

1 **LIFE INSURANCE AND ANNUITIES LAW**

2 **AMENDMENTS**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: James A. Dunnigan**

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7 **LONG TITLE**

8 **General Description:**

9 This bill modifies Insurance Code provisions dealing with life insurance and annuities.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines a two-tier annuity;
- 13 ▶ exempts two-tier annuities from certain cash surrender value requirements;
- 14 ▶ makes permissive a requirement that the commissioner make rules to establish
- 15 standards for materials used in the solicitation or sale of life insurance;
- 16 ▶ requires each life insurance policy or annuity contract to contain a description on its
- 17 cover page and explains what must be included in the description;
- 18 ▶ requires insurers to maintain records that affect the legal effect of a life insurance
- 19 policy, annuity contract, or certificate of life insurance, for the policy term plus five
- 20 years;
- 21 ▶ creates and defines an employer group category and exempts the groups' life
- 22 insurance policies from certain requirements;
- 23 ▶ exempts credit union groups and creditor groups that insure debtors from
- 24 requirements that they notify their members of conversion rights and information;
- 25 and
- 26 ▶ makes technical changes.

27 **Monies Appropriated in this Bill:**



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **31A-22-409**, as last amended by Chapter 97, Laws of Utah 2004

34 **31A-22-425**, as enacted by Chapter 96, Laws of Utah 2004

35 **31A-22-501**, as last amended by Chapter 96, Laws of Utah 2004

36 **31A-22-506**, as enacted by Chapter 242, Laws of Utah 1985

37 **31A-22-507**, as enacted by Chapter 242, Laws of Utah 1985

38 ENACTS:

39 **31A-22-426**, Utah Code Annotated 1953

40 **31A-22-427**, Utah Code Annotated 1953

41 **31A-22-501.1**, Utah Code Annotated 1953



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

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

45 **31A-22-409. Standard Nonforfeiture Law for Individual Deferred Annuities.**

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

48 (2) This section does not apply to:

49 (a) any reinsurance;

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

51 compensation:

52 (i) established or maintained by:

53 (A) an employer, including a partnership or sole proprietorship;

54 (B) an employee organization; or

55 (C) both an employer and an employee organization; and

56 (ii) other than a plan providing individual retirement accounts or individual retirement  
57 annuities under Section 408, Internal Revenue Code;

58 (c) a premium deposit fund;

- 59 (d) a variable annuity;  
60 (e) an investment annuity;  
61 (f) an immediate annuity;  
62 (g) a deferred annuity contract after annuity payments have commenced;  
63 (h) a reversionary annuity; or  
64 (i) any contract that shall be delivered outside this state through an agent or other  
65 representative of the company issuing the contract.

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

- 69 (i) the provisions described in Subsection (3)(b); or  
70 (ii) provisions corresponding to the provisions described in Subsection (3)(b) that in  
71 the opinion of the commissioner are at least as favorable to the contractholder, governing  
72 cessation of payment of consideration under the contract.

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

74 (i) the company shall grant a paid-up annuity benefit on a plan stipulated in the contract  
75 of such a value as specified in Subsections (7), (8), (9), (10), and (12):

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

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

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

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

84 (A) minimum paid-up annuity benefits;

85 (B) cash surrender benefits; or

86 (C) death benefits;

87 (iv) sufficient information to determine the amounts of the benefits described in  
88 Subsection (3)(b)(iii);

89 (v) a statement that any paid-up annuity, cash surrender, or death benefits that may be

90 available under the contract are not less than the minimum benefits required by any statute of  
91 the state in which the contract is delivered; and

92 (vi) an explanation of the manner in which the benefits described in Subsection  
93 (3)(b)(v) are altered by the existence of any:

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

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

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

97 (c) Notwithstanding the requirements of this Subsection (3), any deferred annuity  
98 contract may provide that if no consideration has been received under a contract for a period of  
99 two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated  
100 in the contract arising from consideration paid before the period would be less than \$20  
101 monthly:

102 (i) the company may at the company's option terminate the contract by payment in cash  
103 of the then present value of such portion of the paid-up annuity benefit, calculated on the basis  
104 of the mortality table specified in the contract, if any, and the interest rate specified in the  
105 contract for determining the paid-up annuity benefit; and

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

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

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

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

119 (A) decreased by the sum of:

120 (I) any prior withdrawals from or partial surrenders of the contract accumulated at a

