Legislative History for Connecticut Act

PA 15-167

HB6772

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Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate and House of Representatives Proceedings

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CONNECTICUT
GENERAL ASSEMBLY
HOUSE

PROCEEDINGS
2015

VOL.58
PART 4
1035 – 1385

SPEAKER SHARKEY:

The Chamber will come back to order. Mr. Clerk, will you please call Calendar 270?

CLERK:

On Page 24, Calendar No. 270, Favorable Report of the Joint Standing Committee on Insurance and Real Estate. House Bill - Substitute House Bill No. 6772, AN ACT EXTENDING CREDITOR PROTECTION TO AMOUNTS PAYABLE TO A PARTICIPANT OF OR BENEFICIARY UNDER AN ANNUITY PURCHASED TO FUND EMPLOYEE OR RETIREE RETIREMENT BENEFITS.

SPEAKER SHARKEY:

The distinguished chairman of the Insurance and Real Estate Committee, Representative Megna, you have the floor, sir.

REP. MEGNA (97th):

Thank you. Thank you, Mr. Speaker. Mr. Speaker, I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

SPEAKER SHARKEY:

The question is on acceptance of the Joint Committee's Favorable Report and passage of the bill. Will you remark, sir?

REP. MEGNA (97th):

Thank you, Mr. Speaker. Mr. Speaker, this is a bill that came to us from an attorney down in Stamford, Attorney Stone, who does a lotta work with financial planning and pensions with different groups and actually he was doing work with, I think, a couple of collective bargaining units with AT&T, and during one of the transitions, AT&T, I think it was AT&T, moved the pension over from an ERISA-protected pension to a state allocated or unallocated group annuity, and he had indicated to our, our Committee that they lose their creditor protection when they did this, so this pension instrument lost its creditor protection.

So what this bill does, it narrowly, these individuals whose ERISA-protected pensions move over into an allocated or unallocated group annuity, it provides the same creditor protections as other retirement investments here in the State of Connecticut, and with that it's a good bill and oughta pass. I urge my colleagues to vote favorably for it.

SPEAKER SHARKEY:

Thank you, sir. Would you care to remark further on the bill before us? Representative Sampson.

REP. SAMPSON (80th):

Thank you, Mr. Speaker, and good evening.

SPEAKER SHARKEY:

Good evening, sir.

REP. SAMPSON (80th):

I want to just thank the Chairman of the Insurance and Real Estate Committee for his description of the bill. He did a very good job of explaining it in laymen's terms, which sometimes with these type of bills can be difficult.

There was some concern in the original iteration of this bill about a Section One, which I just want to point out, if you look at the testimony, has been eliminated. The only thing that's left is Section Two, which there was only positive testimony on. This bill, as the chairman stated, is a step in the right direction. It is going to allow employers to get together in group annuity contracts and potentially be able to offer protected benefits to their employees, and I want to urge my colleagues to support it, and I'm being

told all over that my microphone is not loud enough, so I will crank it up. Is that favorable? Thank you, Mr. Speaker.

SPEAKER SHARKEY:

Thank you, sir. Would you care to remark? Would you care to remark further on the bill that's before us? If not, staff and guests to the Well of the House. Members take your seats. The machine will be opened.

CLERK:

[bell ringing] The House of Representatives is voting by roll. Members to the Chamber please. The House of Representatives is voting by roll. Members to the Chamber immediately.

[pause]

SPEAKER SHARKEY:

Have all the members voted? Have all the members voted? Will the members please check the board to make sure your vote is properly cast. If all the members have voted, the machine will be locked, and the Clerk will take a tally.

Will the Clerk please announce the tally.

CLERK:

House Bill 6772

Total Number Voting	143
Necessary for Passage	72
Those voting Yea	143
Those voting Nay	0
Absent and not voting	8

SPEAKER SHARKEY:

The bill passes. [gavel] Will the Clerk please call Calendar 121?

CLERK:

On Page 8, Calendar No. 121, Favorable Report of the Joint Standing Committee on Insurance and Real Estate. House Bill No. 6771, AN ACT AUTHORIZING NONADMITTED INSURERS TO OPEN AN OFFICE IN THIS STATE.

