GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

SESSION LAW 2003-144
HOUSE BILL 829

AN ACT TO ADOPT THE NAIC MODEL STANDARD NONFORFEITURE LAW FOR INDIVIDUAL DEFERRED ANNUITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 58 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-58-61. Standard nonforfeiture law for individual deferred annuities.**

(a) Title. – This section is and may be cited as the Standard Nonforfeiture Law for Individual Deferred Annuities.

(b) Applicability. – This section does not apply to any:

(1) Reinsurance.

(2) 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 Internal Revenue Code, as amended.

(3) Premium deposit fund.

(4) Variable annuity.

(5) Investment annuity.

(6) Immediate annuity.

(7) Deferred annuity contract after annuity payments have commenced.

(8) Reversionary annuity.

(9) Contract delivered outside this State through an agent or other representative of the company issuing the contract.

(c) Nonforfeiture Requirements. – In the case of contracts issued on or after the operative date of this section as defined in subsection (o) of this section, no contract of annuity, except as stated in subsection (b) of this section, shall be delivered or issued for delivery in this State unless it contains in substance the following provisions, or corresponding provisions that 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, 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 the value specified in subsections (g), (h), (i), (j), and (l) of this section.

(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 before the commencement of any annuity payments, the company shall pay in lieu of a paid-up annuity benefit a cash surrender benefit of the amount specified in subsections (g), (h), (j), and (l) of this section. 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 for the payment with surrender of the contract after making written

request and receiving written approval of 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 contract, together with sufficient information to determine the amounts of the 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 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.

Notwithstanding the requirements of this subsection, a deferred annuity contract may provide that if no considerations have been received under the 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 twenty dollars ($20.00) 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.

(d) Minimum Values. – The minimum values specified in subsections (g), (h), (i), (j), and (l) of this section 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. The minimum nonforfeiture amount at any time at or before the commencement of any annuity payments shall be equal to an accumulation up to that time at rates of interest as indicated in subsection (e) of this section of the net considerations, as hereinafter defined, paid before that time, decreased by the sum of the following:

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

(2) An annual contract charge of fifty dollars ($50.00), accumulated at rates of interest as indicated in subsection (e) of this section.

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

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

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount equal to eighty-seven and one-half percent (87 1/2%) of the gross considerations credited to the contract during that contract year.

(e) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three percent (3%) per annum and 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 as of a date, or average over a period, rounded to the nearest one-twentieth of one percent (0.05%), specified in the contract no longer than 15 months before the contract issue date or redetermination date under subdivision (4) of this subsection.

(2) Reduced by 125 basis points.

(3) Where the resulting interest guarantee is not less than one percent (1%).

(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.

(f) During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in subdivision (e)(2) 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 subsequent redetermination date, 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. Absent a demonstration that is acceptable to the Commissioner, the Commissioner may disallow or limit the additional reduction. The Commissioner may adopt rules to implement the provisions of this subsection and to 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 for which the Commissioner determines adjustments are justified.

(g) Computation of Present Value. – 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.

(h) Calculation of Cash Surrender Value. – For contracts that provide cash surrender benefits, the cash surrender benefits available before 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 before 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 (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.

(i) Calculation of Paid-Up Annuity Benefits. – 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 before 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 before the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, the present value being calculated for the period before 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 before the commencement of any annuity payments, present values shall be calculated on the basis of the 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.

(j) Maturity Date. – For the purpose of determining the benefits calculated under subsections (h) and (i) of this section, 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 the latest date for which election is permitted by the contract but not later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

(k) Disclosure of Limited Death Benefits. – A contract that does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount before the commencement of any annuity payments shall include a statement in a prominent place in the contract that those benefits are not provided.

(l) Inclusion of Lapse of Time Considerations. – 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.

(m) Proration of Values; Additional Benefits. – For a contract that 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 (g), (h), (i), (j), and (l) of this section, 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 section. 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.

(n) Rules. – The Commissioner may adopt rules to implement the provisions of this section.

(o) Effective Date. – On and after October 1, 2003, a company may elect to apply the provisions of this section to annuity contracts on a contract form-by-contract form basis before October 1, 2004. In all other instances, this section shall become operative with respect to annuity contracts issued by the company on and after October 1, 2004."

SECTION 2. G.S. 58-58-60 is repealed.

SECTION 3. G.S. 58-7-95(s) reads as rewritten:

"(s) Except for ~~G.S. 58-58-60~~ G.S. 58-58-61 and G.S. 58-58-120 in the case of a variable annuity ~~contract and~~ contract, G.S. 58-58-55, 58-58-120, and 58-58-140(1) in the case of a variable life insurance ~~policy~~ policy, and except as otherwise provided in this section, all pertinent provisions of ~~the insurance laws of this State shall~~ this Chapter apply to separate accounts and contracts issued in connection ~~therewith.~~ with separate accounts. Any individual variable life insurance contract, delivered or issued for delivery within this State, shall contain reinstatement and nonforfeiture provisions appropriate to ~~such a~~ that contract. Any group variable life insurance contract, delivered or issued for delivery within this State, shall contain grace provisions appropriate to ~~such a~~ that contract. Any individual variable annuity contract, delivered or issued for delivery within this State, shall contain reinstatement provisions appropriate to ~~such a~~ that contract."

SECTION 4. Sections 2 and 3 of this act become effective October 1, 2004. The remainder of this act becomes effective October 1, 2003.

In the General Assembly read three times and ratified this the 29th day of May, 2003.

s/ Beverly E. Perdue
President of the Senate

s/ Richard T. Morgan
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:34 p.m. this 4th day of June, 2003