121 rate of interest of 3% per annum; and  
122 (II) the amount of any indebtedness to the company on the contract, including interest  
123 due and accrued; and  
124 (B) increased by any existing additional amounts credited by the company to the  
125 contract.  
126 (ii) For purposes of this Subsection (4)(a), the net consideration for a given contract  
127 year used to define the minimum nonforfeiture amount shall be:  
128 (A) an amount not less than zero; and  
129 (B) equal to the corresponding gross considerations credited to the contract during that  
130 contract year less:  
131 (I) an annual contract charge of \$30; and  
132 (II) a collection charge of \$1.25 per consideration credited to the contract during that  
133 contract year.  
134 (iii) The percentages of net considerations shall be:  
135 (A) 65% of the net consideration for the first contract year; and  
136 (B) 87-1/2% of the net considerations for the second and later contract years.  
137 (iv) Notwithstanding Subsection (4)(a)(iii), the percentage shall be 65% of the portion  
138 of the total net consideration for any renewal contract year that exceeds by not more than two  
139 times the sum of those portions of the net considerations in all prior contract years for which  
140 the percentage was 65%.  
141 (b) (i) Except as provided in Subsections (4)(b)(ii) and (iii), with respect to contracts  
142 providing for fixed scheduled consideration, minimum nonforfeiture amounts shall be:  
143 (A) calculated on the assumption that considerations are paid annually in advance; and  
144 (B) defined as for contracts with flexible considerations that are paid annually.  
145 (ii) The portion of the net consideration for the first contract year to be accumulated  
146 shall be equal to an amount that is the sum of:  
147 (A) 65% of the net consideration for the first contract year; and  
148 (B) 22-1/2% of the excess of the net consideration for the first contract year over the  
149 lesser of the net considerations for:  
150 (I) the second contract year; and  
151 (II) the third contract year.

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

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

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

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

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

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

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

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

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

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

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

177 (A) 3% per annum; and

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

181 (I) reduced by 125 basis points; and

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

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

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

186 (I) the initial period;

187 (II) the redetermination date;

188 (III) the redetermination basis; and

189 (IV) the redetermination period.

190 (B) The basis is the date or average over a specified period that produces the value of  
191 the five-year Constant Maturity Treasury Rate to be used at each redetermination date.

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

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

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

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

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

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

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

213 (8) (a) For contracts that provide cash surrender benefits, the cash surrender benefits

214 available before maturity may not be less than the present value as of the date of surrender of  
215 that portion of the cash surrender value that would be provided under the contract at maturity  
216 arising from considerations paid before the time of cash surrender:

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

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

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

223 (b) For purposes of this Subsection (8), the present value being calculated on the basis  
224 of an interest rate not more than 1% higher than the interest rate specified in the contract for  
225 accumulating the net considerations to determine the maturity value.

226 (c) In no event shall any cash surrender benefit be less than the minimum nonforfeiture  
227 amount at that time.

228 (d) The death benefit under a contract described in Subsection (8)(a) shall be at least  
229 equal to the cash surrender benefit.

230 (9) (a) For contracts that do not provide cash surrender benefits, the present value of  
231 any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity  
232 may not be less than the present value of that portion of the maturity value of the paid-up  
233 annuity benefit provided under the contract arising from considerations paid before the time the  
234 contract is surrendered in exchange for, or changed to, a deferred paid-up annuity increased by  
235 any existing additional amounts credited by the company to the contract.

236 (b) For purposes of this Subsection (9), the present value being calculated for the  
237 period prior to the maturity date on the basis of the interest rate specified in the contract for  
238 accumulating the net considerations to determine maturity value.

239 (c) For contracts that do not provide any death benefits before commencement of any  
240 annuity payments, the present values shall be calculated on the basis of the interest rate and the  
241 mortality table specified in the contract for determining the maturity value of the paid-up  
242 annuity benefit.

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



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

248 (i) the anniversary of the contract next following the annuitant's 70th birthday; or

249 (ii) the tenth anniversary of the contract.

250 (b) For a contract, ~~other than a two-tier annuity as defined in Subsection (10)(d),~~ that  
251 provides cash surrender benefits [~~on or past the maturity date~~], the cash surrender value on or  
252 past the maturity date shall be equal to the amount used to determine the annuity benefit  
253 payments.

