

1-1 By: Averitt S.B. No. 681
1-2 (In the Senate - Filed February 24, 2003; March 3, 2003,
1-3 read first time and referred to Committee on State Affairs;
1-4 March 25, 2003, reported favorably by the following vote: Yeas 8,
1-5 Nays 0; March 26, 2003, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the standard nonforfeiture law for certain annuities.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Chapter 1107, Insurance Code, as effective
1-11 June 1, 2003, is amended to read as follows:

1-12 CHAPTER 1107. STANDARD NONFORFEITURE LAW FOR CERTAIN ANNUITIES

1-13 SUBCHAPTER A. GENERAL PROVISIONS

1-14 Sec. 1107.001. APPLICABILITY OF CHAPTER. (a) This chapter
1-15 applies to an annuity contract issued on or after August 29, 1979.

1-16 (b) This chapter also applies to an annuity contract issued
1-17 by a company after a date specified in a written notice:

1-18 (1) that was filed with the State Board of Insurance
1-19 after August 29, 1977, but before August 29, 1979; and

1-20 (2) under which the company filing the notice elected
1-21 to comply before August 29, 1979, with the law codified by this
1-22 chapter.

1-23 (c) Companies shall issue, and the department shall review,
1-24 annuity contracts as follows:

1-25 (1) under Sections 1107.051-1107.054 until August 31,
1-26 2005; or

1-27 (2) under Sections 1107.055-1107.057 after September
1-28 1, 2003.

1-29 (d) Companies shall not issue annuity contracts under
1-30 Sections 1107.051-1107.054 after August 31, 2005.

1-31 Sec. 1107.002. EXEMPTIONS. (a) This chapter does not
1-32 apply to:

1-33 (1) a reinsurance contract;

1-34 (2) a group annuity contract that is purchased under a
1-35 retirement plan or plan of deferred compensation established or
1-36 maintained by an employer, including a partnership or sole
1-37 proprietorship, by an employee organization, or by both, other than
1-38 a plan that provides individual retirement accounts or individual
1-39 retirement annuities under Section 408, Internal Revenue Code of
1-40 1986, as amended;

1-41 (3) a premium deposit fund;

1-42 (4) a variable annuity contract;

1-43 (5) an investment annuity contract;

1-44 (6) an immediate annuity contract;

1-45 (7) a deferred annuity contract under which annuity
1-46 payments have begun; or

1-47 (8) a reversionary annuity contract.

1-48 (b) This chapter does not apply to a contract delivered
1-49 outside this state through an agent or other representative of the
1-50 company that issues the contract.

1-51 Sec. 1107.003. REQUIRED NONFORFEITURE PROVISIONS. (a) An
1-52 annuity contract delivered or issued for delivery in this state
1-53 must contain in substance the provisions prescribed by this section
1-54 or corresponding provisions that, in the opinion of the department,
1-55 are at least as favorable to the contract holder when payment of
1-56 considerations under the contract ceases.

1-57 (b) The annuity contract must provide that when payment of
1-58 considerations under a contract ceases, the company will grant a
1-59 paid-up annuity benefit on a plan stipulated in the contract that
1-60 has a value that complies with this chapter.

1-61 (c) An annuity contract that provides for a lump-sum
1-62 settlement at maturity or at any other time must provide that on
1-63 surrender of the contract on or before the time annuity payments
1-64 begin, the company that issues the contract shall ~~will~~ pay a cash

2-1 surrender benefit in an amount that complies with this chapter in
 2-2 lieu of a paid-up annuity benefit. A company may [~~shall~~] reserve
 2-3 the right to defer payment of any cash surrender benefit for a
 2-4 period not to exceed [~~of~~] six months after demand for payment of the
 2-5 benefit is made with surrender of the contract.

