

119TH CONGRESS
2D SESSION

S. _____

To amend the Internal Revenue Code of 1986 to prevent the abuse of life insurance tax rules, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Internal Revenue Code of 1986 to prevent the abuse of life insurance tax rules, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Proper Life
5 Insurance from Abuse Act” or the “PPLI Abuse Act”.

6 **SEC. 2. TAX TREATMENT OF PRIVATE PLACEMENT CON-**
7 **TRACTS.**

8 (a) IN GENERAL.—Chapter 79 of the Internal Rev-
9 enue Code of 1986 is amended by inserting after section
10 7702B the following new section:

1 **“SEC. 7702C. TREATMENT OF APPLICABLE PRIVATE PLACE-**
2 **MENT CONTRACTS.**

3 “(a) GENERAL RULE.—Notwithstanding any other
4 provision of this title, an applicable private placement con-
5 tract shall not be treated as an insurance or annuity con-
6 tract for purposes of this title.

7 “(b) APPLICABLE PRIVATE PLACEMENT CON-
8 TRACT.—For purposes of this section—

9 “(1) IN GENERAL.—The term ‘applicable pri-
10 vate placement contract’ means any private place-
11 ment contract if the requirements of subsection (c)
12 are not met with respect to any segregated asset ac-
13 count described in section 817(d) to which amounts
14 received under such contract are allocated.

15 “(2) PRIVATE PLACEMENT CONTRACT.—The
16 term ‘private placement contract’ means any con-
17 tract—

18 “(A) which, without regard to this section,
19 would be treated for purposes of this title as—

20 “(i) a life insurance contract under
21 section 7702 or an annuity contract under
22 section 72, and

23 “(ii) a variable contract (within the
24 meaning of section 817(d)), and

25 “(B) with respect to which the holder of
26 the contract is required, for purposes of obtain-

1 ing a registration exemption under securities
2 laws as in effect on the date of enactment of
3 this section (including the Securities Exchange
4 Act of 1934 and the Investment Advisors Act of
5 1940), to make a representation that such hold-
6 er—

7 “(i) has a specified minimum amount
8 of income or assets,

9 “(ii) has completed a specified min-
10 imum level of education, or

11 “(iii) holds a specific license or cre-
12 dential.

13 “(3) SPECIAL RULES FOR FOREIGN ISSUED
14 CONTRACTS.—In the case of a contract issued out-
15 side of the United States which is directly or indi-
16 rectly held by a United States person, if, without re-
17 gard to this section—

18 “(A) such contract is a life insurance or
19 annuity contract under the laws under which it
20 is issued (or, unless otherwise provided under
21 regulations, would be such a contract if issued
22 in the United States), and

23 “(B)(i) in the case of an annuity contract,
24 or a contract providing insurance on retired
25 lives (as described in section 807(c)(6)), the

1 amounts paid into or out of such contract re-
2 flect the investment return and the market
3 value of 1 or more assets (other than assets in
4 the general accounts of the issuer or reinsurer),
5 or

6 “(ii) in the case of a life insurance con-
7 tract, the amount of the death benefit (or the
8 period of coverage) is adjusted on the basis of
9 the investment return and the market value of
10 1 or more assets described in clause (i),

11 such contract shall (without regard to whether or
12 not the requirements of subsection (c) are met with
13 respect to such contract) be treated as an applicable
14 private placement contract for purposes of this sec-
15 tion (and, for such purposes, the assets described in
16 subparagraph (B) with respect to such contract shall
17 be treated as a segregated asset account with re-
18 spect to such contract).

19 “(4) PERMANENT TREATMENT.—A contract,
20 once treated as an applicable private placement con-
21 tract under this section, shall be so treated for all
22 subsequent periods without regard to whether it con-
23 tinues to meet the requirements to be so treated.

