

CHAPTER 45

AN ACT concerning surrender charges for individual deferred annuities and amending and supplementing P.L.1981, c.285.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 5 of P.L.1981, c.285 (C.17B:25-20) is amended to read as follows:

C.17B:25-20 Standard nonforfeiture law for individual deferred annuities.

5. This section shall be known as the standard nonforfeiture law for individual deferred annuities.

a. No contract of annuity or pure endowment, except as stated in subsection p., shall be issued or delivered in this State on or after January 1, 1972 and before the operative date of this section as defined in subsection o., unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the defaulting or surrendering contract holder:

(1) That, in the event of default in any stipulated payment, the insurer will grant a paid-up nonforfeiture benefit on a plan stipulated in the contract, effective as of such due date, of such value as may be hereinafter specified.

(2) A statement of the mortality tables, if any, and interest rates used in calculating the paid-up nonforfeiture benefits available under the contract, together with a table showing either the cash surrender value, if any, or the paid-up nonforfeiture benefit, if any, available on each anniversary of the contract either during the first 20 contract years or during the term of stipulated payments, whichever is shorter, such benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the contract and that there is no indebtedness to the insurer on the contract.

(3) A statement that the paid-up nonforfeiture benefits available under the contract are not less than the minimum benefits required by or pursuant to the insurance law of the state in which the contract is delivered; an explanation of the manner in which the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the contract or any indebtedness to the insurer on the contract; if a detailed statement of the method of computation of the paid-up nonforfeiture benefits shown in the contract is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the state in which the contract is delivered; and a statement of the method to be used in calculating the paid-up nonforfeiture benefit available under the contract on any contract anniversary beyond the last anniversary for which such benefits are consecutively shown in the contract.

If an insurer shall provide for the payment of a cash surrender value, it shall reserve the right to defer the payment of such value for a period of six months after demand therefor with surrender of the contract.

Notwithstanding the requirements of this subsection, any deferred annuity contract may provide that if the annuity allowed under any paid-up nonforfeiture benefit would be less than \$120.00 annually, the insurer may at its option grant a cash surrender value in lieu of such paid-up nonforfeiture benefit of such amount as may be required by subsection c.

b. Any paid-up nonforfeiture benefit available under any annuity or pure endowment contract referred to in subsection a. in the event of default in a stipulated payment due on any contract anniversary, shall be such that its present value as of such anniversary shall be an amount not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the contract, including any existing paid-up additions, if there had been no default, over the sum of (1) the then present value of the adjusted stipulated payments as defined in subsection d. corresponding to stipulated payments which would have fallen due on and after such anniversary, and (2) the amount of any indebtedness to the insurer on the contract. In determining the benefits referred to in this subsection and in calculating the adjusted stipulated payments referred to in subsection d. in the case of annuity contracts under which an election may be made to have annuity payments commence at optional dates, the annuity payments shall be deemed to commence at a date which shall be the latest permitted by the contract for the commencement of such payments but not later than the contract anniversary nearest the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later; and the stipulated payments shall be deemed to

be payable for the longest period during which they would be payable if election were made to have the annuity payments commence at such date.

c. Any cash surrender value allowed by any annuity or pure endowment contract referred to in subsection a. and the present value under any optional provision, of future benefits commencing on the due date of the stipulated payment in default shall each be at least equal to the then present value of the minimum paid-up nonforfeiture benefit required by subsection b.

d. The adjusted stipulated payments for any annuity or pure endowment contract referred to in subsection a. shall be calculated on an annual basis and shall be such uniform percentage of the respective stipulated payments specified in the contract for each contract year that the present value, at the date of issue of the contract, of all such adjusted stipulated payments shall be equal to the sum of (1) the then present value of the future guaranteed benefits provided for by the contract; (2) 20% of the adjusted stipulated payment for the first contract year; and (3) 2% of the adjusted stipulated payment for the first contract year for each year not exceeding 20 during which stipulated payments are payable.

All adjusted stipulated payments and present values referred to in this section shall for annuity and pure endowment contracts be calculated on the basis of (1) the applicable rates of interest, not exceeding 3 1/2% per annum, specified in the contract for calculating cash surrender values, if any, and paid-up nonforfeiture benefits; and (2) the 1937 Standard Annuity Mortality Table, or the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the commissioner or any other table approved by the commissioner; provided that, in the case of annuity or pure endowment contracts issued after the operative date for the insurer of paragraph (ix) of subsection a. of the standard valuation law, N.J.S.17B:19-8, the 3 1/2% maximum interest rate specified in item (1) of this paragraph shall be increased to 4 1/2%, and, if the applicable rates of interest specified in the contract for calculating cash surrender values, if any, and paid-up nonforfeiture benefits exceed 3 1/2%, there shall be substituted for the mortality tables specified in item (2) the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the commissioner or any other table approved by the commissioner.

e. Any cash surrender value and any paid-up nonforfeiture benefit, available under any contract referred to in subsection a. in the event of default in the payment of a stipulated payment due at any time other than on the contract anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional stipulated payments beyond the last preceding contract anniversary. All values referred to in subsections b. to d. inclusive, may be calculated upon the assumption that any death benefit is payable at the end of the contract year of death. The net value of any paid-up additions shall be not less than the dividends used to provide such additions. Notwithstanding the provisions of subsection b., additional benefits payable (1) in the event of total and permanent disability, (2) as reversionary annuity or deferred reversionary annuity benefits, and (3) as other policy benefits additional to pure endowment, and annuity benefits, and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits. Notwithstanding the provisions of subsection b., additional benefits providing the privilege to purchase additional annuity benefits at some future time without furnishing evidence of insurability, and stipulated payments therefor, may, with the consent of the commissioner, be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

f. In the case of contracts issued on or after the operative date of this section as defined in subsection o., no contract of annuity, except as stated in subsection p., 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, the insurer will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in subsections h., i., j., k. and m.