2-6 (d) An annuity contract must contain:

2-7 (1) a statement of the mortality table, if any, and
 2-8 interest rates to be used to compute any minimum paid-up annuity,
 2-9 cash surrender, or death benefits that are guaranteed under the
 2-10 contract, together with information that is sufficient to determine
 2-11 the amounts of the benefits;

2-12 (2) a statement that any paid-up annuity, cash
 2-13 surrender, or death benefits available under the contract are not
 2-14 less than the minimum benefits required by this state; and

2-15 (3) an explanation of the manner in which a paid-up
 2-16 annuity, cash surrender, or death benefit is altered by the
 2-17 existence of any additional amounts credited to the contract by the
 2-18 company that issues the contract, any indebtedness to the company
 2-19 on the contract, or any prior withdrawals from or partial
 2-20 surrenders of the contract.

2-21 Sec. 1107.004. OPTIONAL TERMINATION PROVISION.

2-22 (a) Notwithstanding the requirements of Section 1107.003, an
 2-23 annuity contract may provide that the company has the option to
 2-24 terminate the contract by making a cash payment of the then present
 2-25 value of that portion of the paid-up annuity benefit if:

2-26 (1) no considerations are received under the contract
 2-27 for two years; and

2-28 (2) at maturity, payments on the portion of the
 2-29 paid-up annuity benefit on the plan stipulated in the contract
 2-30 attributable to considerations paid before that period would be
 2-31 less than \$20 each month.

2-32 (b) If an annuity contract contains a provision permitted
 2-33 under Subsection (a):

2-34 (1) the present value of a portion of a paid-up annuity
 2-35 benefit paid under that provision must be computed on the basis of
 2-36 the mortality table, if any, and interest rates [~~rate~~] specified in
 2-37 the contract for determining the paid-up annuity benefit; and

2-38 (2) a payment made under that provision relieves the
 2-39 company of any further obligation under the contract.

2-40 Sec. 1107.005. CONTRACT DISCLOSURE THAT CERTAIN BENEFITS
 2-41 NOT PROVIDED. An annuity contract that does not provide a cash
 2-42 surrender benefit or that does not provide a death benefit that is
 2-43 at least equal to the minimum nonforfeiture amount for the contract
 2-44 under Subchapter B before annuity payments begin must include a
 2-45 statement in a prominent place in the contract that those benefits
 2-46 are not provided.

2-47 Sec. 1107.006. MATURITY DATE. (a) In determining the
 2-48 value of benefits under Sections 1107.102, 1107.103, and 1107.104,
 2-49 and subject to Subsection (b), if an annuity contract permits an
 2-50 election to have annuity payments begin on optional maturity dates,
 2-51 the maturity date is considered to be the latest date on which an
 2-52 election is permitted by the contract.

2-53 (b) A maturity date determined under this section may not be
 2-54 later than the later of:

2-55 (1) the next anniversary of the annuity contract that
 2-56 follows the annuitant's 70th birthday; or

2-57 (2) the 10th anniversary of the contract.

2-58 SUBCHAPTER B. COMPUTATION OF MINIMUM NONFORFEITURE AMOUNT

2-59 Sec. 1107.051. MINIMUM NONFORFEITURE AMOUNT. The minimum
 2-60 value under Subchapter C of a paid-up annuity, cash surrender, or
 2-61 death benefit shall be computed on the basis of the minimum
 2-62 nonforfeiture prescribed by this subchapter.

2-63 Sec. 1107.052. CONTRACT WITH FLEXIBLE CONSIDERATIONS.

2-64 (a) This section applies only to an annuity contract that provides
 2-65 for the payment of flexible considerations.

2-66 (b) The minimum nonforfeiture amount on or before annuity
 2-67 payments begin is an amount equal to the accumulation of the
 2-68 prescribed percentages of the amount of net considerations paid to
 2-69 the date of computation, which are accumulated at an interest rate

3-1 of three percent per year, plus any additional amount credited to
3-2 the contract by the company, less the amount of:

3-3 (1) any withdrawal from or partial surrender of the
3-4 contract made before the minimum nonforfeiture amount is computed,
3-5 accumulated at an interest rate of three percent per year; and

3-6 (2) any indebtedness to the company on the contract,
3-7 including any accrued interest due on the indebtedness.

