

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 of the Insurance Code, effective as of 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.

(3) companies shall not issue annuity contracts under

1 Sections 1107.051-1107.054 after August 31, 2005.

2 Sec. 1107.002. EXEMPTIONS.

3 (a) This chapter does not apply to:

4 (1) a reinsurance contract;

5 (2) a group annuity contract that is purchased under a
6 retirement plan or plan of deferred compensation established or
7 maintained by an employer, including a partnership or sole
8 proprietorship, by an employee organization, or by both, other than
9 a plan that provides individual retirement accounts or individual
10 retirement annuities under Section 408, Internal Revenue Code of
11 1986, as amended;

12 (3) a premium deposit fund;

13 (4) a variable annuity contract;

14 (5) an investment annuity contract;

15 (6) an immediate annuity contract;

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

18 (8) a reversionary annuity contract.

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

22 Sec. 1107.003. REQUIRED NONFORFEITURE PROVISIONS.

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

1 (b) The annuity contract must provide that when payment of
2 considerations under a contract ceases, the company will grant a
3 paid-up annuity benefit on a plan stipulated in the contract that
4 has a value that complies with this chapter.

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

14 (d) An annuity contract must contain:

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

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

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

1 surrenders of the contract.

2 Sec. 1107.004. OPTIONAL TERMINATION PROVISION.

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

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

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

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

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

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

21 Sec. 1107.005. CONTRACT DISCLOSURE THAT CERTAIN BENEFITS NOT
22 PROVIDED.

23 An annuity contract that does not provide a cash surrender
24 benefit or that does not provide a death benefit that is at least
25 equal to the minimum nonforfeiture amount for the contract under
26 Subchapter B before annuity payments begin must include a statement
27 in a prominent place in the contract that those benefits are not

1 provided.

2 Sec. 1107.006. MATURITY DATE.

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

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

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

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

14 [Sections 1107.007 to 1107.050 reserved for expansion]

15 SUBCHAPTER B. COMPUTATION OF MINIMUM NONFORFEITURE AMOUNT

16 Sec. 1107.051. MINIMUM NONFORFEITURE AMOUNT.

17 The minimum value under Subchapter C of a paid-up annuity,
18 cash surrender, or death benefit shall be computed on the basis of
19 the minimum nonforfeiture prescribed by this subchapter.

20 Sec. 1107.052. CONTRACT WITH FLEXIBLE CONSIDERATIONS.

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

23 (b) The minimum nonforfeiture amount on or before annuity
24 payments begin is an amount equal to the accumulation of the
25 prescribed percentages of the amount of net considerations paid to
26 the date of computation, which are accumulated at an interest rate
27 of three percent per year, plus any additional amount credited to

1 the contract by the company, less the amount of:

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

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

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

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

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

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

17 (1) 65 percent for the first contract year; and

18 (2) 87.5 percent for each subsequent contract year.

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

26 Sec. 1107.053. CONTRACT WITH FIXED, SCHEDULED CONSIDERATIONS.

27 (a) For an annuity contract that provides for the payment of

1 fixed, scheduled considerations, the minimum nonforfeiture amount
2 is computed in the same manner as the minimum nonforfeiture amount
3 for an annuity contract with flexible considerations that are paid
4 annually, except that:

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

8 (A) \$30; or

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

11 (2) the percentage of the net consideration amount for
12 the first contract year to be used to compute the minimum
13 nonforfeiture amount is 65 percent of the amount of net
14 consideration for the first contract year plus 22.5 percent of the
15 amount by which the amount of net consideration for the first
16 contract year exceeds the lesser of:

17 (A) the amount of net consideration for the
18 second contract year; or

19 (B) the amount of net consideration for the third
20 contract year.

