

By: Averitt

S.B. No. 681

A BILL TO BE ENTITLED

AN ACT

relating to the standard nonforfeiture law for certain annuities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 1107, Insurance Code, as effective June 1, 2003, is amended to read as follows:

CHAPTER 1107. STANDARD NONFORFEITURE LAW FOR CERTAIN ANNUITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1107.001. APPLICABILITY OF CHAPTER. (a) This chapter applies to an annuity contract issued on or after August 29, 1979.

(b) This chapter also applies to an annuity contract issued by a company after a date specified in a written notice:

(1) that was filed with the State Board of Insurance after August 29, 1977, but before August 29, 1979; and

(2) under which the company filing the notice elected to comply before August 29, 1979, with the law codified by this chapter.

(c) Companies shall issue, and the department shall review, annuity contracts as follows:

(1) under Sections 1107.051-1107.054 until August 31, 2005; or

(2) under Sections 1107.055-1107.057 after September 1, 2003.

(d) Companies shall not issue annuity contracts under Sections 1107.051-1107.054 after August 31, 2005.

1 Sec. 1107.002. EXEMPTIONS. (a) This chapter does not
2 apply to:

3 (1) a reinsurance contract;

4 (2) a group annuity contract that is purchased under a
5 retirement plan or plan of deferred compensation established or
6 maintained by an employer, including a partnership or sole
7 proprietorship, by an employee organization, or by both, other than
8 a plan that provides individual retirement accounts or individual
9 retirement annuities under Section 408, Internal Revenue Code of
10 1986, as amended;

11 (3) a premium deposit fund;

12 (4) a variable annuity contract;

13 (5) an investment annuity contract;

14 (6) an immediate annuity contract;

15 (7) a deferred annuity contract under which annuity
16 payments have begun; or

17 (8) a reversionary annuity contract.

18 (b) This chapter does not apply to a contract delivered
19 outside this state through an agent or other representative of the
20 company that issues the contract.

21 Sec. 1107.003. REQUIRED NONFORFEITURE PROVISIONS. (a) An
22 annuity contract delivered or issued for delivery in this state
23 must contain in substance the provisions prescribed by this section
24 or corresponding provisions that, in the opinion of the department,
25 are at least as favorable to the contract holder when payment of
26 considerations under the contract ceases.

27 (b) The annuity contract must provide that when payment of

1 considerations under a contract ceases, the company will grant a
2 paid-up annuity benefit on a plan stipulated in the contract that
3 has a value that complies with this chapter.

4 (c) An annuity contract that provides for a lump-sum
5 settlement at maturity or at any other time must provide that on
6 surrender of the contract on or before the time annuity payments
7 begin, the company that issues the contract shall [~~will~~] pay a cash
8 surrender benefit in an amount that complies with this chapter in
9 lieu of a paid-up annuity benefit. A company may [~~shall~~] reserve
10 the right to defer payment of any cash surrender benefit for a
11 period not to exceed [~~of~~] six months after demand for payment of the
12 benefit is made with surrender of the contract.

13 (d) An annuity contract must contain:

14 (1) a statement of the mortality table, if any, and
15 interest rates to be used to compute any minimum paid-up annuity,
16 cash surrender, or death benefits that are guaranteed under the
17 contract, together with information that is sufficient to determine
18 the amounts of the benefits;

19 (2) a statement that any paid-up annuity, cash
20 surrender, or death benefits available under the contract are not
21 less than the minimum benefits required by this state; and

22 (3) an explanation of the manner in which a paid-up
23 annuity, cash surrender, or death benefit is altered by the
24 existence of any additional amounts credited to the contract by the
25 company that issues the contract, any indebtedness to the company
26 on the contract, or any prior withdrawals from or partial
27 surrenders of the contract.

1 Sec. 1107.004. OPTIONAL TERMINATION PROVISION.

2 (a) Notwithstanding the requirements of Section 1107.003, an
3 annuity contract may provide that the company has the option to
4 terminate the contract by making a cash payment of the then present
5 value of that portion of the paid-up annuity benefit if:

6 (1) no considerations are received under the contract
7 for two years; and

8 (2) at maturity, payments on the portion of the
9 paid-up annuity benefit on the plan stipulated in the contract
10 attributable to considerations paid before that period would be
11 less than \$20 each month.

12 (b) If an annuity contract contains a provision permitted
13 under Subsection (a):

14 (1) the present value of a portion of a paid-up annuity
15 benefit paid under that provision must be computed on the basis of
16 the mortality table, if any, and interest rates [~~rate~~] specified in
17 the contract for determining the paid-up annuity benefit; and

18 (2) a payment made under that provision relieves the
19 company of any further obligation under the contract.

