Bill Analysis

Greg Schwab *Legislative Service Commission*

S.B. 187

125th General Assembly
(As Introduced)

Sens. Nein, Robert Gardner, Armbruster, Schuler, Stivers, Mumper

BILL SUMMARY

- Adopts a new formula for determining the 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.

CONTENT AND OPERATION

<u>Standard Nonforfeiture Law for Individual Deferred Annuities</u>

(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 bill, annuity contract owners are allowed to also 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. Current law gives an insurance company the right to defer the payment of the cash surrender benefit for six months after the benefit is requested with the surrender of the annuity contract, while the bill 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. The Standard Nonforfeiture Law requires the minimum values for these benefits to be based upon minimum nonforfeiture amounts determined by formulas set in provisions of the Standard Nonforfeiture Law. For two years after the act's effective date, the minimum nonforfeiture amounts may be determined either by the current formulas as amended by the bill or by new formulas enacted by the bill. Insurance companies may elect to apply chosen formulas to annuity contracts on a contract-form-by-contract-form basis. The bill repeals the current formulas for determining minimum nonforfeiture amounts, as amended by the bill, two years after the act's effective date, leaving only the new formulas enacted by the bill 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, current law requires 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 bill reduces the interest rate for these amounts to *one and one-half per cent* per annum. A temporary provision in current law provides 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 bill's above reduction of the interest rate to one and one-half per cent, the bill repeals this temporary provision.

Other current provisions of the Standard Nonforfeiture Law, effective until repealed two years after the act's effective date, set minimum nonforfeiture amounts for contracts providing for fixed scheduled considerations and for contracts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

Alternative determination of minimum nonforfeiture amounts

The bill 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 current formulas, as amended by the bill. Following the repeal of the current formulas in two years, these new formulas are applicable to the determination of minimum nonforfeiture amounts in all of the identified situations.

Under the bill'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:

--The five-year constant maturity treasury rate reported by the Federal Reserve as of a date or an average over a period, as specified in the contract, rounded to the nearest one-twentieth of one per cent, over a period extending no longer than 15 months prior to the contract issue date or its redetermination date. This rate is then reduced by 125 basis points if 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 period used to produce the value of the five-year constant maturity 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 bill'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 is prohibited from exceeding the market value of the benefit. The bill 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 bill 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 bill 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 that existing law (section 3911.011 of the Revised Code) requires to be filed with the Superintendent of Insurance, applicable to contracts and annuities, and related certificates, applications, endorsements, and riders, providing variable, fixed, or fixed and variable benefits or contractual payments.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-27-04	p. 1444

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