



Greg Schwab

*Final Analysis*  
*Legislative Service Commission*

**Sub. S.B. 187**  
125th General Assembly  
(As Passed by the General Assembly)

**Sens. Nein, Robert Gardner, Armbruster, Schuler, Stivers, Mumper, Padgett, Spada**

**Reps. D. Evans, G. Smith, Faber, Gibbs, Setzer, Martin, Sferra, Wolpert, Koziura, Daniels, Barrett, Aslanides, Carano, Collier, Domenick, C. Evans, Flowers, Hughes, Key, Olman, Reidelbach, Seitz, Slaby**

**Effective date:** \*

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**ACT SUMMARY**

- Adopts a new formula for determining the minimum nonforfeiture value of an individual deferred annuity, repealing current formulas, as amended, two years after the act's effective date.
- Requires insurance companies to obtain the approval of the Superintendent of Insurance prior to deferring the payment of a cash surrender benefit.
- Delays the use of annuity contract and related endorsement forms filed with the Superintendent of Insurance for 30 days unless earlier approved by the Superintendent.
- Differentiates the cancellation and nonrenewal of medical malpractice insurance from the cancellation and nonrenewal of policies for other types of insurance.
- Classifies court orders ruling on the constitutionality of provisions of Am. Sub. S.B. 281 of the 124th General Assembly as final orders, making the orders immediately appealable to the court.

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\* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

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## CONTENT AND OPERATION

### Standard Nonforfeiture Law for Individual Deferred Annuities

(sec. 3915.073)

Section 3915.073 of the Revised Code is known as the Standard Nonforfeiture Law for Individual Deferred Annuities. Under continuing law, life insurance companies must grant paid-up annuity benefits upon the cessation of payment of considerations under an annuity contract pursuant to a plan in the contract fixed in accordance with provisions in the Standard Nonforfeiture Law. Under the act, annuity contract owners also are allowed to obtain the paid-up annuity benefit by making a written request for the benefits to the insurance company.

If an annuity contract provides for a lump sum settlement at maturity or at any other time, insurance companies are required under continuing law to pay out a cash surrender benefit in an amount specified by the Standard Nonforfeiture Law upon the surrender of the contract at or before the commencement of annuity payments. Prior law gave an insurance company the right to defer the payment of the cash surrender benefit for six months after the benefit was requested with the surrender of the annuity contract; the act amends this to provide that an insurance company *may* defer the payment of the cash surrender benefit for a period *not to exceed* six months, and makes the deferral *contingent upon* the insurance company's conveyance of a written request for the deferral to the Superintendent of Insurance and its receipt of approval for the deferral from the Superintendent. The insurance company's request must address the necessity and equitability of the deferral to all of the annuity's contract holders.

The Standard Nonforfeiture Law sets minimum values for paid-up annuity and cash surrender benefits under an annuity contract. Ongoing Standard Nonforfeiture Law requires the minimum values for these benefits to be based upon minimum nonforfeiture amounts determined by formulas set in that Law. For two years after the act's effective date, the minimum nonforfeiture amounts may be determined either by the prior formulas, as amended by the act, or by new formulas enacted by the act. Insurance companies may elect to apply chosen formulas to annuity contracts on a contract-form-by-contract-form basis. The act repeals the prior formulas for determining minimum nonforfeiture amounts, as amended by the act, two years after the act's effective date, leaving only the new formulas in place (*see* uncodified Sections 3, 4, and 5).

**Determination of minimum nonforfeiture amounts; formulas to be repealed two years after the act's effective date**

With respect to annuity contracts providing for flexible considerations, prior law required the minimum nonforfeiture amount at any time at or prior to the commencement of annuity payments to equal an accumulation at an interest rate of *three per cent* per annum of a given percentage of the net considerations previously paid, decreased by the sum of prior withdrawals from or partial surrenders of the contract accumulated at an interest rate of *three per cent* per annum and by any debt accumulated on the contract. The act reduces the interest rate for these amounts to *one and one-half per cent* per annum. A temporary provision in former law provided for the use of a one and one-half per cent interest rate for contracts issued before September 1, 2004, notwithstanding any other provisions in the Standard Nonforfeiture Law, for purposes of determining minimum nonforfeiture amounts for accumulations of net considerations, partial withdrawals and partial surrenders. With the act's above reduction of the interest rate to one and one-half per cent, the act repeals this duplicative temporary provision.