SPEAKER SHARKEY:

Representative Megna.

REP. MEGNA (97th):

Thank you, Mr. Speaker. Mr. Speaker, I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

SPEAKER SHARKEY:

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THE CHAIR:

Senator Crisco. Good evening, sir.

SENATOR CRISCO:

Good evening, Madam President. I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

THE CHAIR:

Motion's on acceptance and passage. Will you remark, sir?

SENATOR CRISCO:

Yes, Madam President. Madam President, this bill amends Connecticut's Unauthorized Insurers Act by adding a new subsection (d) in 38a-271 that provides that nothing in that act shall be construed to prohibit a non-admitted insurer from establishing an office in the state for the lawful transaction of surplus lines insurance.

THE CHAIR:

Will you remark further on the bill? Will you remark further on the bill? If not, Senator Crisco.

SENATOR CRISCO:

Thank you, Madam President. If there's no objection, I request it to be placed on the Consent Calendar.

THE CHAIR:

Seeing no objection, so ordered, sir. Mr. Clerk.

THE CLERK:

On Page 5, Calendar 438, substitute for Senate Bill No. 6772, AN ACT EXTENDING CREDITOR PROTECTION TO AMOUNTS PAYABLE TO A PARTICIPANT OF OR BENEFICIARY UNDER AN ANNUITY PURCHASED TO FUND EMPLOYEE OR RETIREE RETIREMENT BENEFITS. Favorable Report of the

Committee on Insurance and Real Estate. There are amendments.

THE CHAIR:

Senator Crisco.

SENATOR CRISCO:

Thank you, Madam President. Madam President, I move for acceptance of the Joint Committee's Favorable Report and passage of the bill.

THE CHAIR:

Motion's on acceptance and passage. Will you remark, sir?

SENATOR CRISCO:

Yes, Madam President. This bill would require insurers to make certain - to make certain disclosures in connection with the purchase of any annuity contract by ERISA cover pension plans for their participants. It would also make sure that annuity contracts are insulated from creditor garnishment.

THE CHAIR:

Will you remark further? Senator Kelly. Good evening, sir.

SENATOR KELLY:

Good evening, Madam President. I rise in support of this bill. I think that it's a practical solution to help individuals with annuity contracts that are using them as a form of pension to extend the protections that are applied to other pensions and give them creditor protection.

Many times we hear when we walk, not only door-to-door but in our neighborhoods, people complaining and talking about their pensions. And this is one area that we can give some safety and security to individuals. I think it's a - as I said, a practical solution and certainly support the bill. Thank you.

THE CHAIR:

Thank you. Will you remark further on the bill? Will you remark further on the bill? If not, Senator Crisco.

SENATOR CRISCO:

Thank you, Madam President. I'd just like to express my appreciation to Senator Kelly for his work on this bill in Committee. There're many times when an expertise is needed on certain pieces of proposed legislation, and we're fortunate to have Senator Kelly provided expertise. And if there's no objection, I request that it be placed on the Consent Calendar.

THE CHAIR:

Seeing no objection, so ordered, sir. Mr. Clerk.

THE CLERK:

On Page 6, Calendar 439, substitute for House Bill No. 6259, AN ACT CONCERNING THE BOUNDARIES OF REGIONAL ECONOMIC DEVELOPMENT DISTRICTS. Favorable Report of the Committee on Planning and Development. There are amendments.

THE CHAIR:

Good evening, Senator Osten.

SENATOR OSTEN:

Good evening, Madam President. I'd love to say it's wonderful to see you - it's always wonderful to see you but [laughs] this bodes to be another very long night.

Madam President, I move acceptance of the Joint Committee's Favorable Report and passage of the bill in concurrence with the House of Representatives.

THE CHAIR:

THE CLERK:

House Bill 6915. Page 4, Calendar 383 -

THE CHAIR:

Hold on a minute. Mr. Clerk, you're gonna have to use your microphone so we can hear you, please. I apologize. Thank you.

