

**INDIVIDUAL DEFERRED ANNUITIES -
NONFORFEITURE AMENDMENTS**

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: James A. Dunnigan

LONG TITLE

General Description:

This bill modifies the Insurance Code to address nonforfeiture law for individual deferred annuities.

Highlighted Provisions:

This bill:

- ▶ modifies provisions to be included in the contract of annuity;
- ▶ provides for minimum values on the basis of whether the policy is issued before or on or after June 1, 2006;
- ▶ provides rulemaking authority; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-22-409, as last amended by Chapter 308, Laws of Utah 2002

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **31A-22-409** is amended to read:

31A-22-409. Standard Nonforfeiture Law for Individual Deferred Annuities.

(1) This section is known as the "Standard Nonforfeiture Law for Individual Deferred

Annuities."

(2) This section does not apply to:

(a) any reinsurance;

(b) a group annuity purchased under a retirement plan or plan of deferred compensation;

(i) established or maintained by:

(A) an employer, including a partnership or sole proprietorship~~[-, or by]~~;

(B) an employee organization~~[-]~~; or ~~[by]~~

(C) both~~[-]~~ an employer and an employee organization; and

(ii) other than a plan providing individual retirement accounts or individual retirement

annuities under Section 408, Internal Revenue Code;

~~[(b)]~~ (c) a premium deposit fund;

~~[(c)]~~ (d) a variable annuity;

~~[(d)]~~ (e) an investment annuity;

~~[(e)]~~ (f) an immediate annuity;

~~[(f)]~~ (g) a deferred annuity contract after annuity payments have commenced; ~~[or]~~

~~[(g)]~~ (h) a reversionary annuity; or

~~[(h)]~~ (i) any contract that shall be delivered outside this state through an agent or other representative of the company issuing the contract.

(3) (a) If a policy is issued after this section takes effect as set forth in Subsection ~~[(12)]~~ (15), a contract of annuity, except as stated in Subsection (2), may not be delivered or issued for delivery in this state unless the contract of annuity contains in substance:

(i) the provisions described in Subsection (3)(b); or

(ii) provisions corresponding to the provisions described in Subsection (3)(b) that in the opinion of the commissioner are at least as favorable to the contractholder, governing cessation of payment of consideration under the contract.

(b) Subsection (3)(a)(i) requires the following provisions:

(i) ~~[upon cessation of payment of consideration under a contract,]~~ the company ~~[will]~~ shall grant a paid-up annuity benefit on a plan stipulated in the contract of such a value as

specified in Subsections ~~[(5), (6),]~~ (7), (8), (9), (10), and ~~[(10)];~~ (12):

(A) upon cessation of payment of consideration under a contract; or

(B) upon a written request of the contract owner;

(ii) if a contract provides for a lump-sum settlement at maturity, or at any other time, upon surrender of the contract at or before the commencement of any annuity payments, the company ~~[with]~~ shall pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in Subsections ~~[(5), (6), (8)]~~ (7), (8), (10), and ~~[(10)]~~ (12);

~~[(iii) the company shall reserve the right to defer the payment of the cash surrender benefit under Subsection (3)(b)(ii) for a period of six months after demand for the payment of the cash surrender benefit with surrender of the contract;]~~

~~[(iv)]~~ (iii) a statement of the mortality table, if any, and interest rates used in calculating any of the following that are guaranteed under the contract:

(A) minimum paid-up annuity benefits;

(B) cash surrender benefits; or

(C) death benefits;

~~[(v)]~~ (iv) sufficient information to determine the amounts of the benefits described in Subsection (3)(b)~~[(iv)]~~(iii);

~~[(vi)]~~ (v) 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

~~[(vii)]~~ (vi) an explanation of the manner in which the benefits described in Subsection (3)(b)~~[(vi)]~~(v) are altered by the existence of any:

(A) additional amounts credited by the company to the contract;

(B) indebtedness to the company on the contract; or

(C) prior withdrawals from or partial surrender of the contract.

(c) Notwithstanding the requirements of this Subsection (3), any deferred annuity contract may provide that if no consideration has 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 consideration paid before the period would be less than \$20 monthly:

(i) the company may at the company's option terminate the 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 specified in the contract, if any, and the interest rate specified in the contract for determining the paid-up annuity benefit; and

(ii) the payment described in Subsection (3)(c)(i), relieves the company of any further obligation under the contract.

(d) A company may reserve the right to defer the payment of cash surrender benefit for a period not to exceed six months after demand for the payment of the cash surrender benefit with surrender of the contract.