Other provisions of the Standard Nonforfeiture Law, setting minimum nonforfeiture amounts for contracts providing for fixed scheduled considerations and for contracts providing for a single consideration remain effective until repealed by the act two years after the act's effective date. These provisions are not amended by the act prior to their repeal.

**Alternative determination of minimum nonforfeiture amounts**

The act enacts new formulas in the Standard Nonforfeiture Law for Individual Deferred Annuities to be used for determining minimum nonforfeiture amounts. These formulas may be used as an alternative to the prior formulas, as amended by the act. Following the repeal of the amended formulas in two years, the new formulas are applicable to the determination of minimum nonforfeiture amounts in all of the identified situations.

Under the act's new alternative formulas, the minimum nonforfeiture amount at any time at or prior to the commencement of annuity payments is equal to an accumulation up to that time of the net considerations, at an annual rate of the lesser of three per cent per annum or a rate determined under the following formula, which must be specified in the contract if the interest rate will be reset:

--The five-year constant maturity treasury rate reported by the Federal Reserve as of a date or an average over a period, rounded to the nearest one-twentieth of one per cent, specified in the contract, no longer than 15 months prior to the contract issue date or its redetermination date. This rate is then reduced by 125 basis points where the resulting interest rate is not less than one per cent. The

redetermination date, basis, and period for an insurance contract, if any, must be specified in the contract. As used in this formula, the basis is a date or average over a specified period used to produce the value of the five-year constant maturity treasury rate to be used at each redetermination date.

The net consideration for a given contract year used to define the minimum nonforfeiture amount for this formula is an amount equal to 87½% of the gross considerations credited to the contract during that contract year.

The minimum nonforfeiture amount determined above is then decreased by the sum of:

1. Any prior withdrawals from or partial surrenders of the contract, accumulated at rates of interest determined in accordance with the above formula;
2. An annual contract charge of \$50, accumulated at rates of interest determined in accordance with the above formula;
3. Any premium tax paid by the company for the contract, accumulated at rates of interest determined in accordance with the above formula;
4. The amount of indebtedness to the insurance company on the contract, including interest due and accrued.

The act's new minimum nonforfeiture formulas also provide that during the period or term that an annuity contract provides substantive participation in an equity-indexed benefit, the contract may provide for an increase in the standard 125 basis point reduction by a maximum of 100 basis points, to reflect the value of the equity-indexed benefit. The present value at the contract issue date, and at each redetermination date thereafter, of the additional basis point reduction may not exceed the market value of the benefit. The act permits the Superintendent of Insurance to require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. The Superintendent may disallow or limit the additional reduction if the demonstration is not acceptable to the Superintendent.

The act specifies that the Superintendent may adopt rules to implement these provisions and other provisions of the Standard Nonforfeiture Law under the Administrative Procedure Act, including rules that provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity-indexed benefit and for other contracts for which the Superintendent determines adjustments are justified.

### **Filing requirement for annuity contracts**

(sec. 3915.14)

The act prohibits individual or group annuity policies and contracts, including, but not limited to, guaranteed investment contracts, deposit administration contracts, funding agreements, and structured settlement agreements, and certificates, endorsements, riders, and applications that are or are designed to become part of an annuity policy or contract, from being delivered, issued for delivery, or used in this state, or from being issued by a life insurance company organized in this state, until 30 days after the form of the policy, contract, agreement, certificate, endorsement, rider, or application has been filed with the Superintendent of Insurance, unless the Superintendent gives the insurance company prior written approval to use the form within that period. This prohibition does not apply to contracts and annuities issued by life insurance companies, and related certificates, applications, endorsements, and riders, which provide variable, fixed, or both fixed and variable benefits or contractual payments and which ongoing Insurance Law already requires to be filed with the Superintendent.

