SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 658

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO INSURANCE; CHANGING THE NONFORFEITURE INTEREST RATE ON DEFERRED ANNUITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 59A-20-33 NMSA 1978 (being Laws 1984, Chapter 127, Section 398) is amended to read:

"59A-20-33. STANDARD NONFORFEITURE LAW–INDIVIDUAL DEFERRED ANNUITIES.--

A. This section shall not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code of

1986, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced or reversionary annuity, nor to any contract [~~which~~] that shall be delivered outside this state through an agent or other representative of the insurer issuing the contract.

B. In the case of contracts issued on or after the operative date of this section as defined in Subsection [~~K~~] L of this section, no contract of annuity, except as stated in Subsection A of this section, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the superintendent are at least as favorable to the contractholder, upon cessation of payment of considerations under the contract:

(1) that upon cessation of payment of considerations under a contract or upon the written request of the contract owner, the insurer [~~will~~] shall grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in [~~Subsection~~] Subsections D, E, F, G and I of this section;

(2) if a contract provided for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the insurer [~~will~~] shall pay in lieu of

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any paid-up annuity benefit a cash surrender benefit of such amount as is specified in Subsections D, E, G and I of this section. The insurer [~~shall~~] may reserve the right to defer the payment of such cash surrender benefit for a period [~~of~~] not to exceed six months after demand therefor with surrender of the contract after making written request and receiving written approval of the superintendent. The request shall address the necessity and equatability to all policyholders of the deferral;

(3) a statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits; and

(4) a statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the insurer to the contract, any indebtedness to the insurer on the contract or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this section, any deferred annuity contract may provide that if no considerations

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have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from prior considerations paid [~~prior to such period~~] would be less than twenty dollars [~~($20)~~] ($20.00) monthly, the insurer may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

C. The minimum values as specified in Subsections D, E, F, G and I of this section of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

(1) [~~With respect to contracts providing for flexible considerations~~] The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at [~~a rate~~] rates of interest [~~of three percent per annum of percentages~~] as indicated in Paragraph (2) of Subsection C of this section of the net considerations, as hereinafter defined, paid prior to such time, decreased by the sum of [~~(i)~~]

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Subparagraphs (a) through (d):

(a) any prior withdrawals from or partial surrenders of the contract accumulated at [~~a rate~~] rates of interest [~~of three percent per annum and (ii)~~] as indicated in Paragraph (2) of Subsection C of this section;

(b) an annual contract charge of fifty dollars ($50.00), accumulated at rates of interest as indicated in Paragraphs (2) of Subsection C of this section;

(c) any premium tax paid by the insurer for the contract, accumulated at rates of interest as indicated in Paragraph (2) of Subsection C of this section; and

(d) the amount of any indebtedness to the insurer on the contract, including interest due and accrued [~~and increased by any existing additional amounts credited by the insurer to the contract~~].

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount [~~not less than zero and shall be equal to the corresponding~~] equal to eighty-seven and one-half percent of the gross considerations credited to the contract during that contract year [~~less an annual contract charge of thirty dollars ($30) and less a collection charge of one dollar twenty-five cents ($1.25) per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five percent of the net consideration for the first~~]

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~~contract year and eighty-seven and one-half percent of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five percent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five percent.~~

~~(2) With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:~~

~~(a) the portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five percent of the net consideration for the first contract year plus twenty-two and one-half percent of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years; and~~

~~(b) the annual contract charge shall be the lesser of (i) thirty dollars ($30) or (ii) ten percent of the gross annual consideration.~~

~~(3) With respect to contracts providing for a~~

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~~single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to ninety percent and the net consideration shall be the gross consideration less a contract charge of seventy-five dollars ($75)~~].

(2) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three percent per annum and the following, which shall be specified in the contract if the interest rate will be reset:

(a) the five-year constant maturity treasury rate reported by the federal reserve as of a date, or average over a period, rounded to the nearest one-twentieth percent, specified in the contract no longer than fifteen months prior to the contract issue date or redetermination date pursuant to Subparagraph (d) of Paragraph 2 of Section C of this section;

(b) reduced by one hundred twenty-five basis points;

(c) where the resulting interest rate is not less than one percent; and

(d) the interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date, basis and period, if any, shall be

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stated in the contract. The basis is the date or average over a specified period that produces the value of the five-year constant maturity treasury rate to be used at each redetermination date.

(3) Notwithstanding the provisions of Paragraphs (1) and (2) of Subsection C of this section, during the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in Subparagraph (b) of Paragraph (2) of Subsection C of this section by up to an additional one hundred basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date thereafter, of the additional reduction shall not exceed the market value of the benefit. The superintendent may require a demonstration that the present value of the reduction does not exceed the market value of the benefit. Lacking such a demonstration that is acceptable to the superintendent, the superintendent may disallow or limit the additional reduction.

(4) The superintendent may adopt rules to implement the provisions of Paragraph (3) of Subsection C of this section and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts that the superintendent determines

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adjustments are justified.

D. Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest [~~rate~~] rates specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

E. For contracts [~~which~~] that provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit [~~which~~] that would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one percent higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the insurer on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the insurer to the contract. In no event shall any cash

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surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

F. For contracts [~~which~~] that do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the insurer to the contract. For contracts [~~which~~] that do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the bases of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

G. For the purpose of determining the benefits calculated under Subsections E and F of this section, in the

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case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

H. Any contract [~~which~~] that does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

I. Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

J. For any contract [~~which~~] that provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum

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nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of Subsections D, E, F, G and I of this section, additional benefits payable (a) in the event of total and permanent disability, (b) as reversionary annuity or deferred reversionary annuity benefits, or (c) as other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

[~~K. After July 1, 1977, any insurer may file with the superintendent a written notice of its election to comply with the provisions of this section after a specified date before July 1, 1979. After the filing of such notice, then upon such specified date, which shall be the operative date of this section for such insurer, this section shall become operative with respect to annuity contracts thereafter issued by such insurer. If an insurer makes no such election, the~~

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~~operative date of this section for such insurer shall be July 1, 1979.~~]

K. The superintendent may adopt rules to implement the provisions of this section.

L. After July 1, 2003, an insurer may elect to apply its provisions to annuity contracts on a contract-form by contract-form basis before July 1, 2005. In all other instances this section shall become operative with respect to annuity contracts issued by the insurer after June 30, 2005."

- 13 -

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