THE CLERK:

Page 4, Calendar 382, House Bill 6915. Page 4, Calendar 383, House Bill 6723. Page 5, Calendar 390, House Bill 6317. Page 5, Calendar 437, House Bill 6771. Page 5, 438, House Bill 6772. On Page 6, Calendar 439, House Bill 6259. On Page 8, Calendar 480, House Bill 6910.

On Page 8 also, Calendar 481, House Bill 6978, and on Page 9, Calendar 500, House Bill 6579. On Page 10, Calendar 502, House Bill 6868. Page 11, Calendar 511, House Bill 6937. Also on Page 11, Calendar 513, House Bill 6986, and on Page 12, Calendar 515, House Bill 6902.

Also on Page 12, Calendar 521, House Bill 6971. On Page 12 again, Calendar 522, House Bill 6834. Page 12, Calendar 518, House Bill 6770. On Page 13, Calendar 524, House Bill 6997. Also on Page 13, Calendar 525, House Bill 6984, and on Page 14, Calendar 530, House Bill 6977.

Also on Page 14, Calendar 531, House Bill 6994. Page 15, Calendar 535, House Bill 6730. Page 17, Calendar 552, House Bill 6884. Page 17, Calendar 557, House Bill 6155. On Page 18, Calendar 564, House Bill 7000. Page 18 again, 566, House Bill 6138. Also on Page 18, Calendar 571, House Bill 5092, and on Page 19, Calendar 577, House Bill 6853.

On Page 20, Calendar 585, House Bill 6571. Page 20, Calendar 578, House Bill 6852. On Page 23, Calendar 606, House Bill 5660, and on Page 24, Calendar 609, House Bill 5257. Page 24, Calendar 611, House Bill 7060. Page 24, Calendar 610, House Bill 7050. On Page 25, Calendar 617, House Bill 6020.

On Page 26, Calendar 619, House Bill 6750. Also on Page 26, Calendar 620, House Bill 6745. Page 27, Calendar 627, House Bill 5101. Page 29, Calendar 635, House Bill 5110. Also on Page 29, Calendar 641, House Bill 6967. On Page 30, Calendar 645, House Bill 6943, and also on Page 30, Calendar 642, 6707.

THE CHAIR:

Thank you, Mr. Clerk. We're adding - we have to add one more. Hold on for one second, please.

[pause]

THE CLERK:

On - and the last item is on Page 19, Calendar 576, House Bill 6976.

THE CHAIR:

Mr. Clerk, will you call - hold on a minute. There's a question. Senator Kelly, you have a question? Senator Kelly.

SENATOR KELLY:

Thank you, Madam President. That last item on Page 19, the Clerk called 576, House Bill 6976. Was it supposed to be 57 - Calendar No. 575, 6975?

THE CHAIR:

Senator Duff.

SENATOR DUFF:

Thank you, Madam President. And thanks to Senator Kelly for the - catching that. Yes, it is Calendar 575, House Bill 6975.

THE CHAIR:

6975.

THE CLERK:

And that is Page 19, Calendar 575, House Bill 6975.

THE CHAIR:

Are there any other corrections anybody has? If not, at this time, Mr. Clerk, will you please call for a roll call vote on the Consent Calendar. The machine is open.

THE CLERK:

Immediate roll call has been ordered in the Senate. Immediate roll call on today's Consent Calendar has been ordered in the Senate.

[pause]

THE CHAIR:

If all members have voted, all members have voted. The machine will be closed. Mr. Clerk, please call a tally. You wanna call on the Consent Calendar? Yes, it's closed. It's closed on the machine here.

THE CLERK:

On today's Consent Calendar

Total Number Voting	36
Necessary for Passage	19
Those voting Yea	36
Those voting Nay	0
Absent/not voting	0

THE CHAIR:

The Consent Calendar passes. [gavel] Senator Duff.

SENATOR DUFF:

Thank you, Madam President. Before we adjourn, I'd like to yield for any points or announcements.

THE CHAIR:

JOINT
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Are there any questions of Miss Herz? No?

Thank you.

JENNIFER HERZ: Thank you.

