CHAPTER 18

SENATE BILL No. 508

AN ACT concerning insurance; enacting the standard nonforfeiture law for individual deferred annuities; repealing K.S.A. 2003 Supp. 40-428a.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) Sections 1 through 13, and amendments thereto, shall be known as the standard nonforfeiture law for individual deferred annuities.

(b) For the purposes of this act, the term "commissioner" shall mean the commissioner of insurance.

Sec. 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, 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.

Sec. 3. (a) Except as stated in section 2, and amendments thereto, in the case of any annuity contract issued on or after the operative date of this act as defined in section 13, and amendments thereto, no annuity contract, shall be delivered or issued for delivery in this state unless such annuity contract contains in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the holder of such annuity contract, upon cessation of payment of considerations under the annuity contract:

(1) That upon cessation of payment of considerations under an annuity contract, or upon the written request of the owner of an annuity contract, the company shall grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in sections 5, 6, 7, 8 and 10, and amendments thereto;

(2) if an annuity contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of such annuity 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 of such amount as is specified in sections 5, 6, 8 and 10 and amendments thereto. 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 annuity contract after making a written request to and receiving written approval from 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 annuity 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 annuity contract are not less than the minimum benefits required by any statute of the state in which the annuity 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 annuity contract, any indebtedness to the company on the annuity contract or any prior withdrawals from or partial surrenders of the annuity 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 annuity contract arising from prior consideration paid would be less than $20 monthly, the company may, at its option, terminate the annuity contract by payment in cash of the then present value of the portion of the paid-up annuity benefit, calculated on the basis on the mortality table, if any, and interest rate specified in the annuity contract for determining the paid-up annuity benefit, and by this payment shall be relieved of any further obligation under the annuity contract.

Sec. 4. The minimum values as specified in sections 5, 6, 7, 8 and 10, and amendments thereto, 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 and amendments thereto.

(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 such time at rates of interest as indicated in subsection (b) of the net considerations, as hereinafter defined, paid prior to such 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).

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

(C) Any premium tax paid by the company for the contract, accumulated at rates of interest as indicated in subsection (b).

(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 annuity 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 three percent per annum and the following, which shall be specified in the annuity 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 1/20th of one percent, specified in the contract no longer than 15 months prior to the annuity contract's issue date or redetermination date of paragraph (4) of subsection (b) of section 4 and amendments thereto;

(2) reduced by 125 basis points;

(3) where the resulting interest rate is not less than one percent; 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 annuity 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 an annuity contract provides substantive participation in an equity indexed benefit, such annuity contract may increase the reduction described in paragraph (2) of subsection (b) above by up to an additional 100 basis points to reflect the value of the equity index benefit. The present value at the issue date of such annuity contract, 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. Lacking such a demonstration that is acceptable to the commissioner, the commissioner may disallow or limit the additional reduction.

(d) The commissioner may adopt rules and regulations to implement the provisions of subsection (c) of section 4, and amendments thereto, and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for annuity contracts that provide substantive participation in an equity index benefit and for such other annuity contracts that the commissioner determines adjustments are justified.

Sec. 5. Any paid-up annuity benefit available under an annuity 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 annuity contract for determining the minimum paid-up annuity benefits guaranteed in such annuity contract.

Sec. 6. For annuity 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, such present value being calculated on the basis of an interest rate not more than one percent 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 annuity contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such annuity contracts shall at least equal to the cash surrender benefit.

Sec. 7. For annuity 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 annuity contract arising from considerations paid prior to the time the annuity 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 annuity contract for accumulating the net considerations to determine maturity value, and increased by any additional amounts credited by the company to the annuity contract. For annuity 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 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.

Sec. 8. For the purpose of determining the benefits calculated under sections 6 and 7, and amendments thereto, 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 shall be deemed to be the latest date for which election shall be permitted by the annuity contract, but shall not be deemed to be later than the anniversary of such annuity contract next following the annuitant's 70th birthday or the 10th anniversary of such annuity contract, whichever is later.

Sec. 9. Any annuity 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 such contract that such benefits are not provided.

Sec. 10. Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any annuity 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 annuity contract occurs.

Sec. 11. For any annuity 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 sections 5, 6, 7, 8 and 10, and amendments thereto, 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 such 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.

Sec. 12. The commissioner may adopt rules and regulations reasonably necessary to implement the provisions of this act.

Sec. 13. (a) After the effective date of this act, a company may elect to apply its provisions to annuity contracts on a contract form-by-contract form basis before the second anniversary of the effective date of this act.

(b) In all other instances, this act shall become operative with respect to all annuity contracts issued by the company on or after the second anniversary of this act.

Sec. 14. On July 1, 2006, K.S.A. 2003 Supp. 40-428a is hereby repealed.

Sec. 15. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 29, 2004.