### **Requirements for the cancellation or nonrenewal of medical malpractice policies**

(secs. 3937.25 to 3937.27)

Ongoing law governs the cancellation and nonrenewal of commercial policies of property and casualty insurance, and renewals conditioned upon a substantial increase in premium by the insurer. While some types of property and casualty insurance, including automobile insurance, are exempt from these sections, the sections previously applied to medical malpractice insurance. The act amends these sections so that they no longer are applicable to medical malpractice insurance. Medical malpractice insurance, as defined by the act, means "insurance coverage against the legal liability of the insured for loss, damage, or expense arising from a medical, optometric, or chiropractic claim . . . ."

#### **Cancellation of a policy of medical malpractice insurance**

(secs. 3937.28(A), (B), and (C) and 3937.29(A), (B), (C), and (D))

The act enacts two sections to regulate the cancellation and nonrenewal of medical malpractice insurance. First, the act prohibits insurers from issuing a notice of cancellation of a specific policy of medical malpractice insurance unless the action is based upon one of the following grounds:

1. Nonpayment of premium;



2. Discovery of fraud or material misrepresentation in the procurement of the insurance or with respect to any claims submitted thereunder;
3. Discovery of a moral hazard or willful or reckless acts or omissions on the part of the named insured that increase any hazard insured against;
4. The occurrence of a change in the individual risk that substantially increases any hazard insured against after insurance coverage has been issued or renewed, except to the extent the insurer reasonably should have foreseen the change or contemplated the risk in writing the contract;
5. Loss of applicable reinsurance or a substantial decrease in applicable reinsurance, if the Superintendent of Insurance has determined that reasonable efforts have been made to prevent the loss of, or substantial decrease in, the applicable reinsurance, or to obtain replacement coverage;
6. Failure of an insured to correct material violations of safety codes or to comply with reasonable written loss control recommendations;
7. A determination by the Superintendent of Insurance that the continuation of the policy would create a condition that would be hazardous to the policyholders or the public.

If an insurer does issue a notice of cancellation, the act requires that the notice be in writing. The notice must be mailed to the insured at the insured's last known address and to the insured's agent, and must contain the policy number, the date of the notice, the effective date of the cancellation, and an explanation of the grounds for cancellation. Except when cancellation is for nonpayment of premium, the act requires the effective date of cancellation to be no less than 60 days after the date the notice was mailed. If cancellation is for nonpayment of premium, the effective date of the cancellation must be no less than ten days after the date the notice was mailed.

Similarly, the act allows an insurer to refuse to renew a policy of medical malpractice insurance by mailing a notice of the insurer's intent to the agent of record and to the insured at the insured's last known address. The notice must be mailed at least 60 days prior to the expiration date of the policy, and must contain the policy number, the date of the notice, the expiration date of the policy, and an explanation of the grounds for nonrenewal. If an insurer intends to condition renewal of a policy of medical malpractice insurance upon an increase in premium, the act requires the insurer to mail notice of this intention to the agent of record and to the insured at the insured's last known address at least 60 days prior to the expiration date of the policy.

The act enacts provisions governing an insurer that intends to cancel, terminate, or otherwise not renew not just a specific policy but all policies of medical malpractice insurance that the insurer has issued to any class, type, or specialty of practitioner, or that intends to cancel, terminate, or otherwise not renew all policies of medical malpractice insurance in a specific geographic area, which area may include the state as a whole. An insurer that intends to take any of these actions is required by the act to file written notice of the intended action with the Superintendent of Insurance. The notice must contain all of the following information:

1. The date of the notice;
2. The number of insureds with policies that will be cancelled, terminated, or not renewed;
3. The date that the insurer intends to take the action;
4. If the insurer's action involves a specific geographic region, the region involved;
5. Any other information required by the Superintendent.