REP. MEGNA: Eric, you're back up again on House Bill 6772.

ERIC GEORGE: Can I just take up residence here? It would make it a lot easier.

So that was short lived by fun.

Now I'm here to talk about House Bill 6772 but I am going to support part of it. I'm going to support Section 2 which deals with protecting garnishment from creditors. We think that's a good thing.

I would like to focus most of my remarks, however, on Section 1, which is pension de-risking for those who are not familiar with this.

Section 1 would require insurers to disclose certain information in connection with the purchase of annuity contracts by a risk (inaudible) pension plans. And we believe that this is faulty for several reasons based on faulty presumptions. It ignores existing legal requirements, creates unnecessary exposure and potentially creates marketplace confusion.

There seems to be this misconception that retirement benefits provided by through an annuity are suspect and I can tell you that they're not.

They're governed by ARISA, they're administered and enforced by the U.S. Department of Labor.

There are strict fiduciary standards that would require planned fiduciaries to act (inaudible) and in the best interests of the planned participants and beneficiaries. It's a long, well established practice.

The confusion that could be created would be because it could be potential unsupported and unjustified concerns about the financial integrity of annuities. We're already subject to state insolvency, insurance insolvency standards and oversight. There also is an erroneous assertion that the Pension Benefit Guarantee Corporation, their coverage is somehow greater than the guarantees of an insurer or the Connecticut Guarantee Fund Protections.

And I would say that I would offer that was not -- is not a correct assertion.

Those are very different situations. It's very different systems. They're not necessarily comparable but one is not necessarily better than the other.

Insurers that issue annuities must maintain far greater capital to back the obligation than either the original plan sponsor or the PBGC.

Insurers in Connecticut are also subject to significant regulatory oversight.

And where the PBGC acts as a ceiling, the Connecticut Guarantee Association really starts to the floor that you can build up from.

So I would offer that the rate of full payment under the Connecticut Guarantee System is greater than the PBGC coverage.

Finally, planned sponsors, fiduciaries, insurers strive to ensure that the workers have all the information that they need and to know what their entitled benefits and rights are.

So again, Section 1 we find to be very problematic. Section 2 though we would fully endorse your support and we would, we would support a deletion of Section 1 and a full moving forward with Section 2.

Thank you.

REP. MEGNA: Thank you.

I mean Section 2 is a protection because it's a protection they lose when it goes from ARISA to a state regulated annuity?

ERIC GEORGE: My understanding, yes, sir.

REP. MEGNA: okay. And -- and Section 1 is really just notice of -- of a -- a loss of protections possibly when you go from ARISA plan to a state regulated.

Why -- what's wrong with notice?

ERIC GEORGE: Right. What's wrong with notice? It seems to be such a benign thing. But it seems to be built on an assumption that these annuities are somewhat financially suspect and I'm -- that's where seems to be a great disconnect.

The -- the obligations of the insurer and those administering the annuities, are very, very, very significant so I'm -- I'm not quite sure what Section 1 is striving towards but what I would say is, the existing system, the existing safeguards in place are pretty strong.

REP. MEGNA: But not as strong as under ARISA. So am I hearing that you're okay with notice but you -- you -- not the way this particular notice is put forward?

ERIC GEORGE: I think I would -- we could have a conversation. I'm not going to sit here and say that I am okay with notice at this point.

REP. MEGNA: Okay. Thank you.

Are there any other questions? No?

Thank you very much, Eric.

ERIC GEORGE: Thank you.

REP. MEGNA: Moving on over to 6773. Deb Chamberlain.

DEB CHAMBERLAIN: Good afternoon. Thank you.

Good afternoon, Senator Crisco, Representative Megna, ranking member Sampson, Kelly and additional members of the committee, thank you for having us.

My name's Deb Chamberlain. I am a mystic realtor, I work for William Raves. I'm the assistant manager in that office and I am the immediate past president of the Connecticut Realtors.

Today I'm speaking on behalf of our 15,000 members here in Connecticut, our realtors members, and we're speaking in favor of H.B. 6773 which is AN ACT CONCERNING LICENSURE REQUIREMENTS FOR REAL ESTATE BROKERS.