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

23 Sec. 1107.054. CONTRACT WITH SINGLE CONSIDERATION.

24 For an annuity contract that provides for the payment of a
25 single consideration, the minimum nonforfeiture amount is computed
26 in the same manner as the minimum nonforfeiture amount for a
27 contract with flexible considerations, except that:

1 (1) the net consideration amount to be used to compute
2 the minimum nonforfeiture amount is the amount of the gross
3 considerations paid under the contract less a contract charge of
4 \$75; and

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

7 Sec. 1107.055. INTEREST RATE.

8 The interest rate used in determining minimum nonforfeiture
9 amounts shall be an annual rate of interest determined as the lesser
10 of three percent (3%) per annum and the following, which must be
11 specified in the contract if the interest rate will be
12 redetermined:

13 (a) The five-year Constant Maturity Treasury Rate reported
14 by the Federal Reserve as of a date, or average over a period,
15 rounded to the nearest 1/20th of one percent, specified in the
16 contract no longer than fifteen (15) months prior to the contract
17 issue date or redetermination date under Subsection (d);

18 (b) Reduced by 125 basis points;

19 (c) Where the resulting interest rate is not less than one
20 percent (1%); and

21 (d) The interest rate shall apply for an initial period and
22 may be redetermined for additional periods. The redetermination
23 date, basis, and period, if any, shall be stated in the contract.
24 As used in this subsection, basis is the date, or average over a
25 specified period, which produces the five-year Constant Maturity
26 Treasury Rate to be used at each redetermination date.

27 Sec. 1107.056. ADDITIONAL INTEREST RATE ADJUSTMENTS.

1 The commissioner may adopt rules to provide for further
2 adjustments to Sec. 1107.055 for annuity contracts that provide
3 substantive participation in an equity index benefit or other
4 benefits as appropriate.

5 Sec. 1107.057. MINIMUM NONFORFEITURE AMOUNT.

6 (a) The minimum values as specified in Sections 1107.006,
7 1107.101, 1107.102, 1107.103, 1107.104, and 1107.105 of any paid-up
8 annuity, cash surrender or death benefits available under an
9 annuity contract shall be based upon minimum nonforfeiture amounts
10 as defined in this section.

11 (b) The minimum nonforfeiture amount at any time at or prior
12 to the commencement of any annuity payments shall be equal to an
13 accumulation up to such time at rates of interest as indicated in
14 this subchapter of the net considerations (as hereinafter defined)
15 paid prior to such time, decreased by the sum of Paragraphs (1)
16 through (4) below:

17 (1) any withdrawal from or partial surrender of the
18 contract made before the minimum nonforfeiture amount is computed,
19 accumulated at an interest rate as indicated in this subchapter;
20 and

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

23 (3) premium tax paid, if any, by the company, and not
24 subsequently credited back to the company, for the contract,
25 accumulated at rates of interest as indicated in this subchapter;
26 and

27 (4) any indebtedness to the company on the contract,

1 including any accrued interest due on the indebtedness.

2 (c) For the purposes of this section, the amount of net
3 consideration for a contract year shall be an amount equal to
4 eighty-seven and one-half percent (87.5%) of the gross
5 considerations credited to the contract during that contract year.

6 [Sections 1107.05~~5~~8 to 1107.100 reserved for expansion]

7 SUBCHAPTER C. VALUE OF NONFORFEITURE BENEFITS

8 Sec. 1107.101. PRESENT VALUE OF NONFORFEITURE BENEFITS.

9 (a) The present value of any paid-up annuity benefit
10 available under an annuity contract on the date annuity payments
11 are to begin may not be less than the minimum nonforfeiture amount
12 for that contract on that date as computed under Subchapter B.

13 (b) The present value of the paid-up annuity benefit shall
14 be computed using the mortality table, if any, and the interest
15 rates specified in the contract for computing the minimum paid-up
16 annuity benefit guaranteed by the contract.

17 Sec. 1107.102. COMPUTATION OF PAID-UP ANNUITY BENEFIT UNDER
18 CERTAIN CONTRACTS.

19 (a) This section applies only to an annuity contract that
20 does not provide a cash surrender benefit.