3-8 (c) For the purposes of this section, the amount of net
3-9 consideration for a contract year may not be less than \$0 and is
3-10 computed by subtracting from the amount of gross considerations
3-11 credited to the contract during that contract year:

3-12 (1) an annual contract charge of \$30; and

3-13 (2) a collection charge of \$1.25 for each
3-14 consideration credited to the contract during that year.

3-15 (d) Except as provided by Subsection (e), the percentage of
3-16 the amount of net consideration to be used in computing a minimum
3-17 nonforfeiture amount under Subsection (b) is:

3-18 (1) 65 percent for the first contract year; and

3-19 (2) 87.5 percent for each subsequent contract year.

3-20 (e) For a renewal contract year, the percentage of the
3-21 amount of net consideration to be used to compute a minimum
3-22 nonforfeiture amount under Subsection (b) is 65 percent of the
3-23 portion of the total amount of net consideration that exceeds by not
3-24 more than two times the sum of those portions of the amount of net
3-25 consideration in all preceding contract years for which the
3-26 percentage was 65 percent.

3-27 Sec. 1107.053. CONTRACT WITH FIXED, SCHEDULED
3-28 CONSIDERATIONS. (a) For an annuity contract that provides for the
3-29 payment of fixed, scheduled considerations, the minimum
3-30 nonforfeiture amount is computed in the same manner as the minimum
3-31 nonforfeiture amount for an annuity contract with flexible
3-32 considerations that are paid annually, except that:

3-33 (1) the amount of net consideration for a contract
3-34 year is computed using an annual contract charge equal to the lesser
3-35 of:

3-36 (A) \$30; or

3-37 (B) 10 percent of the amount of the gross annual
3-38 considerations paid on the contract; and

3-39 (2) the percentage of the net consideration amount for
3-40 the first contract year to be used to compute the minimum
3-41 nonforfeiture amount is 65 percent of the amount of net
3-42 consideration for the first contract year plus 22.5 percent of the
3-43 amount by which the amount of net consideration for the first
3-44 contract year exceeds the lesser of:

3-45 (A) the amount of net consideration for the
3-46 second contract year; or

3-47 (B) the amount of net consideration for the third
3-48 contract year.

3-49 (b) The computation made under Subsection (a) must assume
3-50 that the considerations are paid annually in advance.

3-51 Sec. 1107.054. CONTRACT WITH SINGLE CONSIDERATION. For an
3-52 annuity contract that provides for the payment of a single
3-53 consideration, the minimum nonforfeiture amount is computed in the
3-54 same manner as the minimum nonforfeiture amount for a contract with
3-55 flexible considerations, except that:

3-56 (1) the net consideration amount to be used to compute
3-57 the minimum nonforfeiture amount is the amount of the gross
3-58 considerations paid under the contract less a contract charge of
3-59 \$75; and

3-60 (2) the percentage of the net consideration amount to
3-61 be used to compute the minimum nonforfeiture amount is 90 percent.

3-62 Sec. 1107.055. INTEREST RATE. The interest rate used in
3-63 determining minimum nonforfeiture amounts shall be an annual rate
3-64 of interest determined as the lesser of three percent per annum and
3-65 the following, which must be specified in the contract if the
3-66 interest rate will be redetermined:

3-67 (1) the five-year Constant Maturity Treasury Rate
3-68 reported by the Federal Reserve as of a date, or average over a
3-69 period, rounded to the nearest 1/20th of one percent, specified in

4-1 the contract no longer than 15 months prior to the contract issue
4-2 date or redetermination date under Subdivision (4);

4-3 (2) reduced by 125 basis points;

4-4 (3) where the resulting interest rate is not less than
4-5 one percent; and

4-6 (4) the interest rate shall apply for an initial
4-7 period and may be redetermined for additional periods. The
4-8 redetermination date, basis, and period, if any, shall be stated in
4-9 the contract. As used in this section, basis is the date, or
4-10 average over a specified period, which produces the five-year
4-11 Constant Maturity Treasury Rate to be used at each redetermination
4-12 date.

4-13 Sec. 1107.056. ADDITIONAL INTEREST RATE ADJUSTMENTS. The
4-14 commissioner may adopt rules to provide for further adjustments to
4-15 Section 1107.055 for annuity contracts that provide substantive
4-16 participation in an equity index benefit or other benefits as
4-17 appropriate.

