

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431:10D-107, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The minimum values as specified in subsections (e), (f), (g), (h), and (j) of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this subsection.

- (1) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to that time at a rate of interest of three per cent per annum of percentages of the net considerations paid prior to that time, decreased by the sum of:
 - (A) Any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three per cent per annum; and
 - (B) 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 insurer to the contract.

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of \$30 and less a collection charge of \$1.25 per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five per cent of the net consideration for the first contract year and eighty-seven and one-half per cent of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five per cent of the portion of the total net consideration for any renewal contract year which 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 sixty-five per cent.

- (2) With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:
 - (A) The portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five per cent of the net consideration for the first contract year plus twenty-two and one-half per cent of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years[-]; and
 - (B) The annual contract charge shall be the lesser of \$30 or ten per cent of the gross annual consideration.
- (3) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to

ninety per cent and the net consideration shall be the gross consideration less a contract charge of \$75.

Notwithstanding any other provision of this section, for any contract issued after June 30, 2002, and before July 1, [2004,] 2006, the interest rate at which net considerations, prior withdrawals, and partial surrenders shall be accumulated, for the purpose of determining minimum nonforfeiture amounts, shall be one and one-half per cent.”

SECTION 2. Section 431:10D-107, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10D-107 Standard nonforfeiture law; individual deferred annuities.** (a) This section shall be known as the Standard Nonforfeiture Law for Individual Deferred Annuities.

(b) This section shall not apply to:

- (1) Any 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) Any premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity; or
- (4) Any contract which shall be delivered outside this State through a producer or other representative of the insurer issuing the contract.

(c) In the case of contracts issued on or after [June 1, 1981,] July 1, 2006, no contract of annuity, except as stated in subsection (b), shall be delivered or issued for delivery in this State unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the contract holder upon cessation of payment of considerations under the contract[-]:

- (1) That upon cessation of payment of considerations under a contract, or upon the written request of the contract owner, the insurer will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in subsections [(e), (f);] (g), (h), [and] (i), (j)[-], and (l);
- (2) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the insurer will pay in lieu of any paid-up annuity benefit a cash surrender benefit of the amount as specified in subsections [(e), (f);] (g), (h), [and] (j)[-], and (l). The insurer shall reserve the right to defer the payment of the cash surrender benefit for a period [of] not exceeding six months after demand therefor with surrender of the contract[-] after making written request and receiving written approval of the commissioner. The request shall address the necessity and equitability to all policyholders of the deferral;
- (3) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender, or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of the benefits[-]; and

- (4) 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 an explanation of the manner in which the benefits are altered by the existence of any additional amounts credited by the insurer to the contract, any indebtedness to the ~~[company]~~ insurer on the contract, or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this subsection, any deferred annuity contract may provide that if no considerations have 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 considerations paid ~~[prior to the period]~~ would be less than \$20 monthly, the ~~[company]~~ insurer may at its option terminate the contract by payment in cash of the then present value of the portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by the payment shall be relieved of any further obligation under the contract.

(d) The minimum values as specified in subsections ~~[(e), (f),]~~ (g), (h), ~~[and (i), (j), and (l),]~~ of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this subsection.

~~[(1) With respect to contracts providing for flexible considerations, the]~~ The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to that time at ~~[a rate of interest of three per cent per annum of percentages]~~ rates of interest as indicated in subsection (e) of the net considerations paid prior to that time, decreased by the sum of:

- ~~[(A) Any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three per cent per annum; and~~
- ~~(B) 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 insurer to the contract.]~~
- (1) Any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest as indicated in subsection (e);
- (2) An annual contract charge of \$50, accumulated at rates of interest as indicated in subsection (e);
- (3) Any premium tax paid by the insurer for the contract, accumulated at rates of interest as indicated in subsection (e); and
- (4) The amount of any indebtedness to the company on the contract, including interest due and accrued.

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount ~~[not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of \$30 and less a collection charge of \$1.25 per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty five per cent of the net consideration for the first contract year and eighty seven and one-half per cent of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty five per cent of the portion of the total net consideration for any renewal contract year which 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 sixty five per cent.]~~ equal to eighty-seven and five-tenths per cent of the gross considerations credited to the contract during the contract year.

- (2) ~~With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:~~
- ~~(A) The portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five per cent of the net consideration for the first contract year plus twenty-two and one-half per cent of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.~~
- ~~(B) The annual contract charge shall be the lesser of \$30 or ten per cent of the gross annual consideration.~~
- (3) ~~With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to ninety per cent and the net consideration shall be the gross consideration less a contract charge of \$75.~~

Notwithstanding any other provision of this section, for any contract issued after June 30, 2002, and before July 1, 2004, the interest rate at which net considerations, prior withdrawals, and partial surrenders shall be accumulated, for the purpose of determining minimum nonforfeiture amounts, shall be one and one-half per cent.]

(e) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three per cent a year and the following, which shall be specified in the contract if the interest rate will be reset:

- (1) The five-year constant maturity treasury rate reported by the Federal Reserve as of a date, or average over a period, rounded to the nearest one-twentieth of one per cent, specified in the contract not later than fifteen months prior to the contract issue date or redetermination date under paragraph (4);
- (2) Reduced by one hundred twenty-five basis points;
- (3) Where the resulting interest rate is not less than one per cent; and
- (4) The interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date, basis, and period, if any, shall be stated in the contract. As used in this paragraph, "basis" means 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.

(f) During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in subsection (e)(2) by up to an additional one hundred basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each subsequent redetermination date, of the additional reduction shall not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. Lacking such a demonstration that is acceptable to the commissioner, the commissioner may disallow or limit the additional reduction. The commissioner may adopt rules to implement this subsection and provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts that the commissioner determines adjustments are justified.

[(e)] (g) Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal

to the minimum nonforfeiture amount on that date. The present value 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.

[(f)] (h) For contracts which provide cash surrender benefits, the cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, the present value being calculated on the basis of an interest rate not more than one per cent 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 insurer on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the insurer to the contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under these contracts shall be at least equal to the cash surrender benefit.

[(g)] (i) For contracts which 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 shall 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 prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, 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 the maturity value, and increased by any existing additional amounts credited by the insurer to the contract. For contracts which do not provide any death benefits prior to the 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. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

[(h)] (j) For the purpose of determining the benefits calculated under subsections [(f)] (h) and [(g)] (i), in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date [is to] shall be the latest date for which election shall be permitted by the contract, but [is not to] shall not be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

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

[(j)] (l) 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 consideration beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

[(k)] (m) For any contract which provides, within the same contract by rider or supplemental contract provision, 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 be equal to

the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding ~~[the provisions of]~~ subsections ~~[(e), (f),]~~ (g), (h), ~~[and] (i), (j), and (l),~~ and (l), additional benefits payable in the event of total and permanent disability, as reversionary annuity or deferred reversionary annuity benefits, or as other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits that may be required by this section. The inclusion of additional benefits shall not be required in any paid-up benefits, unless these additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits.

~~[(1) After June 1, 1979, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before June 1, 1981. After the filing of the notice, then upon the specified date, which shall be the operative date of this section for the insurer, this section shall become operative with respect to annuity contracts thereafter issued by the insurer. If an insurer makes no election, the operative date of this section for the insurer shall be June 1, 1981.]'~~

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2004; provided that:

- (1) Section 1 shall be repealed on July 1, 2006;
- (2) An insurer may elect to apply section 2 to annuity contracts on a contract form-by-contract form basis beginning July 1, 2004, and ending June 30, 2006; and
- (3) Section 2 shall apply to annuity contracts issued by an insurer beginning July 1, 2006.

(Approved April 22, 2004.)