(4) ~~[The]~~ For a policy issued before June 1, 2006, the minimum values as specified in Subsections ~~[(5), (6);~~ (7), (8), (9), (10), and ~~[(10)]~~ (12) of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as established in this ~~[section]~~ Subsection (4).

(a) (i) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or before the commencement of any annuity payments shall be equal to an accumulation up to such time, at a rate of interest of 3% per annum of percentages of the net considerations paid prior to such time:

(A) decreased by the sum of:

(I) any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of 3% per annum; and

(II) the amount of any indebtedness to the company on the contract, including interest due and accrued; and

(B) increased by any existing additional amounts credited by the company to the contract.

(ii) For purposes of this Subsection (4)(a), the net consideration for a given contract year used to define the minimum nonforfeiture amount shall be:

(A) an amount not less than zero; and

(B) equal to the corresponding gross considerations credited to the contract during that

contract year less:

- (I) an annual contract charge of \$30; and
- (II) a collection charge of \$1.25 per consideration credited to the contract during that

contract year.

(iii) The percentages of net considerations shall be:

- (A) 65% of the net consideration for the first contract year; and
- (B) 87-1/2% of the net considerations for the second and later contract years.

(iv) Notwithstanding Subsection (4)(a)(iii), the percentage shall be 65% of the portion of the total net consideration for any renewal contract year that 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 65%.

(b) (i) Except as provided in Subsections (4)(b)(ii) and (iii), with respect to contracts providing for fixed scheduled consideration, minimum nonforfeiture amounts shall be:

- (A) calculated on the assumption that considerations are paid annually in advance; and
- (B) defined as for contracts with flexible considerations that are paid annually.

(ii) The portion of the net consideration for the first contract year to be accumulated shall be equal to an amount that is the sum of:

- (A) 65% of the net consideration for the first contract year; and
- (B) 22-1/2% of the excess of the net consideration for the first contract year over the

lesser of the net considerations for:

- (I) the second contract year; and
- (II) the third contract year.

(iii) The annual contract charge shall be the lesser of \$30 or 10% of the gross annual consideration.

(c) With respect to contracts providing for a single consideration payment, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that:

(i) the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to 90%; and

(ii) the net consideration shall be the gross consideration less a contract charge of \$75.

(5) For a policy issued on or after June 1, 2006, the minimum values as specified in Subsections (7), (8), (9), (10), and (12) of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as established in this Subsection (5).

(a) The minimum nonforfeiture amount at any time at or before the commencement of any annuity payments shall be equal to an accumulation up to such time, at rates of interest as indicated in Subsection (5)(b), of 87-1/2% of the gross considerations paid before such time decreased by the sum of:

(i) any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as indicated in Subsection (5)(b);

(ii) an annual contract charge of \$50, accumulated at rates of interest as indicated in Subsection (5)(b);

(iii) any premium tax paid by the company for the contract, accumulated at rates of interest as indicated in Subsection (5)(b); and

(iv) the amount of any indebtedness to the company on the contract, including interest due and accrued.

(b) (i) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of:

(A) 3% per annum; and

(B) the five-year Constant Maturity Treasury Rate reported by the Federal Reserve, rounded to the nearest 1/20th of 1%, as of a date or average over a period no longer than 15 months prior to the contract issue date or redetermination date under Subsection (5)(b)(iii):

(I) reduced by 125 basis points; and

(II) where the resulting interest rate is not less than 1%.

(ii) The interest rate shall apply for an initial period and may be redetermined for additional periods.

(iii) (A) If the interest rate will be reset, the contract shall state:

- (I) the initial period;
- (II) the redetermination date;
- (III) the redetermination basis; and
- (IV) the redetermination period.

(B) 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.

(c) (i) During the period or term that a contract provides substantive participation in an equity indexed benefit, the reduction described in Subsection (5)(b)(i)(B)(I) may be increased by up to an additional 100 basis points to reflect the value of the equity index benefit.

(ii) The present value of the additional reduction at the contract issue date and at each redetermination date may not exceed the market value of the benefit.

(iii) (A) The commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit.

(B) If the demonstration required under Subsection (5)(c)(iii)(A) is not made to the satisfaction of the commissioner, the commissioner may disallow or limit the additional reduction.

(6) Notwithstanding Subsection (4), for a policy issued on or after June 1, 2004 and before June 1, 2006, at the election of a company, on a contract form-by-contract form basis, the minimum values as specified in Subsections (7), (8), (9), (10), and (12) of any paid-up annuity, cash surrender, or death benefits available under an annuity contract may be based upon minimum nonforfeiture amounts as established in Subsection (5).