24 “(c) LIMITATIONS FOR ASSETS IN SEGREGATED
25 ASSET ACCOUNT.—

1 “(1) IN GENERAL.—The requirements of this
2 subsection are met with respect to a segregated
3 asset account only if—

4 “(A) the assets in such account support at
5 least 25 private placement contracts, and

6 “(B) in the case of each of the contracts
7 supported by such account—

8 “(i) the value of such contract is sup-
9 ported by each of the assets in such ac-
10 count (and not by any asset not in such
11 account), and

12 “(ii) the proportion of each such asset
13 supporting such contract is the same as
14 the proportion of each other such asset
15 supporting such contract.

16 “(2) AGGREGATION OF CONTRACTS HELD BY
17 PERSONS.—For purposes of paragraph (1)—

18 “(A) IN GENERAL.—All private placement
19 contracts held directly or indirectly by the same
20 person, or a related person to such person, shall
21 be treated as 1 private placement contract.

22 “(B) RELATED PERSON.—

23 “(i) IN GENERAL.—A person shall be
24 treated as related to another person if they

1 bear a relationship to such other person
2 described in section 267(b) or 707(b)(1).

3 “(ii) MEMBERS OF FAMILY.—For pur-
4 poses of clause (i), sections 267(b) and
5 707(b)(1) shall be applied as if section
6 267(e)(4) provided that the family of an
7 individual consists of a husband and wife
8 and members of a family described in sec-
9 tion 1361(c)(1)(B), except that the appli-
10 cable date for purposes of clause (ii) there-
11 of shall be the date the segregated asset
12 account is established.

13 “(iii) MEMBERS UNDER COMMON CON-
14 TROL.—For purposes of clause (i), a rule
15 similar to section 108(e)(4)(C) shall apply.

16 “(d) TAX TREATMENT OF HOLDERS OF CON-
17 TRACTS.—

18 “(1) OWNERSHIP OF ASSETS AND INCOME.—

19 “(A) IN GENERAL.—In the case of an ap-
20 plicable private placement contract, the holder
21 of such contract shall be treated as if the hold-
22 er—

23 “(i) held its share of the assets in the
24 segregated asset account supporting such
25 contract, and

1 “(ii) received or accrued directly its
2 share of any amount of net income, net
3 loss, or credit earned or accrued with re-
4 spect to such assets (without regard to
5 whether any amount is actually distrib-
6 uted).

7 “(B) NET INCOME OR LOSS.—For pur-
8 poses of subparagraph (A)(ii)—

9 “(i) NET INCOME.—The term ‘net in-
10 come’ means, with respect to any assets
11 supporting a contract—

12 “(I) the amount (if any) by
13 which the aggregate amount of income
14 (including interest, dividends, or
15 gains) with respect to such assets is
16 greater than

17 “(II) the deductions allowed
18 under this title which are directly con-
19 nected with the production of such in-
20 come.

21 “(ii) NET LOSS.—The term ‘net loss’
22 means, with respect to any assets sup-
23 porting a contract, the amount (if any) by
24 which the amount under clause (i)(II) ex-
25 ceeds the amount under clause(i)(I).

1 “(iii) AMOUNTS NOT TAKEN INTO AC-
2 COUNT.—No deduction shall be taken into
3 account under clause (i)(II) (including for
4 reserves, fees, or mortality charges)
5 which—

6 “(I) is taken into account by the
7 insurer or reinsurer of the applicable
8 private placement contract, or

9 “(II) would be so taken into ac-
10 count if such contract were treated as
11 a life insurance or annuity contract.

12 “(C) TAXABLE YEAR OF CESSATION.—If a
13 life insurance contract or annuity contract
14 ceases to be such a contract by reason of this
15 section in a taxable year after the taxable year
16 in which issued, amounts described in subpara-
17 graph (A)(ii) for all preceding taxable years
18 shall be treated as received or accrued during
19 the taxable year in which such cessation occurs.

20 “(2) DISTRIBUTIONS.—

21 “(A) IN GENERAL.—Any excess distribu-
22 tion received by a taxpayer from an applicable
23 private placement contract shall be included by
24 the taxpayer in gross income as ordinary in-
25 come.

