013

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on COMMERCE AND CONSUMER

AFFAIRS to which was referred HB400,

AN ACT relative to funding agreements issued by life insurance companies. Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.

Rep. Kermit R Williams

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	COMMERCE AND CONSUMER AFFAIRS
Bill Number:	HB400
Title:	relative to funding agreements issued by life insurance companies.
Date:	March 6, 2013
Consent Calendar:	YES
Recommendation:	OUGHT TO PASS WITH AMENDMENT

STATEMENT OF INTENT

This bill is a request of the insurance department. HB 400 establishes a new chapter in Title XXXVII, Insurance Statutes, RSA 408-E, that enables life insurers to issue funding agreements. While funding agreements are not a life insurance or annuity product, because life insurers issuing them are subject to the jurisdiction of the insurance department, the department and the industry requested that this insurer business expansion be regulated by the insurance department. Funding agreements enable the accumulation of funds by insurers for payment to the holder not based on morbidity or mortality. The bill delineates permissible holders of funding agreements, the allocation of monies received by the insurer to one or more separate accounts, and the necessary reserve requirements to be maintained by insurers.

Vote 17-2.

Rep. Kermit R Williams
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

COMMERCE AND CONSUMER AFFAIRS

HB400, relative to funding agreements issued by life insurance companies. **OUGHT TO PASS WITH AMENDMENT.**

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OK DONNA