

CHAPTER 108
HB 400 – FINAL VERSION

13Mar2013... 0574h

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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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:

1 108:1 New Chapter; Funding Agreements. Amend RSA by inserting after chapter 408-D the
2 following new chapter:

CHAPTER 408-E

FUNDING AGREEMENTS

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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 or an
13 annuity and does not constitute a security, as defined by RSA 421-B:2, XX.

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

16 III. “Life insurance company” means a life insurance company authorized to do business
17 pursuant to RSA 401:1, III.

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

20 408-E:3 Authorization and Regulation of Funding Agreements.

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

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

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

CHAPTER 108
HB 400 – FINAL VERSION
- Page 2 -

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.

36 108:2 Effective Date. This act shall take effect 60 days after its passage.

CHAPTER 108
HB 400 – FINAL VERSION
- Page 3 -

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2 Approved: June 24, 2013

3 Effective Date: August 23, 2013