1 income under paragraph (1) with respect
2 to such contract (whether or not includible
3 by the taxpayer) for all periods preceding
4 such date, and

5 “(ii) decreased by the aggregate
6 amount of deductions for net losses allow-
7 able to any person under paragraph (1)
8 with respect to such contract for all peri-
9 ods preceding such date.

10 “(D) APPLICABLE DISTRIBUTION.—For
11 purposes of this paragraph, the term ‘applicable
12 distribution’ means, with respect to any applica-
13 ble private placement contract, any payment by
14 reason of the death of the insured, any payment
15 in the nature of an annuity payment, any with-
16 drawal, the distribution of any loan proceeds,
17 and any other similar distribution or payment.

18 “(E) ASSIGNMENTS, ETC.—In the case of
19 the transferee of a transfer for valuable consid-
20 eration by assignment or otherwise of an appli-
21 cable private placement contract (or an interest
22 therein)—

23 “(i) the premiums and other amounts
24 paid by the transferee with respect to such
25 contract shall be the sum of the actual

1 value of such consideration plus any pre-
2 miums and other amounts subsequently
3 paid by the transferee, and

4 “(ii) the amounts determined under
5 subparagraph (C) with respect to such con-
6 tract shall only include amounts included
7 in gross income, and deductions of, the
8 transferee.

9 “(e) TAX TREATMENT OF ISSUERS AND REIN-
10 SURERS.—

11 “(1) IN GENERAL.—In the case of an issuer or
12 reinsurer of an applicable private placement contract
13 (including a reinsurer with respect to mortality risk
14 for such contract)—

15 “(A) premiums and reserves with respect
16 to such contract shall not be treated as life in-
17 surance premiums or reserves, and

18 “(B) notwithstanding section 446(a) or
19 part I of subchapter L of chapter 1—

20 “(i) premiums, expenses, and fees
21 with respect to such contract which, with-
22 out regard to this section, would be taken
23 into account in determining life insurance
24 taxable income shall be so taken into ac-
25 count, but

1 “(ii) the amounts so taken into ac-
2 count shall be determined under the ac-
3 crual method of accounting described in
4 section 446(c)(2).

5 “(2) CONTRACTS ISSUED BY FOREIGN
6 ISSUERS.—Notwithstanding subsection (a), an appli-
7 cable private placement contract issued by a foreign
8 insurer or reinsurer and to which section 4371 ap-
9 plies (without regard to this section) shall continue
10 to be treated as a contract to which such section ap-
11 plies.

12 “(f) REGULATIONS.—The Secretary shall issue such
13 regulations and other guidance as are necessary to carry
14 out this section and section 6050AA, including regulations
15 or other guidance—

16 “(1) preventing the avoidance of the application
17 of this section through related parties, accommoda-
18 tion parties, passthrough entities, trusts, or the allo-
19 cation of assets other than through segregated asset
20 accounts,

21 “(2) providing that an asset account or set of
22 assets not meeting the requirements of section
23 817(d) shall be treated as a segregated asset ac-
24 count meeting such requirements if such account or
25 set of assets achieves substantially the same results

1 as such a segregated asset account or if such treat-
2 ment is otherwise necessary to prevent the avoidance
3 of the purposes of this section,

4 “(3) preventing the taking into account of items
5 more than once,

6 “(4) providing rules for determining whether 1
7 or more persons are indirect holders of applicable
8 private placement contracts, and

9 “(5) providing rules for the application of this
10 section in cases where there is more than 1 holder
11 of an applicable private placement contract or where
12 applicable distributions are made at the same time
13 to 2 or more persons with respect to such a con-
14 tract.”.

15 (b) CONFORMING AMENDMENT.—The table of sec-
16 tions for chapter 79 of the Internal Revenue Code of 1986
17 is amended by inserting after the item relating to section
18 7702B the following new item:

“Section 7702C. Treatment of applicable private placement contracts.”.

19 (c) EFFECTIVE DATE.—

20 (1) IN GENERAL.—The amendments made by
21 this section shall take effect on the date of the en-
22 actment of this Act and shall apply to contracts
23 whether issued before, on, or after such date.

