

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S

D

SENATE DRS35172-LT-72D* (3/26)

Short Title: Annuity Nonforfeiture Rate Change. (Public)

Sponsors: Senators Hartsell; and Metcalf.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ADOPT THE NAIC MODEL STANDARD NONFORFEITURE LAW
FOR INDIVIDUAL DEFERRED ANNUITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 58 of Chapter 58 of the General Statutes is amended by
adding a new section to read:

"§ 58-58-61. Standard nonforfeiture law for individual deferred annuities.

(a) Title. – This section is and may be cited as the Standard Nonforfeiture Law
for Individual Deferred Annuities.

(b) Applicability. – This section does not apply to any:

(1) Reinsurance.

(2) 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, as amended.

(3) Premium deposit fund.

(4) Variable annuity.

(5) Investment annuity.

(6) Immediate annuity.

(7) Deferred annuity contract after annuity payments have commenced.

(8) Reversionary annuity.

(9) Contract delivered outside this State through an agent or other
representative of the company issuing the contract.

(c) Nonforfeiture Requirements. – In the case of contracts issued on or after the
operative date of this section as defined in subsection (o) of this section, no contract of

1 annuity, except as stated in subsection (b) of this section, shall be delivered or issued for
2 delivery in this State unless it contains in substance the following provisions, or
3 corresponding provisions that in the opinion of the Commissioner are at least as
4 favorable to the contract holder, upon cessation of payment of considerations under the
5 contract:

6 (1) That upon cessation of payment of considerations under a contract, or
7 upon the written request of the contract owner, the company shall
8 grant a paid-up annuity benefit on a plan stipulated in the contract of
9 the value specified in subsections (g), (h), (i), (j), and (l) of this
10 section.

11 (2) If a contract provides for a lump sum settlement at maturity or at any
12 other time, that upon surrender of the contract at or before the
13 commencement of any annuity payments, the company shall pay in
14 lieu of a paid-up annuity benefit a cash surrender benefit of the amount
15 specified in subsections (g), (h), (j), and (l) of this section. The
16 company may reserve the right to defer the payment of the cash
17 surrender benefit for a period not to exceed six months after demand
18 for the payment with surrender of the contract after making written
19 request and receiving written approval of the Commissioner. The
20 request shall address the necessity and equitability to all policyholders
21 of the deferral.

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

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

34 Notwithstanding the requirements of this subsection, a deferred annuity contract
35 may provide that if no considerations have been received under the contract for a period
36 of two full years and the portion of the paid-up annuity benefit at maturity on the plan
37 stipulated in the contract arising from prior considerations paid would be less than
38 twenty dollars (\$20.00) monthly, the company may at its option terminate the contract
39 by payment in cash of the then-present value of the portion of the paid-up annuity
40 benefit, calculated on the basis of the mortality table, if any, and interest rate specified
41 in the contract for determining the paid-up annuity benefit, and by this payment shall be
42 relieved of any further obligation under the contract.

43 (d) Minimum Values. – The minimum values specified in subsections (g), (h),
44 (i), (j), and (l) of this section of any paid-up annuity, cash surrender, or death benefits

1 available under an annuity contract shall be based upon minimum nonforfeiture
2 amounts as defined in this section. The minimum nonforfeiture amount at any time at or
3 before the commencement of any annuity payments shall be equal to an accumulation
4 up to that time at rates of interest as indicated in subsection (e) of this section of the net
5 considerations, as hereinafter defined, paid before that time, decreased by the sum of the
6 following:

- 7 (1) Any prior withdrawals from or partial surrenders of the contract
8 accumulated at rates of interest as indicated in subsection (e) of this
9 section.
- 10 (2) An annual contract charge of fifty dollars (\$50.00), accumulated at
11 rates of interest as indicated in subsection (e) of this section.
- 12 (3) Any premium tax paid by the company for the contract, accumulated
13 at rates of interest as indicated in subsection (e) of this section.
- 14 (4) The amount of any indebtedness to the company on the contract,
15 including interest due and accrued.

