

HOUSE BILL No. 5050

September 23, 2003, Introduced by Rep. Robertson and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," by amending section 4072 (MCL 500.4072), as amended by 2002 PA 635.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4072. (1) This section shall be known as the standard
2 nonforfeiture law for individual deferred annuities.

3 (2) This section does not apply to any reinsurance, group
4 annuity purchased under a retirement plan or plan of deferred
5 compensation established or maintained by an employer, including
6 a partnership or sole proprietorship, or by an employee
7 organization, or by both, other than a plan providing individual
8 retirement accounts or individual retirement annuities under
9 section 408 of the internal revenue code, premium deposit fund,
10 variable annuity, investment annuity, immediate annuity, a

1 deferred annuity contract after annuity payments have commenced,
2 or reversionary annuity, nor to a contract delivered outside this
3 state through an agent or other representative of the company
4 issuing the contract.

5 (3) Except as provided in subsection (2), ~~for contracts~~
6 ~~issued on or after the operative date of this section, as defined~~
7 ~~in subsection (13),~~ a contract of annuity shall not be delivered
8 or issued for delivery in this state unless it contains in
9 substance the following provisions, or corresponding provisions
10 that in the commissioner's opinion are at least as favorable to
11 the contract holder, upon cessation of payment of consideration
12 under the contract:

13 (a) That upon cessation of payment of consideration under a
14 contract, **or upon the written request of the contract owner**, the
15 company ~~will~~ **shall** grant a paid-up annuity benefit on a plan
16 stipulated in the contract of a value specified in subsections
17 ~~(6), (7), (8), (9), and (11)~~ **(8), (9), (10), (11), and (13)**.

18 (b) If a contract provides for a lump sum settlement at
19 maturity, or at any other time, that upon surrender of the
20 contract at or before the commencement of any annuity payments,
21 the company ~~will~~ **shall** pay in place of any paid-up annuity
22 benefit, a cash surrender benefit of an amount specified in
23 subsections ~~(6), (7), (9), and (11)~~ **(8), (9), (11), and (13)**.
24 The company ~~shall~~ **may** reserve the right to defer the payment of
25 the cash surrender benefit for a period of 6 months after demand
26 for the payment with surrender of the contract **if the company**
27 **makes a written request to the commissioner showing the necessity**

1 and equitability to all policyholders of the deferral and the
2 commissioner gives written approval.

3 (c) A statement of the mortality table, if any, and interest
4 rates used in calculating any minimum paid-up annuity, cash
5 surrender, or death benefits that are guaranteed under the
6 contract, together with sufficient information to determine the
7 amounts of the benefits.

8 (d) A statement that any paid-up annuity, cash surrender, or
9 death benefits that may be available under the contract are not
10 less than the minimum benefits required by law of the state in
11 which the contract is delivered, and an explanation of the manner
12 in which the benefits are altered by the existence of additional
13 amounts credited by the company to the contract, indebtedness to
14 the company on the contract, or prior withdrawals from or partial
15 surrenders of the contract.

16 (4) Notwithstanding the requirements of subsection (3), a
17 deferred annuity contract may provide that if considerations have
18 not been received under a contract for a period of 2 full years
19 and the portion of the paid-up annuity benefit at maturity on the
20 plan stipulated in the contract arising from considerations paid
21 before this period would be less than \$20.00 monthly, the company
22 may at its option terminate the contract by payment in cash of
23 the then present value of that portion of the paid-up annuity
24 benefit, calculated on the basis of the mortality table, if any,
25 and interest rate specified in the contract for determining the
26 paid-up annuity benefit. This payment shall relieve the company
27 of further obligation under the contract.