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

255 (d) As used in this Subsection (10), "two-tier annuity" means an annuity contract under  
256 which:

257 (i) cash surrender value is an accumulation, at interest, of percentages of premiums  
258 specified in the contract; and

259 (ii) cash surrender value cannot be derived from the amount used to determine the  
260 annuity benefit payments.

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

265 (12) Any paid-up annuity, cash surrender, or death benefits available at any time, other  
266 than on the contract anniversary under any contract with fixed scheduled considerations, shall  
267 be calculated with allowance for the lapse of time and the payment of any scheduled  
268 considerations beyond the beginning of the contract year in which cessation of payment of  
269 considerations under the contract occurs.

270 (13) (a) For any contract that provides, within the same contract by rider or  
271 supplemental contract provisions, both annuity benefits and life insurance benefits that are in  
272 excess of the greater of cash surrender benefits or a return of the gross considerations with  
273 interest, the minimum nonforfeiture benefits shall:

274 (i) be equal to the sum of:

275 (A) the minimum nonforfeiture benefits for the annuity portion; and

276 (B) the minimum nonforfeiture benefits, if any, for the life insurance portion; and  
277 (ii) computed as if each portion were a separate contract.

278 (b) (i) Notwithstanding Subsections (7), (8), (9), (10), and (12), additional benefits  
279 payable, as described in Subsection (13)(b)(ii), and consideration for the additional benefits  
280 payable, shall be disregarded in ascertaining, if required by this section:

281 (A) the minimum nonforfeiture amounts;

282 (B) paid-up annuity;

283 (C) cash surrender; and

284 (D) death benefits.

285 (ii) For purposes of this Subsection (13), an additional benefit is a benefit payable:

286 (A) in the event of total and permanent disability;

287 (B) as reversionary annuity or deferred reversionary annuity benefits; or

288 (C) as other policy benefits additional to life insurance, endowment, and annuity  
289 benefits.

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

292 (A) minimum nonforfeiture amounts;

293 (B) paid-up annuity;

294 (C) cash surrender; and

295 (D) death benefits.

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

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

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

302 (i) contracts that provide substantive participation in an equity index benefit; and

303 (ii) other contracts for which the commissioner determines adjustments are justified.

304 (15) (a) After this section takes effect, any company may file with the commissioner a  
305 written notice of its election to comply with this section after a specified date before July 1,  
306 1988.

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

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

311 Section 2. Section **31A-22-425** is amended to read:

312 **31A-22-425. Rulemaking authority.**

313 In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
314 commissioner [~~shall~~] may make rules to establish standards for any of the following used in  
315 connection with the solicitation or sale of life insurance policies and contracts:

- 316 (1) a buyer's guide;  
317 (2) a disclosure;  
318 (3) an illustration;  
319 (4) a policy summary; or  
320 (5) a recommendation.

321 Section 3. Section **31A-22-426** is enacted to read:

322 **31A-22-426. Coverage description.**

323 (1) Each life insurance policy, annuity contract, and certificate of life insurance shall  
324 contain a brief description printed on the cover page.

325 (2) The description shall include:

- 326 (a) the type of insurance;  
327 (b) whether it is participating or nonparticipating;  
328 (c) a significant limitation stated or included in the filed policy, contract, or certificate;

329 and

330 (d) a significant specific feature stated or included in the filed policy, contract, or  
331 certificate.

332 Section 4. Section **31A-22-427** is enacted to read:

333 **31A-22-427. Life insurance and annuity policy records.**

334 A life insurer, and its successors, shall maintain all records that affect the legal effect of  
335 a life insurance policy, annuity contract, or certificate of life insurance for the term of the  
336 insurance plus five years.

337 Section 5. Section **31A-22-501** is amended to read:

338 **31A-22-501. Eligible groups.**

339 A group or blanket policy of life insurance may not be delivered in Utah unless the  
340 insured group:

341 (1) falls within at least one of the classifications under Sections [~~31A-22-502~~]  
342 31A-22-501.1 through 31A-22-509; and

343 (2) is formed for a reason other than the purchase of insurance.

344 Section 6. Section **31A-22-501.1** is enacted to read:

345 **31A-22-501.1. Employer groups.**

346 (1) The lives of a group of individuals may be insured under a policy:

347 (a) issued as a policyholder, to:

348 (i) an employer; or

349 (ii) an employer sponsored trust for the benefit of the employer's employees;

350 (b) having an insurable interest as stated in Subsection 31A-21-104(2)(a)(v); and

351 (c) subject to the requirement of Subsection 31A-21-104(9).