24 (2) TRANSITION RULE.—The amendments
25 made by this section shall not apply to a contract

1 issued on or before the date of the enactment of this
2 Act which (without regard to this paragraph) is an
3 applicable private placement contract under section
4 7702C of the Internal Revenue Code of 1986 (as
5 added by this section) if, before the end of the 180-
6 day period beginning on such date of enactment,
7 such contract—

8 (A) is exchanged for, or converted to, a life
9 insurance or annuity contract that is not such
10 an applicable private placement contract, or

11 (B) is cancelled or otherwise liquidated.

12 **SEC. 3. REPORTING REQUIREMENTS.**

13 (a) IN GENERAL.—

14 (1) RETURN REQUIREMENT.—

15 (A) IN GENERAL.—Subpart B of part III
16 of subchapter A of chapter 61 of the Internal
17 Revenue Code of 1986 is amended by adding at
18 the end the following new section:

19 **“SEC. 6050BB. RETURNS RELATING TO APPLICABLE PRI-
20 VATE PLACEMENT CONTRACTS.**

21 “(a) INITIAL REPORT.—

22 “(1) IN GENERAL.—Every reporting issuer,
23 shall, not later than the applicable date, make a re-
24 turn (in such form as the Secretary may prescribe)

1 with respect to each applicable private placement
2 contract issued or reinsured by the issuer.

3 “(2) INFORMATION INCLUDED.—Such return
4 shall set forth—

5 “(A) the name, address, and TIN of the
6 reporting issuer,

7 “(B) the name, address, and TIN of the
8 holder of the contract,

9 “(C) the applicable adjusted basis (as de-
10 fined in section 7702C(d)(2)) in the contract of
11 such holder (determined as if an applicable dis-
12 tribution were to be made as of the applicable
13 date),

14 “(D) any other contracts which are sup-
15 ported by the segregated asset account sup-
16 porting such contract,

17 “(E) the name, address, and TIN of the
18 holder of any contract described in subpara-
19 graph (D) who is related (within the meaning
20 of section 7702C(c)(2)(B)) to the holder of
21 such contract, and

22 “(F) such other information as the Sec-
23 retary may require.

24 “(3) APPLICABLE DATE.—For purposes of this
25 section, the applicable date means, with respect to

1 any applicable private placement contract, 30 days
2 after the later of—

3 “(A) the date that is 180 days after the
4 date of the enactment of this section, or

5 “(B) the date the contract first became an
6 applicable private placement contract.

7 “(b) ANNUAL REPORTS.—

8 “(1) IN GENERAL.—Every reporting issuer shall
9 file an annual return with respect to each applicable
10 private placement contract issued or reinsured by
11 the issuer.

12 “(2) TIME FOR FILING RETURN.—The return
13 under paragraph (1) shall be filed at such time and
14 in such manner as the Secretary shall prescribe.

15 “(3) INFORMATION INCLUDED.—A return filed
16 under paragraph (1) shall set forth—

17 “(A) the name, address, and TIN of the
18 reporting issuer,

19 “(B) the name address, and TIN of the
20 holder of the applicable private placement con-
21 tract,

22 “(C) the name, address, and TIN of each
23 person receiving an applicable distribution (as
24 defined in section 7792C(d)(2)) under the con-

1 tract if such person is not the holder of the con-
2 tract,

3 “(D) the amounts for the taxable year of—

4 “(i) items of income, loss, deduction,
5 and credit for the year with respect to the
6 assets of which the holder is treated as the
7 owner by reason of section 7702C(d)(1),

8 “(ii) the amount of any applicable dis-
9 tribution (as so defined) under the applica-
10 ble private placement contract and the por-
11 tion of such distribution which is treated
12 as an excess distribution (as defined in sec-
13 tion 7702C(d)(2)),

14 “(iii) the holder’s applicable adjusted
15 basis (as defined in section 7702C(d)(2))
16 in the contract as of the date of each ap-
17 plicable distribution made during the re-
18 porting period and as of the last day of the
19 reporting period (determined as if an ap-
20 plicable distribution were to be made on
21 such day), and

22 “(iv) in the case of a reporting issuer
23 described in subsection (d)(1)(B), pre-
24 miums or other amounts paid or received
25 by any person pursuant to any reinsurance

1 or risk-shifting arrangement described in
2 such subsection, and

3 “(E) such other information as the Sec-
4 retary may require.