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

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

3 (1) computed for the period before the maturity date
4 on the basis of the interest rate specified in the contract for
5 accumulating the net considerations paid on the contract to
6 determine the maturity value; and

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

9 (d) Subject to Subsection (e), for an annuity contract that
10 does not provide a death benefit before annuity payments begin, the
11 present value of a paid-up annuity benefit available as a
12 nonforfeiture option shall be computed using the interest rate and
13 the mortality table specified in the contract for determining the
14 maturity value of the paid-up annuity benefit.

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

18 Sec. 1107.103. COMPUTATION OF CASH SURRENDER BENEFIT.

19 (a) Subject to Subsection (c), the value of a cash surrender
20 benefit available under an annuity contract before the maturity
21 date may not be less than the present value on the date the contract
22 is surrendered of the portion of the maturity value of the paid-up
23 annuity benefit that arises from considerations paid under the
24 contract before that date and that would be provided under the
25 contract at maturity less an amount reflecting any withdrawals from
26 or partial surrenders of the contract before that date and the
27 amount of any indebtedness to the company on the contract,

1 including accrued interest due on the indebtedness, plus any
2 additional amount credited by the company to the contract.

3 (b) The present value used to compute the minimum cash
4 surrender benefit under Subsection (a) shall be computed using an
5 interest rate that is not more than one percent higher than the
6 interest rate specified in the contract for accumulating the net
7 considerations paid on the contract to determine the maturity
8 value.

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

12 Sec. 1107.104. COMPUTATION OF DEATH BENEFIT.

13 The value of a death benefit available under an annuity
14 contract that provides a cash surrender benefit may not be less than
15 the value of the cash surrender benefit.

16 Sec. 1107.105. COMPUTATION OF BENEFITS AVAILABLE AT TIME OTHER
17 THAN CONTRACT ANNIVERSARY.

18 For an annuity contract that requires payment of fixed,
19 scheduled considerations, the value of a paid-up annuity, cash
20 surrender, or death benefit that is available under the contract on
21 a date other than an anniversary of the contract date shall be
22 computed to allow for the lapse of time and any scheduled
23 considerations paid after the beginning of the contract year in
24 which payment of considerations under the contract ceased.

25 Sec. 1107.106. MINIMUM NONFORFEITURE VALUES UNDER CONTRACT THAT
26 PROVIDES ANNUITY AND LIFE INSURANCE BENEFITS.

27 For a contract that provides, by rider or by supplemental

1 provision, both annuity benefits and life insurance benefits that
2 exceed the greater of the value of the cash surrender benefit or the
3 amount with interest of the gross considerations paid on the
4 contract, the minimum nonforfeiture benefits are equal to the sum
5 of the minimum nonforfeiture benefits for the annuity portion of
6 the contract and the minimum nonforfeiture benefits, if any, for
7 the life insurance portion of the contract, computed as if each
8 portion were a separate contract.

9 Sec. 1107.107. COMPUTATIONS NOT AFFECTED BY ADDITIONAL BENEFITS.

10 (a) Notwithstanding any other provision of this subchapter
11 or Section 1107.006, a computation of a minimum nonforfeiture
12 amount or of a paid-up annuity, cash surrender, or death benefit
13 under this chapter may not include:

14 (1) any additional benefit that is:

15 (A) payable in the event of total and permanent
16 disability;

17 (B) payable as a reversionary annuity or deferred
18 reversionary annuity benefit; or

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

21 (2) the considerations paid for the additional
22 benefit.

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

26 (1) a minimum nonforfeiture amount; or

27 (2) a paid-up annuity, cash surrender, or death

1 benefit.

2 Sec. 1107.108. RULES.

3 The commissioner may adopt rules to implement the provisions
4 of this Act.

5 SECTION 2. This Act take effect immediately if it receives a vote
6 of two-thirds of all the members elected to each house, as provided
7 by Section 39, Article III, Texas Constitution. If this Act does
8 not receive the vote necessary for immediate effect, this Act takes
9 effect September 1, 2003.