

CHAPTER 194

AN ACT revising the standard nonforfeiture law for individual deferred annuities and supplementing chapter 25 of Title 17B of the New Jersey Statutes and P.L.1981, c.285 (C.17B:25-20).

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

C.17B:25-21 Short title.

1. This act shall be known and may be cited as the "Indexed Standard Nonforfeiture Law for Individual Deferred Annuities."

C.17B:25-22 Inapplicability of act.

2. This act shall not apply to any reinsurance, 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 federal Internal Revenue Code of 1986 (26 U.S.C. s.408), as now or hereafter amended, 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 company issuing the contract.

C.17B:25-23 Required provisions for contract of annuity.

3. a. No contract of annuity to which this act applies shall be delivered or issued for delivery in this State on or after the second anniversary of the effective date of this act, or any earlier date as elected by the company pursuant to section 14 of this act, unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the Commissioner of Banking and Insurance 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 company shall grant a paid-up annuity benefit on a plan stipulated in the contract of that value provided by sections 5, 6, 7, 8 and 10 of this act;

(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 company shall pay in lieu of a paid-up annuity benefit a cash surrender benefit in the amount provided by sections 5, 6, 8 and 10 of this act. The company may reserve the right to defer the payment of the cash surrender benefit for a period not to exceed 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 equitableness 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 company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract.

b. Notwithstanding the requirements of this section, a 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 prior considerations paid would be less than \$20 monthly, the company 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 this payment shall be relieved of any further obligation under the contract.

C.17B:25-24 Minimum values.

4. The minimum values provided by sections 5, 6, 7, 8 and 10 of this act 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 section.

a. (1) 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 rates of interest as indicated in subsection b. of this section of the net considerations, as defined in paragraph (2) of this subsection, paid prior to that time, decreased by the sum of subparagraphs (a) through (d) below:

(a) Any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as indicated in subsection b. of this section;

(b) An annual contract charge of \$50, accumulated at rates of interest as indicated in subsection b. of this section;

(c) Any premium tax paid by the company for the contract, accumulated at rates of interest as indicated in subsection b. of this section; and

(d) The amount of any indebtedness to the company on the contract, including interest due and accrued.

(2) The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount equal to 87.5% of the gross considerations credited to the contract during that contract year, except that in the case of a single premium contract, net considerations shall consist of 90% of the gross considerations credited to the contract during that contract year.

b. The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of 3% per annum or 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 Board as of a date, or average over a period, rounded to the nearest 1/20th of one percent, specified in the contract no longer than 15 months prior to the contract issue date or redetermination date under paragraph (4) of this section;

(2) Reduced by 125 basis points;

(3) Where the resulting interest rate is not less than 1% per annum; 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. The basis is 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.

c. During the period or term that a contract provides a substantive participation in an equity indexed benefit, it may increase the reduction described in paragraph (2) of subsection b. of this section by up to an additional 100 basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date thereafter, 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. If that demonstration is not acceptable to the commissioner, the commissioner may disallow or limit the additional reduction.

d. The commissioner may adopt rules to implement the provisions of subsection c. of this section which 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.

C.17B:25-25 Paid-up annuity benefit.

5. 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. Present value shall be computed using the mortality table, if any, and the interest rates specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

C.17B:25-26 Cash surrender benefits, determination of present value.

6. For contracts that 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 that 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, which present value shall be 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 maturity value, decreased by 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 company 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.

C.17B:25-27 Determination of present value.

7. For contracts that 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 maturity value, and increased by any additional amounts credited by the company to the contract. For contracts that do not provide any death benefits prior to the commencement of any annuity payments, present values shall be calculated on the basis of that 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.

C.17B:25-28 Determination of benefits.

8. a. For the purpose of determining the benefits calculated under sections 6 and 7 of this act, in the case of annuity contracts for which the maturity date is stated, that maturity date shall not be after the later of: (1) the anniversary of the contract next following the annuitant's seventieth birthday; or (2) 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.

b. The amount of benefits calculated under sections 6 and 7 of this act on or after the stated or deemed maturity date shall not be reduced by any surrender charge. The amount of the benefits calculated under sections 6 and 7 of this act on or after the stated or deemed maturity date shall not be less than the greater of: (1) the present value of annuity benefits available on or after the maturity date, computed according to the assumptions stated in section 5 of this act; and (2) the amount available on or after the maturity date to be applied to the purchase of an annuity on a basis stated in a contract.

c. 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 subsection a. of section 4 of this act. For the purpose of determining the maturity date, the tenth anniversary of the contract shall be determined separately for each consideration.

The provisions of this section 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.

C.17B:25-29 Notice of benefits not provided in contract.

9. A contract that 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 those benefits are not provided.

C.17B:25-30 Benefits allowance for lapse of time and payments beyond schedule.

10. 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 considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

C.17B:25-31 Minimum nonforfeiture benefits.

11. For a 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 forfeiture 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 sections 5, 6, 7, 8 and 10 of this act, 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 the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this act. The inclusion of those benefits shall not be required in any paid-up benefits unless the additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

C.17B:25-32 Rules.

12. The Commissioner of Banking and Insurance may adopt rules to implement the provisions of this act pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

C.17B:25-20.1 Supersedure of standard nonforfeiture law, certain.

13. Effective on the second anniversary of the effective date of the "Indexed Standard Nonforfeiture Law for Individual Deferred Annuities," P.L.2005, c.194 (C.17B:25-21 et al.), the standard nonforfeiture law for individual deferred annuities as provided in section 5 of P.L.1981, c.285 (C.17B:25-20) shall continue to govern a contract of annuity issued pursuant thereto, but shall not apply to, and shall be superseded with respect to, a contract of annuity subject to the provisions of the "Indexed Standard Nonforfeiture Law for Individual Deferred Annuities," P.L.2005, c.194 (C.17B:25-21 et al.) as provided therein.

C.17B:25-33 Effective date, applicability.

14. This act shall take effect immediately and shall apply as follows:

a. Before the second anniversary of the effective date of this act, on a contract form-by-contract form basis, to those annuity contracts for which the company has filed a notice of election of applicability with the Commissioner of Banking and Insurance. A company that elects not to file using the "Indexed Standard Forfeiture Law for Individual Deferred Annuities," P.L.2005, c.194 (C.17B:25-21 et al.), may continue to use contract forms which use the interest rate of 1 1/2% per annum for minimum nonforfeiture values as specified by paragraph (4) of subsection g. of section 5 of P.L.1981, c.285 (C.17B:25-20).

b. In all other instances, to all annuity contracts issued by the company on or after the second anniversary of the effective date.

Approved August 18, 2005.