20 Sec. 1107.005. CONTRACT DISCLOSURE THAT CERTAIN BENEFITS
21 NOT PROVIDED. An annuity contract that does not provide a cash
22 surrender benefit or that does not provide a death benefit that is
23 at least equal to the minimum nonforfeiture amount for the contract
24 under Subchapter B before annuity payments begin must include a
25 statement in a prominent place in the contract that those benefits
26 are not provided.

27 Sec. 1107.006. MATURITY DATE. (a) In determining the

1 value of benefits under Sections 1107.102, 1107.103, and 1107.104,
2 and subject to Subsection (b), if an annuity contract permits an
3 election to have annuity payments begin on optional maturity dates,
4 the maturity date is considered to be the latest date on which an
5 election is permitted by the contract.

6 (b) A maturity date determined under this section may not be
7 later than the later of:

8 (1) the next anniversary of the annuity contract that
9 follows the annuitant's 70th birthday; or

10 (2) the 10th anniversary of the contract.

11 SUBCHAPTER B. COMPUTATION OF MINIMUM NONFORFEITURE AMOUNT

12 Sec. 1107.051. MINIMUM NONFORFEITURE AMOUNT. The minimum
13 value under Subchapter C of a paid-up annuity, cash surrender, or
14 death benefit shall be computed on the basis of the minimum
15 nonforfeiture amount prescribed by this subchapter.

16 Sec. 1107.052. CONTRACT WITH FLEXIBLE CONSIDERATIONS.

17 (a) This section applies only to an annuity contract that provides
18 for the payment of flexible considerations.

19 (b) The minimum nonforfeiture amount on or before annuity
20 payments begin is an amount equal to the accumulation of the
21 prescribed percentages of the amount of net considerations paid to
22 the date of computation, which are accumulated at an interest rate
23 of three percent per year, plus any additional amount credited to
24 the contract by the company, less the amount of:

25 (1) any withdrawal from or partial surrender of the
26 contract made before the minimum nonforfeiture amount is computed,
27 accumulated at an interest rate of three percent per year; and

1 (2) any indebtedness to the company on the contract,
2 including any accrued interest due on the indebtedness.

3 (c) For the purposes of this section, the amount of net
4 consideration for a contract year may not be less than \$0 and is
5 computed by subtracting from the amount of gross considerations
6 credited to the contract during that contract year:

7 (1) an annual contract charge of \$30; and

8 (2) a collection charge of \$1.25 for each
9 consideration credited to the contract during that year.

10 (d) Except as provided by Subsection (e), the percentage of
11 the amount of net consideration to be used in computing a minimum
12 nonforfeiture amount under Subsection (b) is:

13 (1) 65 percent for the first contract year; and

14 (2) 87.5 percent for each subsequent contract year.

15 (e) For a renewal contract year, the percentage of the
16 amount of net consideration to be used to compute a minimum
17 nonforfeiture amount under Subsection (b) is 65 percent of the
18 portion of the total amount of net consideration that exceeds by not
19 more than two times the sum of those portions of the amount of net
20 consideration in all preceding contract years for which the
21 percentage was 65 percent.

22 Sec. 1107.053. CONTRACT WITH FIXED, SCHEDULED
23 CONSIDERATIONS. (a) For an annuity contract that provides for the
24 payment of fixed, scheduled considerations, the minimum
25 nonforfeiture amount is computed in the same manner as the minimum
26 nonforfeiture amount for an annuity contract with flexible
27 considerations that are paid annually, except that:

1 (1) the amount of net consideration for a contract
2 year is computed using an annual contract charge equal to the lesser
3 of:

4 (A) \$30; or

5 (B) 10 percent of the amount of the gross annual
6 considerations paid on the contract; and

7 (2) the percentage of the net consideration amount for
8 the first contract year to be used to compute the minimum
9 nonforfeiture amount is 65 percent of the amount of net
10 consideration for the first contract year plus 22.5 percent of the
11 amount by which the amount of net consideration for the first
12 contract year exceeds the lesser of:

13 (A) the amount of net consideration for the
14 second contract year; or

15 (B) the amount of net consideration for the third
16 contract year.

17 (b) The computation made under Subsection (a) must assume
18 that the considerations are paid annually in advance.