5 “(c) STATEMENT TO BE FURNISHED TO TAXPAYERS
6 WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—

7 “(1) IN GENERAL.—Every person that is re-
8 quired to make a return under subsection (a) or (b)
9 shall furnish to each person whose identity is re-
10 quired to be set forth under subsection (a)(2)(B) or
11 subparagraph (B) or (C) of subsection (b)(3) a writ-
12 ten statement showing—

13 “(A) the name, address, and phone num-
14 ber of the information contact of the person re-
15 quired to make such return, and

16 “(B) the information required to be shown
17 on such return with respect to the person to
18 whom such statement is required to be fur-
19 nished.

20 “(2) FURNISHING OF INFORMATION.—The
21 written statement required under paragraph (1) with
22 respect to any return shall be furnished to the per-
23 son on or before January 31 of the year following
24 the calendar year for which the return is required to
25 be made.

1 “(d) DEFINITIONS.—For purposes of this section—

2 “(1) REPORTING ISSUER.—The term ‘reporting
3 issuer’ means any person who—

4 “(A) issues a life insurance contract or an-
5 nuity contract which is treated as an applicable
6 private placement contract, or

7 “(B) reinsures, or shifts risks with respect
8 to any portion of, an applicable private place-
9 ment contract.

10 “(2) APPLICABLE PRIVATE PLACEMENT CON-
11 TRACT.—The term ‘applicable private placement
12 contract’ has the meaning given such term under
13 section 7702C.”.

14 (2) PENALTIES.—

15 (A) FAILURE TO PROVIDE INITIAL RE-
16 TURN.—Part I of subchapter B of chapter 68
17 of the Internal Revenue Code of 1986 is
18 amended by adding at the end the following
19 new section:

20 **“SEC. 6720D. PENALTY FOR FAILURE TO REPORT APPLICA-
21 BLE PRIVATE PLACEMENT CONTRACTS.**

22 “(a) IMPOSITION OF PENALTY.—

23 “(1) IN GENERAL.—Any person required to
24 make a return under section 6050BB(a) who fails to
25 file such return with the Secretary before the appli-

1 cable date shall pay a penalty equal to the amount
2 determined under paragraph (2).

3 “(2) AMOUNT OF PENALTY.—

4 “(A) IN GENERAL.—The amount of the
5 penalty determined under this paragraph is the
6 sum of—

7 “(i) \$1,000,000, plus

8 “(ii) an additional \$1,000,000 for
9 each penalty period ending before the date
10 on which the failure described in sub-
11 section (a) has been corrected.

12 “(B) PENALTY PERIOD.—For purposes of
13 this subsection, the term ‘penalty period’ means
14 each period of 30 days beginning after the first
15 30-day period beginning with the applicable
16 date.

17 “(3) APPLICABLE DATE.—For purposes of this
18 subsection, the term ‘applicable date’ has the mean-
19 ing given such term under section 6050BB(a)(3).

20 “(b) SPECIAL RULES.—

21 “(1) PERSONS SUBJECT TO INSURANCE REGU-
22 LATION.—In the case of a person—

23 “(A) which is regulated by an agency or
24 entity under foreign, State, or local law, and

1 “(B) which is required to pay a penalty
2 under this section,
3 the requirement to pay such penalty shall be
4 disclosed to such agency or entity. Failure to
5 make a disclosure in accordance with the pre-
6 ceding sentence shall be treated as a failure to
7 which this section applies.

8 “(2) PERSONS SUBJECT TO SECURITIES EX-
9 CHANGE ACT OF 1932.—In the case of a person—

10 “(A) which is required to file periodic re-
11 ports under section 13 or 15(d) of the Securi-
12 ties Exchange Act of 1934 or is required to be
13 consolidated with another person for purposes
14 of such reports, and

15 “(B) which is required to pay a penalty
16 under this section,
17 the requirement to pay such penalty shall be
18 disclosed in such reports filed by such person
19 for such periods as the Secretary shall specify.
20 Failure to make a disclosure in accordance with
21 the preceding sentence shall be treated as a
22 failure to which this section applies.”.