This is a proposal to change the requirements

001388

FTR

Kate Kiernan
Vice President, Chief Counsel & Deputy, State Relations

Testimony of the American Council of Life Insurers before the Insurance & Real Estate Committee
February 24, 2015

House Bill 6772 – An Act Requiring Disclosures Upon the Purchase of an Annuity to Fund Pension Benefits and Extending Creditor Protection to Amounts Payable to a Participant of or Beneficiary Under such Annuity

Senator Crisco, Representative Megna and members of the Insurance and Real Estate Committee, the American Council of Life Insurers (ACLI) appreciates the opportunity to offer the following comments in opposition to Section 1 of **House Bill 6772 – An Act Requiring Disclosures Upon the Purchase of an Annuity to Fund Pension Benefits and Extending Creditor Protection to Amounts Payable to a Participant of or Beneficiary Under such Annuity.** Section 1 of the proposed legislation will detrimentally restrict the transfer of pension plan risks and raise the costs of these beneficial transactions potentially harming Connecticut consumers.

As described in the attached "ACLI Pension De-Risking: Overview", pension de-risking typically involves the transfer of a pension risk from an employer sponsored plan into an annuity. These transactions generally involve a group of plan participants who are no longer accruing pension benefits because they have retired or have left the company. The administration of pension plans can be challenging for employers. Annuities enable plan sponsors to manage plan funding volatility. With annuities, payments are made to retirees for life regardless of the health of the employer's business. These transfers can be "win wins" for employers, employees and retirees.

The life insurers offering the annuities are subject to a robust, modern regulatory regime that holds them to their commitments through uniform rules for the establishment of reserves, the valuation of assets and liabilities, and the satisfaction of risk-based capital and other requirements. Life insurers are required to hold assets well in excess of liabilities. And the state insurance regulators conduct routine reviews of the financial strength of each insurer and its ability to meet its commitments.

Section 1 of proposed HB 6772 would require pension risk transfer transactions to be subject to onerous and unnecessary disclosures. Plan participants already receive many notices from both the employer and the insurer which are tailored to the particular transaction. Current benefit communications required of plan sponsors are regulated by the U.S. Department of Labor which has jurisdiction over requisite notices.

ACLI supports Section 2 of the proposed legislation which would protect these annuity contracts from garnishment by creditors. This would bring state law in line with ERISA plan protections. In addition, Section 522 of the U.S. Bankruptcy Code includes a provision that a direct transfer of retirement funds, such as that from a pension to an annuity, will not cease to qualify for protection from creditors and garnishment (11 U.S.C. Section 522(b)(4)(C)).

Thank you for your consideration of our position in **opposition** to Section 1 of House Bill 6772. Please contact John Larkin at (860) 508-9924 or Kate Kiernan at (202) 624-2463 with any questions.

The American Council of Life Insurers (ACLI) is a national trade association with approximately 300 member companies operating in the United States and abroad. 221 member companies serve Connecticut consumers. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers' products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 90 percent of industry assets and premiums in Connecticut. Learn more at www.acli.com.

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Pension De-Risking: Overview

Pension de-risking is the term given to a transaction in which a sponsor of a defined benefit pension plan lessens the risks it faces in connection with sponsoring a plan.* These risks include ensuring it can continue to fund and manage the plan on behalf of its participants.

De-risking can be done in many ways. It typically involves plan participants who are no longer earning pension benefits, either because they have retired or left the company. Some employers choose to offer to "buy out" these participants with lump sum payments. The lump sum represents the accumulated value of their pension benefits. At the same time, some employers choose to purchase annuities, a life insurance product that provides a steady stream of income for life, from life insurance companies to fulfill the benefit owed under the plan. Often, employers will combine these strategies by offering a lump sum to participants before the annuities are purchased. In either case, the result is that – following the transaction – the plan has fewer remaining participants.