16 The net considerations for a given contract year used to define the minimum
17 nonforfeiture amount shall be an amount equal to eighty-seven and one-half percent (87
18 1/2%) of the gross considerations credited to the contract during that contract year.

19 (e) The interest rate used in determining minimum nonforfeiture amounts shall
20 be an annual rate of interest determined as the lesser of three percent (3%) per annum
21 and the following, which shall be specified in the contract if the interest rate will be
22 reset:

- 23 (1) The five-year Constant Maturity Treasury Rate reported by the Federal
24 Reserve as of a date, or average over a period, rounded to the nearest
25 one-twentieth of one percent (0.05%), specified in the contract no
26 longer than 15 months before the contract issue date or
27 redetermination date under subdivision (4) of this subsection.
- 28 (2) Reduced by 125 basis points.
- 29 (3) Where the resulting interest guarantee is not less than one percent
30 (1%).
- 31 (4) The interest rate shall apply for an initial period and may be
32 redetermined for additional periods. The redetermination date, basis,
33 and period, if any, shall be stated in the contract. The basis is the date
34 or average over a specified period that produces the value of the
35 five-year Constant Maturity Treasury Rate to be used at each
36 redetermination date.

37 (f) During the period or term that a contract provides substantive participation in
38 an equity indexed benefit, it may increase the reduction described in subdivision (e)(2)
39 of this section by up to an additional 100 basis points to reflect the value of the equity
40 index benefit. The present value at the contract issue date, and at each subsequent
41 redetermination date, of the additional reduction shall not exceed the market value of
42 the benefit. The Commissioner may require a demonstration that the present value of the
43 additional reduction does not exceed the market value of the benefit. Absent a
44 demonstration that is acceptable to the Commissioner, the Commissioner may disallow

1 or limit the additional reduction. The Commissioner may adopt rules to implement the
2 provisions of this subsection and to provide for further adjustments to the calculation of
3 minimum nonforfeiture amounts for contracts that provide substantive participation in
4 an equity index benefit and for other contracts for which the Commissioner determines
5 adjustments are justified.

6 (g) Computation of Present Value. – Any paid-up annuity benefit available under
7 a contract shall be such that its present value on the date annuity payments are to
8 commence is at least equal to the minimum nonforfeiture amount on that date. Present
9 value shall be computed using the mortality table, if any, and the interest rates specified
10 in the contract for determining the minimum paid-up annuity benefits guaranteed in the
11 contract.

12 (h) Calculation of Cash Surrender Value. – For contracts that provide cash
13 surrender benefits, the cash surrender benefits available before maturity shall not be less
14 than the present value as of the date of surrender of that portion of the maturity value of
15 the paid-up annuity benefit that would be provided under the contract at maturity arising
16 from considerations paid before the time of cash surrender reduced by the amount
17 appropriate to reflect any prior withdrawals from or partial surrenders of the contract,
18 such present value being calculated on the basis of an interest rate not more than one
19 percent (1%) higher than the interest rate specified in the contract for accumulating the
20 net considerations to determine maturity value, decreased by the amount of any
21 indebtedness to the company on the contract, including interest due and accrued, and
22 increased by any existing additional amounts credited by the company to the contract. In
23 no event shall any cash surrender benefit be less than the minimum nonforfeiture
24 amount at that time. The death benefit under such contracts shall be at least equal to the
25 cash surrender benefit.

26 (i) Calculation of Paid-Up Annuity Benefits. – For contracts that do not provide
27 cash surrender benefits, the present value of any paid-up annuity benefit available as a
28 nonforfeiture option at any time before maturity shall not be less than the present value
29 of that portion of the maturity value of the paid-up annuity benefit provided under the
30 contract arising from considerations paid before the time the contract is surrendered in
31 exchange for, or changed to, a deferred paid-up annuity, the present value being
32 calculated for the period before the maturity date on the basis of the interest rate
33 specified in the contract for accumulating the net considerations to determine maturity
34 value, and increased by any additional amounts credited by the company to the contract.
35 For contracts that do not provide any death benefits before the commencement of any
36 annuity payments, present values shall be calculated on the basis of the interest rate and
37 the mortality table specified in the contract for determining the maturity value of the
38 paid-up annuity benefit. However, in no event shall the present value of a paid-up
39 annuity benefit be less than the minimum nonforfeiture amount at that time.