An insurer that intends to cancel, terminate, or otherwise not renew all policies of medical malpractice insurance of any class, type, or specialty of practitioner, or all policies of medical malpractice insurance in a specific geographic area, is required by the act to file notice with the Superintendent of Insurance. An insurer's action to cancel, terminate, or otherwise not renew all policies of medical malpractice insurance that the insurer has issued in Ohio is not effective unless written notice has been filed with the Superintendent at least 180 days prior to the action. An insurer's action to cancel, terminate, or otherwise not renew all policies of medical malpractice insurance for a specific class, type, or specialty of practitioner, or in a specific geographic area other than the state as a whole, is not effective unless written notice has been filed with the Superintendent at least 120 days prior to the action. The act also provides that written notice must be filed with the Superintendent at least 120 days prior to the insurer making changes in its underwriting guidelines, if the *effect* of these changes will be to cancel, terminate, or otherwise not renew all policies of medical malpractice insurance for a specific type, class, or specialty of practitioner or in a specific geographic area other than the state as a whole.

**Coverage may be extended if notice is not timely**

(sec. 3937.29(E) and (F))

Under the act, if an insurer mails notice to an insured of the insurer's intent to condition renewal of a policy of medical malpractice insurance upon an increase

in premium, or of the insurer's refusal to renew the insured's policy, less than 60 days prior to the expiration date of the policy, the insured's coverage may temporarily remain in effect. The act provides that coverage remains in effect until 60 days after the mailing of the notice, unless either of the following occurs:

1. In the case of a premium increase, the insured accepts the increased premium, in which case the change is effective immediately following the expiration of the insured's coverage then in effect.

2. In the case of nonrenewal, the insured notifies the insurer in writing that the insured accepts the nonrenewal as stated.

If the insured's coverage is extended pursuant to the above, the act requires that the premium for the time that coverage is extended beyond a policy's original expiration date must be calculated using the rates originally applicable to the coverage then in effect. The insurer is required to notify the insured of the amount of the premium for the time that coverage is extended and the insured is required to pay the premium unless the insured provides either of the following notices:

1. In the case of a premium increase, the insured notifies the insurer in writing that the insured does not want the coverage then in effect to be extended past the expiration date.

2. In the case of nonrenewal, the insured notifies the insurer in writing that the insured accepts the nonrenewal as stated.

**Term of policy of medical malpractice insurance; liability**

(sec. 3937.28(D) and (E))

The act prohibits construing its provisions to prevent an insurer from writing a policy of medical malpractice insurance for a period greater than one year and providing in the policy that the insurer may issue a notice of cancellation of the policy at least 60 days prior to an anniversary of the policy, with the effective date of cancellation being that anniversary. The Superintendent of Insurance may prescribe that adequate disclosure be made to the insured when a policy is issued for a term greater than one year.

The act provides that there is no liability on the part of, and no cause of action of any nature arises against, the Superintendent of Insurance, any insurer, or any person furnishing information requested by the Superintendent or an insurer, or the agent, employee, attorney or other authorized representative of these persons, for any oral or written statement made to supply information relevant to a determination of cancellation of any policy of medical malpractice insurance or in connection with advising an insured or the insured's attorney of the grounds

therefore, or in connection with any administrative or judicial proceeding arising out of or related to such cancellations.

**Appeal of court orders determining the constitutionality of provisions of a past malpractice bill**

(sec. 2505.02)

Ongoing law does not classify all court orders, judgments, and decrees as final orders that may be immediately appealed and affirmed, modified, or reversed on appeal. Orders not classified as final orders may not be appealed before the action is complete. The act classifies any court order determining the constitutionality of statutory changes brought about by the enactment of Am. Sub. S.B. 281 of the 124th General Assembly (relating to civil actions for damages arising out of medical malpractice claims) as a final order that may be immediately appealed and affirmed, modified, or reversed. Am. Sub. S.B. 281 of the 124th General Assembly contained several provisions regulating medical malpractice actions.

**Severability clause**

(Section 7)

The act contains a severability clause.

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	01-27-04	p. 1444
Reported, S. Insurance, Commerce & Labor	03-31-04	p. 1687
Passed Senate (33-0)	03-31-04	p. 1693
Reported, H. Insurance	05-12-04	p. 1897
Passed House (94-5)	05-25-04	pp. 1978-1979
Senate concurred in House amendments (33-0)	05-26-04	pp. 2011-2012

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