~~[(5)]~~ (7) (a) Any paid-up annuity benefit available under a contract shall be such that the contract's present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date.

(b) The present value described in Subsection ~~[(5)]~~ (7)(a) shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

~~[(6)]~~ (8) (a) For contracts that provide cash surrender benefits, the cash surrender benefits available before maturity may not be less than the present value as of the date of surrender of that

portion of the cash surrender value that would be provided under the contract at maturity arising from considerations paid before the time of cash surrender [~~reduced~~]:

(i) decreased by the amount appropriate to reflect any prior withdrawals from or partial surrender of the contract[~~;~~];

(ii) decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued; and

(iii) increased by any existing additional amounts credited by the company to the contract.

(b) For purposes of this Subsection (8), the present value being calculated on the basis of an interest rate not more than 1% higher than the interest rate specified in the contract for accumulating the net considerations to determine the maturity value[~~, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract~~].

[~~(b)~~] (c) In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time.

[~~(c)~~] (d) The death benefit under [~~these contracts~~] a contract described in Subsection (8)(a) shall be at least equal to the cash surrender benefit.

[~~(7)~~] (9) (a) For contracts 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 may 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 before the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity[~~, this~~] increased by any existing additional amounts credited by the company to the contract.

(b) For purposes of this Subsection (9), the 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 maturity value[~~, and increased by any existing additional amounts credited by the company to the contract~~].

[~~(b)~~] (c) For contracts that do not provide any death benefits before commencement of any annuity payments, the present values shall be calculated on the basis of the interest rate and

the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit.

~~[(e)]~~ (d) In no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

~~[(8)]~~ (10) (a) For the purpose of determining the benefits calculated under Subsections ~~[(6)]~~ (8) and ~~[(7)]~~ (9), the maturity date shall be considered to be the latest date permitted by the contract, except that it may not be considered to be later than the later of:

- (i) the anniversary of the contract next following the annuitant's 70th birthday; or
- (ii) the tenth anniversary of the contract.

(b) For a contract that provides cash surrender benefits on or past the maturity date, the cash surrender value shall be equal to the amount used to determine the annuity benefit payments.

(c) A surrender charge may not be imposed on or past maturity.

~~[(9)]~~ (11) Any contract that does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount before the commencement of any annuity payments shall include a statement in a prominent place in the contract that these benefits are not provided.

~~[(10)]~~ (12) 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.

~~[(11)]~~ (13) (a) For any contract that provides, within the same contract by rider or supplemental contract provisions, 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 nonforfeiture benefits shall:

- (i) be equal to the sum of:
 - (A) the minimum nonforfeiture benefits for the annuity portion; and
 - (B) the minimum nonforfeiture benefits, if any, for the life insurance portion; and

(ii) computed as if each portion were a separate contract.

(b) (i) Notwithstanding Subsections [~~(5)~~,~~(6)~~] (7), (8), (9), (10), and [~~(11)~~] (12), additional benefits payable, as described in Subsection [~~(11)~~] (13)(b)(ii), and consideration for the additional benefits payable, shall be disregarded in ascertaining, if required by this section:

- (A) the minimum nonforfeiture amounts;
- (B) paid-up annuity;
- (C) cash surrender; and
- (D) death benefits.

(ii) For purposes of this Subsection [~~(11)~~] (13), an additional benefit is a benefit 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.

(iii) The inclusion of the additional benefits described in this Subsection [~~(11)~~] (13) may not be required in any paid-up benefits, unless the additional benefits separately would require:

- (A) minimum nonforfeiture amounts;
- (B) paid-up annuity;
- (C) cash surrender; and
- (D) death benefits.

(14) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commissioner may adopt rules necessary to implement this section, including:

(a) ensuring that any additional reduction under Subsection (5)(c) is consistent with the requirements imposed by Subsection (5)(c); and

(b) providing for adjustments in addition to the adjustments allowed under Subsection (5)(c) to the calculation of minimum nonforfeiture amounts for:

- (i) contracts that provide substantive participation in an equity index benefit; and
- (ii) other contracts for which the commissioner determines adjustments are justified.

[~~(12)~~] (15) (a) After this section takes effect, any company may file with the commissioner a written notice of its election to comply with this section after a specified date

before July 1, 1988.

(b) This section applies to annuity contracts of a company issued on or after the date the company specifies in the notice.

(c) If a company makes no election under Subsection [~~(12)~~] (15)(a), the operative date of this section for such company is July 1, 1988.