(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 such amount as is specified in subsections h., i., k. and m. The insurer shall reserve the right to defer the payment of such cash surrender benefit for a period of six months after demand therefor with surrender of the contract.

(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 such benefits.

(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 such benefits are altered by the existence of any additional amounts credited by the insurer to the contract, any indebtedness to the 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 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 such period would be less than \$20.00 monthly, the insurer may at its option terminate such 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, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

g. The minimum values as specified in subsections h., i., j., k. and m. of any paid-up annuity, cash surrender or death benefits available under an annuity contract referred to in subsection f., 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 3% per annum of percentages of the net considerations (as hereinafter defined) paid prior to such time; decreased by the sum of any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of 3% per annum and 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. 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 \$30.00 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 65% of the net consideration for the first contract year and 87 1/2% of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be 65% 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 65%.

(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 65% of the net consideration for the first contract year plus 22 1/2% 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 (i) \$30.00 or (ii) 10% 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 90% and the net consideration shall be the gross consideration less a contract charge of \$75.00.

(4) Notwithstanding any other provision of this subsection to the contrary, for any contract issued on or after the effective date of P.L.2003, c.152 and before the 730th day after that effective date, the interest rate at which net consideration shall be accumulated for purposes of determining minimum nonforfeiture amounts shall be 1 1/2% per annum.

h. Any paid-up annuity benefit available under a contract referred to in subsection f. shall have a present value on the date annuity payments are to commence at least equal to the minimum nonforfeiture amount on that date. Such 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.

i. For contracts referred to in subsection f. which provide cash surrender benefits, such 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, such 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 such 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 such contracts shall be at least equal to the cash surrender benefit.

j. For contracts referred to in subsection f. 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, such 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 such maturity value, and increased by any existing additional amounts credited by the insurer to the contract. For contracts referred to in subsection f. which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of such 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.

k. This subsection k. shall apply to the determination of the benefits calculated under subsections i. and j. of this section.

(1) In the case of annuity contracts for which the maturity date is stated, that maturity date shall not be after the later of: (a) the anniversary of the contract next following the annuitant's seventieth birthday; or (b) the tenth anniversary of the contract. In the case of annuity contracts under which an election may be made to have annuity payments begin at optional maturity dates, the maturity date shall be deemed to be the latest date for which election is permitted by the contract, but shall not be deemed to be later than the latest date permitted for an annuity contract with a stated maturity date.

(2) The amount of the benefits calculated under subsections i. and j. of this section on or after the stated or deemed maturity date shall not be reduced by any surrender charge. The amount of the benefits calculated under subsections i. and j. of this section on or after the stated or deemed maturity date shall not be less than the greater of: (a) the present value of annuity benefits available on or after the maturity date, computed according to the assumptions stated in subsection h. of this section; and (b) the amount available on or after the maturity date to be applied to the purchase of an annuity on a basis stated in the contract.

(3) Contracts providing for flexible considerations may have separate surrender charge schedules associated with each consideration, provided that the nonforfeiture values are at least as great as they would be if each consideration had been a separate single consideration contract

based on the requirements of paragraph (3) of subsection g. of this section. For the purpose of determining the maturity date, the tenth anniversary of the contract shall be determined separately for each consideration.

The provisions of P.L.2005, c.45 shall apply notwithstanding section 1 of P.L.2001, c.237 (C.17B:25-18.4), shall take precedence over that section of law, and shall apply to annuity contracts regardless of whether the requirements of that section have been met.

l. Any contract referred to in subsection f. 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 such benefits are not provided.

m. 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 referred to in subsection f. 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.

n. For any contract referred to in subsection f. 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 h., i., j., k. and m., additional benefits payable (1) in the event of total and permanent disability, (2) as reversionary annuity or deferred reversionary annuity benefits, or (3) as other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

o. After January 1, 1981, 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 January 1, 1983. After the filing of such notice, then upon such specified date, which shall be the operative date of this section for such insurer, the provisions of subsections f. through n. shall become operative with respect to annuity contracts thereafter issued by such insurer. If an insurer makes no such election, the operative date of this section for such insurer shall be January 1, 1983.

p. This section shall not apply to any reinsurance, group annuity purchased in connection with one or more retirement plans or plans of deferred compensation established or maintained by or for one or more employers (including partnerships or sole proprietorships), employee organizations, or any combination thereof, other than plans providing individual retirement accounts or individual retirement annuities under Section 408 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.408), as amended, nor to any premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which shall be delivered outside this State through an agent or other representative of the insurer issuing the contract. The requirements of subsections a. to e. of this section shall not apply to any group annuity, single premium pure endowment, or single stipulated payment annuity.

2. The provisions of P.L.2005, c.45 shall be known and may be cited as the "Senior Citizen Investment Protection Act."

3. This act shall take effect on the 90th day following enactment.

Approved March 21, 2005.