1 (5) The minimum values as specified in subsections ~~-(6), (7),~~
2 ~~(8), (9), and (11)-~~ **(8), (9), (10), (11), and (13)** of any paid-up
3 annuity, cash surrender, or death benefits available under an
4 annuity contract shall be based upon ~~minimum nonforfeiture~~
5 ~~amounts as defined in this subsection-~~ **the following:**

6 (a) ~~Except as otherwise provided in subdivision (b), for~~
7 ~~contracts providing for flexible considerations, the minimum~~
8 ~~nonforfeiture amount at any time at or before the commencement of~~
9 ~~any annuity payments shall be equal to an accumulation up to that~~
10 ~~time at a rate of interest of 3% per annum of percentages of the~~
11 ~~net considerations, as defined in this subsection, paid before~~
12 ~~that time, decreased by the sum of subparagraphs (i) and (ii),~~
13 ~~and increased by any existing additional amounts credited by the~~
14 ~~company to the contract:~~

15 ~~(i) Prior withdrawals from or partial surrenders of the~~
16 ~~contract accumulated at a rate of interest of 3% per annum.~~

17 ~~(ii) The amount of any indebtedness to the company on the~~
18 ~~contract, including interest due and accrued. Until January 1,~~
19 **2005 for contracts providing for flexible considerations, the**
20 **minimum nonforfeiture amount at any time at or before the**
21 **commencement of any annuity payments shall be equal to an**
22 **accumulation up to that time at a rate of interest of 1.5% per**
23 **annum of percentages of the net considerations, as defined in**
24 **subdivision (c), paid before that time, decreased by the sum of**
25 **subparagraphs (i) and (ii), and increased by any existing**
26 **additional amounts credited by the company to the contract:**

27 **(i) Prior withdrawals from or partial surrenders of the**

1 contract accumulated at a rate of interest of 1.5% per annum.

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

4 (b) ~~Beginning on the effective date of the amendatory act~~
5 ~~that added this subdivision and continuing until January 1, 2005~~
6 ~~for contracts providing for flexible considerations, the~~ **The**
7 minimum nonforfeiture amount at any time at or before the
8 commencement of any annuity payments shall be equal to an
9 accumulation up to that time at ~~a rate~~ **rates** of interest ~~of~~
10 ~~1.5% per annum of percentages~~ **as provided in subsection (6)** of
11 the net considerations, as defined in ~~this subsection~~
12 **subdivision (c)**, paid before that time, decreased by the sum of
13 subparagraphs (i) ~~and (ii)~~, and increased by any existing
14 additional amounts credited by the company to the contract to
15 (iv):

16 (i) Prior withdrawals from or partial surrenders of the
17 contract accumulated at ~~a rate of interest of 1.5% per annum~~
18 **rates of interest as provided in subsection (6)**.

19 (ii) An annual contract charge of \$50.00, accumulated at
20 rates of interest as provided in subsection (6).

21 (iii) Any premium tax paid by the company for the contract,
22 accumulated at rates of interest as provided in subsection (6).

23 (iv) ~~(ii)~~ The amount of any indebtedness to the company on
24 the contract, including interest due and accrued.

25 (c) The net consideration for a given contract year used to
26 define the minimum nonforfeiture amount shall be an amount ~~not~~
27 ~~less than zero, and shall be equal to the corresponding~~ **87.5%**

1 of the gross considerations credited to the contract during that
2 contract year. ~~less an annual contract charge of \$30.00 and less~~
3 ~~a collection charge of \$1.25 per consideration credited to the~~
4 ~~contract during that contract year. The percentages of net~~
5 ~~considerations shall be 65% of the net consideration for the~~
6 ~~first contract year and 87-1/2% of the net considerations for the~~
7 ~~second and later contract years. Notwithstanding the preceding~~
8 ~~sentence, the percentage shall be 65% of the portion of the total~~
9 ~~net consideration for any renewal contract year which exceeds by~~
10 ~~not more than 2 times the sum of those portions of the net~~
11 ~~considerations in all prior contract years for which the~~
12 ~~percentage was 65%.~~

13 ~~—— (d) For contracts providing for fixed scheduled~~
14 ~~considerations, minimum nonforfeiture amounts shall be calculated~~
15 ~~on the assumption that considerations are paid annually in~~
16 ~~advance, and shall be defined as for contracts with flexible~~
17 ~~considerations paid annually, except that:~~