23 (B) FAILURE TO MAKE ANNUAL RETURNS
24 OR PAYEE STATEMENTS.—

22

1 (i) RETURNS.—Section 6724(d)(1)(B)
2 of the Internal Revenue Code of 1986 is
3 amended by striking “or” at the end of
4 clause (xxviii), by inserting “or” at the end
5 of clause (xxix), and by inserting after
6 clause (xxix) the following new clause:

7 “(xxx) section 6050BB(b).”.

8 (ii) STATEMENTS.—Section
9 6724(d)(2) of such Code is amended—

10 (I) by redesignating subpara-
11 graphs (NN) and (OO) as subpara-
12 graphs (OO) and (PP), respectively,
13 and

14 (II) by inserting after subpara-
15 graph (MM) the following new sub-
16 paragraph:

17 “(NN) section
18 6050BB(c).”.

19 (3) CLERICAL AMENDMENTS.—

20 (A) The table of sections for subpart B of
21 part III of subchapter A of chapter 61 of the
22 Internal Revenue Code of 1986 is amended by
23 inserting after the item relating to section
24 6050AA the following new item:

“Sec. 6050BB. Returns relating to applicable private placement contracts.”.

1 (B) The table of sections for part I of sub-
2 chapter B of chapter 68 of the Internal Rev-
3 enue Code of 1986 is amended by adding at the
4 end the following new item:

“Sec. 6720D. Penalty for failure to report applicable private placement con-
tracts.”.

5 (b) RULES RELATING TO FOREIGN ACCOUNT TAX
6 COMPLIANCE.—

7 (1) INSURANCE COMPANIES TREATED AS FI-
8 NANCIAL INSTITUTIONS.—

9 (A) IN GENERAL.—Section 1471(d)(5) of
10 the Internal Revenue Code of 1986 is amended
11 by striking “or” at the end of subparagraph
12 (B), by striking the period at the end of sub-
13 paragraph (C) and inserting “, or”, and by
14 adding at the end the following new subpara-
15 graph:

16 “(D) except as otherwise provided by the
17 Secretary, holds itself out as a life insurance
18 company.”.

19 (B) TREATMENT OF CERTAIN CORPORA-
20 TIONS AS FOREIGN FINANCIAL INSTITUTIONS.—
21 Section 1471(d)(4) of such Code is amended by
22 inserting “(determined without regard to any
23 election made under section 953(d))” after
24 “foreign entity”.

1 (C) LIMITATION ON AUTHORITY TO EX-
2 CLUDE.—Section 1471(f)(4) of such Code is
3 amended by inserting “(other than an entity de-
4 scribed in subsection (d)(5)(D))” before the pe-
5 riod at the end.

6 (2) PRIVATE PLACEMENT CONTRACTS TREATED
7 AS FINANCIAL ACCOUNTS.—Section 1471(d)(2) of
8 the Internal Revenue Code of 1986 is amended by
9 striking “and” at the end of subparagraph (B), by
10 striking the period at the end of subparagraph (C)
11 and inserting “, and”, and by inserting after sub-
12 paragraph (C) the following new subparagraph:

13 “(D) any contract which is described in
14 section 7702C(b)(3) and any separate seg-
15 regated asset account that holds assets sup-
16 porting such a contract.”.

17 (3) ADDITIONAL LIMITATION ON EXCEP-
18 TIONS.—Section 1472(c)(2) of the of the Internal
19 Revenue Code of 1986 is amended by inserting
20 “(other than payments to an entity described in sec-
21 tion 1471(d)(5)(D))” before the period at the end.

22 (4) EFFECTIVE DATE.—The amendments made
23 by this subsection shall apply to payments made
24 after the date that is 1 year after the date of the
25 enactment of this Act.