19 Sec. 1107.054. CONTRACT WITH SINGLE CONSIDERATION. For an
20 annuity contract that provides for the payment of a single
21 consideration, the minimum nonforfeiture amount is computed in the
22 same manner as the minimum nonforfeiture amount for a contract with
23 flexible considerations, except that:

24 (1) the net consideration amount to be used to compute
25 the minimum nonforfeiture amount is the amount of the gross
26 considerations paid under the contract less a contract charge of
27 \$75; and

1 (2) the percentage of the net consideration amount to
2 be used to compute the minimum nonforfeiture amount is 90 percent.

3 Sec. 1107.055. INTEREST RATE. The interest rate used in
4 determining minimum nonforfeiture amounts shall be an annual rate
5 of interest determined as the lesser of three percent per annum and
6 the following, which must be specified in the contract if the
7 interest rate will be redetermined:

8 (1) the five-year Constant Maturity Treasury Rate
9 reported by the Federal Reserve as of a date, or average over a
10 period, rounded to the nearest 1/20th of one percent, specified in
11 the contract no longer than 15 months prior to the contract issue
12 date or redetermination date under Subdivision (4);

13 (2) reduced by 125 basis points;

14 (3) where the resulting interest rate is not less than
15 one percent; and

16 (4) the interest rate shall apply for an initial
17 period and may be redetermined for additional periods. The
18 redetermination date, basis, and period, if any, shall be stated in
19 the contract. As used in this section, basis is the date, or
20 average over a specified period, which produces the five-year
21 Constant Maturity Treasury Rate to be used at each redetermination
22 date.

23 Sec. 1107.056. ADDITIONAL INTEREST RATE ADJUSTMENTS. The
24 commissioner may adopt rules to provide for further adjustments to
25 Section 1107.055 for annuity contracts that provide substantive
26 participation in an equity index benefit or other benefits as
27 appropriate.

1 Sec. 1107.057. MINIMUM NONFORFEITURE AMOUNT. (a) The
2 minimum values as specified in Sections 1107.006 and
3 1107.101-1107.105 of any paid-up annuity, cash surrender, or death
4 benefits available under an annuity contract shall be based upon
5 minimum nonforfeiture amounts as defined in this section.

6 (b) The minimum nonforfeiture amount at any time at or prior
7 to the commencement of any annuity payments shall be equal to an
8 accumulation up to such time at rates of interest as indicated in
9 this subchapter of the net considerations as defined by Subsection
10 (c) paid prior to such time, decreased by the sum of Subdivisions
11 (1) through (4):

12 (1) any withdrawal from or partial surrender of the
13 contract made before the minimum nonforfeiture amount is computed,
14 accumulated at an interest rate as indicated in this subchapter;

15 (2) an annual contract charge of \$50, accumulated at
16 rates of interest as indicated in this subchapter;

17 (3) premium tax paid, if any, by the company, and not
18 subsequently credited back to the company, for the contract,
19 accumulated at rates of interest as indicated in this subchapter;
20 and

21 (4) any indebtedness to the company on the contract,
22 including any accrued interest due on the indebtedness.

23 (c) For the purposes of this section, the amount of net
24 consideration for a contract year shall be an amount equal to 87.5
25 percent of the gross considerations credited to the contract during
26 that contract year.

1 SUBCHAPTER C. VALUE OF NONFORFEITURE BENEFITS

2 Sec. 1107.101. PRESENT VALUE OF NONFORFEITURE BENEFITS
3 ~~[PAID-UP ANNUITY BENEFIT]~~. (a) The present value of any paid-up
4 annuity benefit available under an annuity contract on the date
5 annuity payments are to begin may not be less than the minimum
6 nonforfeiture amount for that contract on that date as computed
7 under Subchapter B.

8 (b) The present value of the paid-up annuity benefit shall
9 be computed using the mortality table, if any, and the interest
10 rates ~~[rate]~~ specified in the contract for computing the minimum
11 paid-up annuity benefit guaranteed by the contract.

12 Sec. 1107.102. COMPUTATION OF PAID-UP ANNUITY BENEFIT UNDER
13 CERTAIN CONTRACTS. (a) This section applies only to an annuity
14 contract that does not provide a cash surrender benefit.

15 (b) Subject to Subsection (e), the present value of a
16 paid-up annuity benefit available as a nonforfeiture option before
17 the maturity date may not be less than the present value of the
18 portion of the maturity value of the paid-up annuity benefit
19 provided under the contract that arises from considerations paid on
20 the contract before the date the contract is surrendered in
21 exchange for or is changed to a deferred paid-up annuity.