Some people refer to these transactions as "risk transfer," because the risk does not actually disappear, it just shifts from the pension plan to other parties. When a participant opts to receive a lump sum buy-out, risk shifts from the employer to the participant. The risks assumed by plan participants come in connection with managing money over a retirement that can last many years. Meanwhile, life insurers assume the risks associated with fulfilling the obligations to provide lifetime payments through annuities to plan participants that do not elect a lump sum payment from their pension plan.

A key question that commonly arises in de-risking arrangements is whether plan participants lose consumer protections when their employers turn to life insurers to fulfill their obligations. The answer to that question is "no."

An annuity purchased in a de-risking transaction retains the spousal protections from the plan and the protections from creditors. Instead of being insured by the Pension Benefit Guaranty Corporation (PBGC), participants receive the coverage under the state insurance system. Josh Gotbaum, former PBGC director, which insures private-sector defined benefit pension plans, has said that the state insurance system, with states' insurance guaranty association coverages, is at least as good as PBGC coverage, and that policy-makers should not be concerned about de-risking when it involves a private insurance company. He made those comments in testimony before the U.S. Department of Labor's ERISA Advisory Council on August 29, 2013.

Annuities, whether paid from the plan or from a private insurer, should be encouraged, because they provide more protection to the participants than lump sum payments.

**De-risking can also refer to various "in-plan" strategies, including various investment strategies that the employer can use to manage pension risk within the plan. For our purposes, we are not referring to in-plan de-risking strategies.*

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ERISA Protections for Annuitants in Pension De-risking Transactions

Today, more plan sponsors are choosing to transfer pension plan risk through de-risking transactions. These transactions typically involve either transferring risk to the plan participant through lump sum distributions or transferring risk to an insurance company in the form of a distributed annuity, a life insurance product that provides guaranteed income for life.

This paper describes the important protections under the Employee Retirement Income Security Act of 1974 (ERISA) that apply when an employer purchases annuities to secure benefits in connection with a pension de-risking transaction. In short, annuitants in these transactions not only benefit from the continued receipt of lifetime income, but also from continued spousal and creditor protections carried over from their ERISA-covered plan.

ERISA ENSURES PLANS AND PARTICIPANTS ARE PROTECTED

Plan officials responsible for implementing de-risking transactions are governed by ERISA's fiduciary standards, described by courts as the "highest known to the law." These standards not only require that plan fiduciaries act prudently in carrying out their responsibilities, but that they act solely in the interest of the plan's participants and beneficiaries. In satisfying these standards, plan fiduciaries must, in compliance with Department of Labor's (DOL) guidance in Interpretive Bulletin 95-1, take steps calculated to obtain the safest available annuity, as well as to ensure that the annuity contract fulfills all other applicable requirements of ERISA and the Internal Revenue Code (the Code).

Congress intentionally framed ERISA to permit fiduciaries to satisfy their duties by distributing benefits through the purchase of a private annuity. Annuity contracts represent the only exception to the ERISA trust requirements for plans because they are accepted as an ERISA trust equivalent. Moreover, the DOL has recognized since 1975 that once a plan has fulfilled its obligations and secured benefits through an annuity, the ERISA fiduciary and other requirements are generally no longer relevant, as ERISA was designed to protect participants from employer actions and ensure that they receive their promised benefits. However, the benefits of ERISA coverage are not "lost" in a de-risking transaction.

Significantly, when a pension obligation is assumed by an insurer, that obligation is a guarantee that the participant will be provided the same annuity benefit determined by the plan's fiduciaries to be due the participant under the terms of the plan. These annuities are considered distributed annuities under Code section 401(g). The Code and Treasury regulations require that the annuity be nontransferable. The annuity cannot be surrendered to the insurance company or sold. There are concerns, however, about third-party companies attempting to "buy" annuity payments by offering lump-sum amounts or "advances" in exchange for receiving all or part of their annuity income stream. The marketing of such "advances," however, is not limited to holders of annuity contracts, but extends to recipients of payments from defined benefit plans as well. See the recent GAO report on pension factoring.