4-18 Sec. 1107.057. MINIMUM NONFORFEITURE AMOUNT. (a) The
4-19 minimum values as specified in Sections 1107.006 and
4-20 1107.101-1107.105 of any paid-up annuity, cash surrender, or death
4-21 benefits available under an annuity contract shall be based upon
4-22 minimum nonforfeiture amounts as defined in this section.

4-23 (b) The minimum nonforfeiture amount at any time at or prior
4-24 to the commencement of any annuity payments shall be equal to an
4-25 accumulation up to such time at rates of interest as indicated in
4-26 this subchapter of the net considerations as defined by Subsection
4-27 (c) paid prior to such time, decreased by the sum of Subdivisions
4-28 (1) through (4):

4-29 (1) any withdrawal from or partial surrender of the
4-30 contract made before the minimum nonforfeiture amount is computed,
4-31 accumulated at an interest rate as indicated in this subchapter;

4-32 (2) an annual contract charge of \$50, accumulated at
4-33 rates of interest as indicated in this subchapter;

4-34 (3) premium tax paid, if any, by the company, and not
4-35 subsequently credited back to the company, for the contract,
4-36 accumulated at rates of interest as indicated in this subchapter;
4-37 and

4-38 (4) any indebtedness to the company on the contract,
4-39 including any accrued interest due on the indebtedness.

4-40 (c) For the purposes of this section, the amount of net
4-41 consideration for a contract year shall be an amount equal to 87.5
4-42 percent of the gross considerations credited to the contract during
4-43 that contract year.

4-44 SUBCHAPTER C. VALUE OF NONFORFEITURE BENEFITS

4-45 Sec. 1107.101. PRESENT VALUE OF NONFORFEITURE BENEFITS
4-46 [PAID-UP ANNUITY BENEFIT]. (a) The present value of any paid-up
4-47 annuity benefit available under an annuity contract on the date
4-48 annuity payments are to begin may not be less than the minimum
4-49 nonforfeiture amount for that contract on that date as computed
4-50 under Subchapter B.

4-51 (b) The present value of the paid-up annuity benefit shall
4-52 be computed using the mortality table, if any, and the interest
4-53 rates [rate] specified in the contract for computing the minimum
4-54 paid-up annuity benefit guaranteed by the contract.

4-55 Sec. 1107.102. COMPUTATION OF PAID-UP ANNUITY BENEFIT UNDER
4-56 CERTAIN CONTRACTS. (a) This section applies only to an annuity
4-57 contract that does not provide a cash surrender benefit.

4-58 (b) Subject to Subsection (e), the present value of a
4-59 paid-up annuity benefit available as a nonforfeiture option before
4-60 the maturity date may not be less than the present value of the
4-61 portion of the maturity value of the paid-up annuity benefit
4-62 provided under the contract that arises from considerations paid on
4-63 the contract before the date the contract is surrendered in
4-64 exchange for or is changed to a deferred paid-up annuity.

4-65 (c) The present value of a paid-up annuity benefit under
4-66 Subsection (b) shall be:

4-67 (1) computed for the period before the maturity date
4-68 on the basis of the interest rate specified in the contract for
4-69 accumulating the net considerations paid on the contract to

5-1 determine the maturity value; and

5-2 (2) increased by any additional amount credited by the
5-3 company to the contract.

5-4 (d) Subject to Subsection (e), for an annuity contract that
5-5 does not provide a death benefit before annuity payments begin, the
5-6 present value of a paid-up annuity benefit available as a
5-7 nonforfeiture option shall be computed using the interest rate and
5-8 the mortality table specified in the contract for determining the
5-9 maturity value of the paid-up annuity benefit.

5-10 (e) The present value of a paid-up annuity benefit may not
5-11 be less than the minimum nonforfeiture amount on the date of
5-12 surrender or change.

5-13 Sec. 1107.103. COMPUTATION OF CASH SURRENDER BENEFIT.