22 (c) The present value of a paid-up annuity benefit under
23 Subsection (b) shall be:

24 (1) computed for the period before the maturity date
25 on the basis of the interest rate specified in the contract for
26 accumulating the net considerations paid on the contract to
27 determine the maturity value; and

1 (2) increased by any additional amount credited by the
2 company to the contract.

3 (d) Subject to Subsection (e), for an annuity contract that
4 does not provide a death benefit before annuity payments begin, the
5 present value of a paid-up annuity benefit available as a
6 nonforfeiture option shall be computed using the interest rate and
7 the mortality table specified in the contract for determining the
8 maturity value of the paid-up annuity benefit.

9 (e) The present value of a paid-up annuity benefit may not
10 be less than the minimum nonforfeiture amount on the date of
11 surrender or change.

12 Sec. 1107.103. COMPUTATION OF CASH SURRENDER BENEFIT.

13 (a) Subject to Subsection (c), the value of a cash surrender
14 benefit available under an annuity contract before the maturity
15 date may not be less than the present value on the date the contract
16 is surrendered of the portion of the maturity value of the paid-up
17 annuity benefit that arises from considerations paid under the
18 contract before that date and that would be provided under the
19 contract at maturity less an amount reflecting any withdrawals from
20 or partial surrenders of the contract before that date and the
21 amount of any indebtedness to the company on the contract,
22 including accrued interest due on the indebtedness, plus any
23 additional amount credited by the company to the contract.

24 (b) The present value used to compute the minimum cash
25 surrender benefit under Subsection (a) shall be computed using an
26 interest rate that is not more than one percent higher than the
27 interest rate specified in the contract for accumulating the net

1 considerations paid on the contract to determine the maturity
2 value.

3 (c) The value of a cash surrender benefit may not be less
4 than the minimum nonforfeiture amount on the date the contract is
5 surrendered.

6 Sec. 1107.104. COMPUTATION OF DEATH BENEFIT. The value of a
7 death benefit available under an annuity contract that provides a
8 cash surrender benefit may not be less than the value of the cash
9 surrender benefit.

10 Sec. 1107.105. COMPUTATION OF BENEFITS AVAILABLE AT TIME
11 OTHER THAN CONTRACT ANNIVERSARY. For an annuity contract that
12 requires payment of fixed, scheduled considerations, the value of a
13 paid-up annuity, cash surrender, or death benefit that is available
14 under the contract on a date other than an anniversary of the
15 contract date shall be computed to allow for the lapse of time and
16 any scheduled considerations paid after the beginning of the
17 contract year in which payment of considerations under the contract
18 ceased.

19 Sec. 1107.106. MINIMUM NONFORFEITURE VALUES UNDER CONTRACT
20 THAT PROVIDES ANNUITY AND LIFE INSURANCE BENEFITS. For a contract
21 that provides, by rider or by supplemental provision, both annuity
22 benefits and life insurance benefits that exceed the greater of the
23 value of the cash surrender benefit or the amount with interest of
24 the gross considerations paid on the contract, the minimum
25 nonforfeiture benefits are equal to the sum of the minimum
26 nonforfeiture benefits for the annuity portion of the contract and
27 the minimum nonforfeiture benefits, if any, for the life insurance

1 portion of the contract, computed as if each portion were a separate
2 contract.

3 Sec. 1107.107. COMPUTATIONS NOT AFFECTED BY ADDITIONAL
4 BENEFITS. (a) Notwithstanding any other provision of this
5 subchapter or Section 1107.006, a computation of a minimum
6 nonforfeiture amount or of a paid-up annuity, cash surrender, or
7 death benefit under this chapter may not include:

8 (1) any additional benefit that is:

9 (A) payable in the event of total and permanent
10 disability;

11 (B) payable as a reversionary annuity or deferred
12 reversionary annuity benefit; or

13 (C) payable as another policy benefit in addition
14 to life insurance, endowment, or annuity benefits; or

15 (2) the considerations paid for the additional
16 benefit.

17 (b) A paid-up benefit under an annuity contract is not
18 required to include an additional benefit described by Subsection
19 (a) unless the additional benefit separately requires:

20 (1) a minimum nonforfeiture amount; or

21 (2) a paid-up annuity, cash surrender, or death
22 benefit.

23 Sec. 1107.108. RULES. The commissioner may adopt rules to
24 implement the provisions of this chapter.

25 SECTION 2. This Act take effect immediately if it receives a
26 vote of two-thirds of all the members elected to each house, as
27 provided by Section 39, Article III, Texas Constitution. If this

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- 1 Act does not receive the vote necessary for immediate effect, this
- 2 Act takes effect September 1, 2003.