SPOUSAL PROTECTIONS

The same spousal potection rules apply, whether the benefit is provided as a stream of payments directly from the plan or through an annuity. (See Treas. Reg. section 1.401(a)-20, Q&A 2, which provides that qualified joint and survivor annuity (QJSA) requirements extend to payments under the annuity contract, not simply the distribution of the annuity contract.) If the participant is a retiree in pay status already receiving an annuity, then the annuity provided by the private insurer must be the same type of distribution that the participant has already elected and is already receiving (e.g., single life annuity, joint and survivor annuity, life and period certain, etc.). If the employer does not purchase an annuity that satisfies the participant's election, then the plan sponsor's liability is not extinguished.

If a de-risking transaction takes place before the participant has made a benefit election, then the spousal consent rules would apply – the participant would need to obtain spousal consent to elect any distribution form other than a QJSA (or a qualified optional survivor annuity (QOSA)), just as is the case under the plan.

CREDITOR PROTECTIONS

ERISA provides strong creditor protections, and those protections do not go away merely because an annuity is purchased on behalf of an ERISA plan participant, by an ERISA plan. If a plan participant enters bankruptcy, his ERISA benefit receives special protection and is not included in the bankruptcy estate under Federal law. In 2005, changes were made to the Federal Bankruptcy Code. Section 522(b)(3)(C), or alternatively section 522(d)(12), broadly exempts retirement funds that are exempt under Code section 401. Distributed annuities from qualified plans are exempt under Code section 401(g), so they would be covered by this exemption. The Bankruptcy Code also exempts direct transfers from one retirement account to another.

Even outside of the context of bankruptcy, ERISA's broad anti-alienation provision prohibits the assignment or alienation of ERISA retirement benefits. Group annuity certificates issued to participants to provide qualified plan benefits are required to follow the plan provisions and form of benefit rules, and therefore do not permit assignment to creditors or any other party. See IRS General Counsel Memorandum 39882 (May 27, 1992) and Treas. Reg. §1.401(a)-20, Q&A-2.

ERISA DISCLOSURES

The ERISA disclosures required for defined benefit plans are designed to ensure that participants understand their rights, obligations, and entitlements under the plan in which they participate. At the time individuals cease to be participants covered under a plan—as would be the case following the distribution of all of a participant's benefits from the plan, whether by lump sum distribution or annuity—information pertaining to the plan is no longer needed by or relevant to the participant. For example, summaries of subsequent changes to the plan or changes in the plan's funding status would have no bearing on an annuitized participant's rights, obligations, or entitlements under the plan and, therefore, provide no discernible benefit to such a participant. Similarly, furnishing an annual benefit statement to an annuitized participant with respect to which a payable accrued and vested benefit determination has already been made and disclosed serves no meaningful purpose. As noted above, before a distribution can be made, the participant must receive notice of the QJSA provisions that includes an explanation of the requirement to obtain spousal consent before a non-QJSA distribution form, including a lump sum, may be elected. This must be provided before the annuity form of benefit is provided.

Complementing the many ERISA protections afforded participants in connection with de-risking transactions, insurers have dedicated significant resources to ensure that participants and retirees understand, through clear and concise disclosures, the transaction and how they are affected, the consequences of any decisions they may have to make, and their rights under the annuity contract. For insurers, the longer term satisfaction of annuitants is an imperative, and participant communications are an integral element of new case implementation.

PBGC COVERAGE

When a participant's or class of participants' pension obligation is annuitized, the plan is no longer required to pay premiums to the Pension Benefit Guaranty Corporation (PBGC) on behalf of those participants because the liability for payment of annuitized benefits has been legally transferred from the plan to an insurer. In the case of annuitized benefits, the guarantee of payment is now the obligation of a licensed insurance company that is subject to stringent solvency standards and oversight by state insurance regulators. In addition, all states manage state guaranty funds that are intended to protect promised benefits against the failure of any one insurer. Unlike the PBGC protections, which are subject to caps on promised benefits, annuitized benefits are not subject to a defined guarantee.