352 (2) A policy issued under this section is not subject to:

353 (a) Section 31A-21-311; and

354 (b) Sections 31A-22-516 through 31A-22-522.

355 Section 7. Section **31A-22-506** is amended to read:

356 **31A-22-506. Creditor groups to insure debtors.**

357 [~~A~~] (1) To insure debtors of a creditor, a group life insurance policy may be issued to a  
358 policyholder who is [a] any of the following:

359 (a) the creditor [or];

360 (b) the creditor's parent holding company; or [to]

361 (c) trustees or agents designated by two or more creditors[~~, to insure debtors of the~~  
362 creditors. The policies are].

363 (2) A policy described in Subsection (1) is subject to the [following] requirements[~~;~~] of  
364 this Subsection (2).

365 [~~(+)~~] (a) (i) The persons eligible for insurance are;

366 (A) all of the debtors of the creditors; or

367 (B) all of any classes of debtors.

368 (ii) The policy may provide that "debtors" includes:

369           ~~[(a)]~~ (A) borrowers of money, or purchasers or lessees of goods, services, property,  
370 rights, or privileges for which payment is arranged through a credit transaction; and

371           ~~[(b)]~~ (B) the debtors of one or more affiliated corporations, proprietorships, or  
372 partnerships under common control with the policyholder.

373           ~~[(2)]~~ (b) (i) The premiums shall be paid by the policyholder, from:

374           (A) the creditor's funds~~[-from]~~;

375           (B) charges collected from the insured debtors~~[-]~~; or

376           (C) from both Subsections (2)(b)(i)(A) and (B).

377           (ii) Except as provided under Section 31A-22-512, a policy on which no part of the  
378 premium is contributed by insured debtors specifically for their insurance shall insure all  
379 eligible debtors.

380           ~~[(3)]~~ (c) (i) To the extent of the creditor's interest, the insurance may be payable to the  
381 creditor or to any successor to the right, title, and interest of the creditor.

382           (ii) The payment shall reduce or extinguish the obligation of the debtor to the extent of  
383 the payment.

384           (iii) When the amount of insurance exceeds the debt, the excess is payable to a  
385 beneficiary other than the creditor named by the debtor, or to the debtor's estate.

386           ~~[(4)]~~ (d) Group policies issued under this section are not subject to Sections  
387 31A-22-516 through ~~[31A-22-520]~~ 31A-22-521.

388           Section 8. Section **31A-22-507** is amended to read:

389           **31A-22-507. Credit union groups.**

390           (1) The lives of a group of individuals may be insured under a policy issued to a  
391 policyholder who is:

392           (a) a credit union ~~[or to]~~; or

393           (b) trustees or agents designated by two or more credit unions. ~~[This]~~

394           (2) A policy described in Subsection (1) shall insure members of ~~[the]~~ a credit ~~[unions]~~  
395 union for the benefit of persons other than:

396           (a) the credit ~~[unions,]~~ union;

397           (b) trustees~~[-or]~~ of the credit union;

398           (c) agents ~~[or any of their officials:]~~ of the credit union; or

399           (d) an official of an entity described in Subsections (2)(a) through (c).

400           ~~(3)~~ The policies are subject to the ~~[following]~~ requirements~~[:]~~ of this Subsection (3).

401           ~~(+)~~ (a) The persons eligible for insurance are:

402           ~~(i)~~ all of the members of the credit ~~[unions,]~~ union; or

403           ~~(ii)~~ all of any classes of ~~[it:]~~ the members of the credit union.

404           ~~(2)~~ (b) The premiums shall be paid by the policyholder. Except as provided in  
405 Section 31A-22-512, a policy on which no part of the premium is collected from the covered  
406 members specifically for their insurance shall insure all eligible members.

407           ~~(3) Group policies~~ (c) A group policy issued under this section ~~[are]~~ is not subject to  
408 Sections 31A-22-517 through ~~[31A-22-520]~~ 31A-22-521.

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**Legislative Review Note**  
**as of 1-7-05 9:24 AM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number HB0201**

**Life Insurance and Annuities Law Amendments**

*19-Jan-05*

*11:29 AM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

The record keeping provision may impact some businesses. Those costs may be passed onto the consumer.

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**Office of the Legislative Fiscal Analyst**