5-14 (a) Subject to Subsection (c), the value of a cash surrender
5-15 benefit available under an annuity contract before the maturity
5-16 date may not be less than the present value on the date the contract
5-17 is surrendered of the portion of the maturity value of the paid-up
5-18 annuity benefit that arises from considerations paid under the
5-19 contract before that date and that would be provided under the
5-20 contract at maturity less an amount reflecting any withdrawals from
5-21 or partial surrenders of the contract before that date and the
5-22 amount of any indebtedness to the company on the contract,
5-23 including accrued interest due on the indebtedness, plus any
5-24 additional amount credited by the company to the contract.

5-25 (b) The present value used to compute the minimum cash
5-26 surrender benefit under Subsection (a) shall be computed using an
5-27 interest rate that is not more than one percent higher than the
5-28 interest rate specified in the contract for accumulating the net
5-29 considerations paid on the contract to determine the maturity
5-30 value.

5-31 (c) The value of a cash surrender benefit may not be less
5-32 than the minimum nonforfeiture amount on the date the contract is
5-33 surrendered.

5-34 Sec. 1107.104. COMPUTATION OF DEATH BENEFIT. The value of a
5-35 death benefit available under an annuity contract that provides a
5-36 cash surrender benefit may not be less than the value of the cash
5-37 surrender benefit.

5-38 Sec. 1107.105. COMPUTATION OF BENEFITS AVAILABLE AT TIME
5-39 OTHER THAN CONTRACT ANNIVERSARY. For an annuity contract that
5-40 requires payment of fixed, scheduled considerations, the value of a
5-41 paid-up annuity, cash surrender, or death benefit that is available
5-42 under the contract on a date other than an anniversary of the
5-43 contract date shall be computed to allow for the lapse of time and
5-44 any scheduled considerations paid after the beginning of the
5-45 contract year in which payment of considerations under the contract
5-46 ceased.

5-47 Sec. 1107.106. MINIMUM NONFORFEITURE VALUES UNDER CONTRACT
5-48 THAT PROVIDES ANNUITY AND LIFE INSURANCE BENEFITS. For a contract
5-49 that provides, by rider or by supplemental provision, both annuity
5-50 benefits and life insurance benefits that exceed the greater of the
5-51 value of the cash surrender benefit or the amount with interest of
5-52 the gross considerations paid on the contract, the minimum
5-53 nonforfeiture benefits are equal to the sum of the minimum
5-54 nonforfeiture benefits for the annuity portion of the contract and
5-55 the minimum nonforfeiture benefits, if any, for the life insurance
5-56 portion of the contract, computed as if each portion were a separate
5-57 contract.

5-58 Sec. 1107.107. COMPUTATIONS NOT AFFECTED BY ADDITIONAL
5-59 BENEFITS. (a) Notwithstanding any other provision of this
5-60 subchapter or Section 1107.006, a computation of a minimum
5-61 nonforfeiture amount or of a paid-up annuity, cash surrender, or
5-62 death benefit under this chapter may not include:

5-63 (1) any additional benefit that is:

5-64 (A) payable in the event of total and permanent
5-65 disability;

5-66 (B) payable as a reversionary annuity or deferred
5-67 reversionary annuity benefit; or

5-68 (C) payable as another policy benefit in addition
5-69 to life insurance, endowment, or annuity benefits; or

6-1 (2) the considerations paid for the additional
6-2 benefit.

6-3 (b) A paid-up benefit under an annuity contract is not
6-4 required to include an additional benefit described by Subsection
6-5 (a) unless the additional benefit separately requires:

6-6 (1) a minimum nonforfeiture amount; or
6-7 (2) a paid-up annuity, cash surrender, or death
6-8 benefit.

6-9 Sec. 1107.108. RULES. The commissioner may adopt rules to
6-10 implement the provisions of this chapter.

6-11 SECTION 2. This Act take effect immediately if it receives a
6-12 vote of two-thirds of all the members elected to each house, as
6-13 provided by Section 39, Article III, Texas Constitution. If this
6-14 Act does not receive the vote necessary for immediate effect, this
6-15 Act takes effect September 1, 2003.

6-16 * * * * *