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DECEMBER 2014

INSURANCE ASSOCIATION OF CONNECTICUT

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Statement

Insurance Association of Connecticut

Insurance and Real Estate Committee

February 26, 2015

HB 6772, AN ACT REQUIRING DISCLOSURES UPON THE PURCHASE OF AN ANNUITY TO FUND PENSION BENEFITS AND EXTENDING CREDITOR PROTECTION TO AMOUNTS PAYABLE TO A PARTICIPANT OF OR BENEFICIARY UNDER SUCH ANNUITY

I am Eric George, President of the Insurance Association of Connecticut (IAC). IAC opposes Section 1 of HB 6772, AN ACT REQUIRING DISCLOSURES UPON THE PURCHASE OF AN ANNUITY TO FUND PENSION BENEFITS AND EXTENDING CREDITOR PROTECTION TO AMOUNTS PAYABLE TO A PARTICIPANT OF OR BENEFICIARY UNDER SUCH ANNUITY. IAC supports Section 2 of HB 6772.

Section 1 of HB 6772 would require insurers to make certain disclosures in connection with the purchase of any annuity contract by ERISA-covered pension plans for their participants. Section 1 of HB 6772 is premised on many faulty presumptions, ignores existing legal requirements, and creates unnecessary exposure for insurers while potentially creating confusion in the marketplace.

Section 1 of HB 6772 is premised on the misconception that retirement benefits provided through an annuity contract are suspect and are need of greater scrutiny. These transactions are already governed by and subject to strict fiduciary standards established by federal law (the Employee Retirement Income Security Act of 1974 (ERISA)), administered and enforced by the U.S. Department of Labor (USDOL). These standards require that the plan's fiduciaries discharge their duties prudently and solely in the interest of the plan's participants and beneficiaries. The annuitization of pension benefits is a well established practice that has delivered retirement security for decades used by business and government entities alike as a means to provide pension benefits.

Section 1 of HB 6772 adds nothing new in the way of protections for annuitants. To the contrary, its effect will create confusion and potentially unsupported and unjustified concerns

about the financial integrity of annuity products. Such products are subject to state insurance solvency standards and oversight; a regulatory and enforcement regime that has worked exceptionally well protecting consumers from financial risk for almost a hundred years.

Section 1's disclosure requirements are premised on a number of faulty assumptions, including the erroneous assertion that Pension Benefit Guaranty Corporation (PBGC) coverage is superior to the guarantees of an insurer and state guaranty fund protections. The PBGC fund and state insurance guaranty association system are very different and therefore difficult to compare. Coverage applies differently and is provided in different circumstances. However, because the plans are different does not render one better than the other. Insurers issuing annuity contracts are required to maintain far greater capital to back the annuity obligation than either the original plan sponsor or the PBGC, as well as follow prudent investment strategies. Insurers in general, and insurers doing business in Connecticut in particular, are also subject to significant insurance regulatory oversight. PBGC coverage acts a ceiling whereas state guaranty association coverage is the floor. The rate of full payment under a state guaranty system, and state regulation, is far higher than that under PBGC coverage. As coverage that may be provided under the state guaranty system is subject to many variables, it is not possible to predict those variables in a way that would yield any information for annuitant that is straightforward or useful.

Plan sponsors, plan fiduciaries and insurers have strived to ensure that workers have all the information they need to understand their benefits entitlements and rights in connection with annuitization transactions. The goal of insurers and plan sponsors is to make the transition as seamless as possible for the plan participants so that the employees/participants' benefits remain the same after the transaction. The USDOL, the federal agency charged with protecting the interest of pension plan participants and beneficiaries, is in the best position to address, and adopt, if necessary, changes to ensure a uniform and consistent national regulatory scheme for such transactions. State based regulation could result in potentially conflicting and confusing multistate regulation for Connecticut businesses, as well potential ERISA preemption issues.

IAC does support Section 2 of HB 6772, as this would ensure that these annuity contracts are insulated from creditor garnishment. This would ensure that Connecticut state statutes mirror the plan protections contained in ERISA.

For the above stated reasons, the IAC urges your rejection of Section 1 of HB 6772 and for the Committee to only move forward with Section 2 of HB 6772. Thank you for the opportunity to present IAC's viewpoint.