40 (j) Maturity Date. – For the purpose of determining the benefits calculated under
41 subsections (h) and (i) of this section, in the case of annuity contracts under which an
42 election may be made to have annuity payments commence at optional maturity dates,
43 the maturity date shall be the latest date for which election is permitted by the contract

1 but not later than the anniversary of the contract next following the annuitant's
2 seventieth birthday or the tenth anniversary of the contract, whichever is later.

3 (k) Disclosure of Limited Death Benefits. – A contract that does not provide cash
4 surrender benefits or does not provide death benefits at least equal to the minimum
5 nonforfeiture amount before the commencement of any annuity payments shall include
6 a statement in a prominent place in the contract that those benefits are not provided.

7 (l) Inclusion of Lapse of Time Considerations. – Any paid-up annuity, cash
8 surrender, or death benefits available at any time, other than on the contract anniversary
9 under any contract with fixed scheduled considerations, shall be calculated with
10 allowance for the lapse of time and the payment of any scheduled considerations
11 beyond the beginning of the contract year in which cessation of payment of
12 considerations under the contract occurs.

13 (m) Proration of Values; Additional Benefits. – For a contract that provides within
14 the same contract, by rider or supplemental contract provision, both annuity benefits and
15 life insurance benefits that are in excess of the greater of cash surrender benefits or a
16 return of the gross considerations with interest, the minimum nonforfeiture benefits
17 shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion
18 and the minimum nonforfeiture benefits, if any, for the life insurance portion computed
19 as if each portion were a separate contract. Notwithstanding the provisions of
20 subsections (g), (h), (i), (j), and (l) of this section, additional benefits payable in the
21 event of total and permanent disability, as reversionary annuity or deferred reversionary
22 annuity benefits, or as other policy benefits additional to life insurance, endowment, and
23 annuity benefits, and considerations for all such additional benefits, shall be disregarded
24 in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender,
25 and death benefits that may be required by this section. The inclusion of those benefits
26 shall not be required in any paid-up benefits, unless the additional benefits separately
27 would require minimum nonforfeiture amounts, paid-up annuity, cash surrender, and
28 death benefits.

29 (n) Rules. – The Commissioner may adopt rules to implement the provisions of
30 this section.

31 (o) Effective Date. – On and after October 1, 2003, a company may elect to apply
32 the provisions of this section to annuity contracts on a contract form-by-contract form
33 basis before October 1, 2004. In all other instances, this section shall become operative
34 with respect to annuity contracts issued by the company on and after October 1, 2004."

35 **SECTION 2.** G.S. 58-58-60 is repealed.

36 **SECTION 3.** G.S. 58-7-95(s) reads as rewritten:

37 "(s) Except for ~~G.S. 58-58-60~~ G.S. 58-58-61 and G.S. 58-58-120 in the case of a
38 variable annuity ~~contract and contract,~~ contract, G.S. 58-58-55, 58-58-120, and 58-58-140(1) in
39 the case of a variable life insurance ~~policy policy,~~ policy, and except as otherwise provided in
40 this section, all pertinent provisions of ~~the insurance laws of this State shall this Chapter~~
41 apply to separate accounts and contracts issued in connection therewith. ~~with separate~~
42 accounts. Any individual variable life insurance contract, delivered or issued for
43 delivery within this State, shall contain reinstatement and nonforfeiture provisions
44 appropriate to ~~such a~~ that contract. Any group variable life insurance contract, delivered

1 or issued for delivery within this State, shall contain grace provisions appropriate to
2 ~~such a~~that contract. Any individual variable annuity contract, delivered or issued for
3 delivery within this State, shall contain reinstatement provisions appropriate to ~~such a~~
4 that contract."

5 **SECTION 4.** Sections 2 and 3 of this act become effective October 1, 2004.
6 The remainder of this act becomes effective October 1, 2003.