18 ~~—— (i) The portion of the net consideration for the first~~
19 ~~contract year to be accumulated shall be the sum of 65% of the~~
20 ~~net consideration for the first contract year plus 22-1/2% of the~~
21 ~~excess of the net consideration for the first contract year over~~
22 ~~the lesser of the net considerations for the second and third~~
23 ~~contract years.~~

24 ~~—— (ii) The annual contract charge shall be the lesser of \$30.00~~
25 ~~or 10% of the gross annual considerations.~~

26 ~~—— (c) For contracts providing for a single consideration,~~
27 ~~minimum nonforfeiture amounts shall be defined as for contracts~~

1 ~~with flexible considerations, except that the percentage of net~~
2 ~~consideration used to determine the minimum nonforfeiture amount~~
3 ~~shall be equal to 90% and the net consideration shall be the~~
4 ~~gross consideration less a contract charge of \$75.00.~~

5 (6) The interest rate used in determining minimum
6 nonforfeiture amounts shall be an annual rate of interest
7 determined as the lesser of 3% per annum and the following, which
8 shall be specified in the contract if the interest rate will be
9 reset:

10 (a) The 5-year constant maturity treasury rate reported by
11 the federal reserve as of a date, or average over a period,
12 rounded to the nearest 1/20 of 1%, specified in the contract no
13 longer than 15 months before the contract issue date or
14 redetermination date under subdivision (d).

15 (b) Subject to subsection (7), reduced by 125 basis points.

16 (c) Where the resulting interest rate is not less than 1%.

17 (d) The interest rate shall apply for an initial period and
18 may be redetermined for additional periods. The redetermination
19 date, basis, and period, if any, shall be stated in the
20 contract. As used in this subdivision, "basis" means the date or
21 average over a specified period that produces the value of the
22 5-year constant maturity treasury rate to be used at each
23 redetermination date.

24 (7) During the period or term that a contract provides
25 substantive participation in an equity indexed benefit, the
26 contract may provide for an increase in the reduction described
27 in subsection (6)(b) of up to an additional 100 basis points to

1 reflect the value of the equity index benefit. The present value
2 at the contract issue date, and at each redetermination date
3 after the issue date, of the additional reduction shall not
4 exceed the market value of the benefit. The commissioner may
5 require a demonstration that the present value of the additional
6 reduction does not exceed the market value of the benefit and if
7 the demonstration is unacceptable, may disallow or limit the
8 additional reduction. The commissioner may adopt rules to
9 implement this subsection and to provide for further adjustments
10 to the calculation of minimum nonforfeiture amounts for contracts
11 that provide substantive participation in an equity index benefit
12 and for other contracts that the commissioner determines
13 adjustments are justified.

14 (8) ~~-(6)-~~ Any paid-up annuity benefit available under a
15 contract shall be such that its present value on the date annuity
16 payments are to commence is at least equal to the minimum
17 nonforfeiture amount on that date. This present value shall be
18 computed using the mortality table, if any, and the interest rate
19 specified in the contract for determining the minimum paid-up
20 annuity benefits guaranteed in the contract.

21 (9) ~~-(7)-~~ For contracts that provide cash surrender benefits,
22 the cash surrender benefits available before maturity shall not
23 be less than the present value as of the date of surrender of
24 that portion of the maturity value of the paid-up annuity benefit
25 that would be provided under the contract at maturity arising
26 from considerations paid before the time of cash surrender
27 reduced by the amount appropriate to reflect any prior

1 **withdrawals from or partial surrenders of the contract.** The
2 present value shall be calculated on the basis of an interest
3 rate not more than 1% higher than the interest rate specified in
4 the contract for accumulating the net considerations to determine
5 the maturity value, **decreased by the amount of any indebtedness**
6 **to the company on the contract, including interest due and**
7 **accrued, and increased by any existing additional amounts**
8 **credited by the company to the contract.** However, a cash
9 surrender benefit shall not be less than the minimum
10 nonforfeiture amount at that time. The death benefit under
11 contracts that provide cash surrender benefits shall be at least
12 equal to the cash surrender benefit. ~~As used in this subsection~~
13 ~~and except as otherwise provided in this subsection, "maturity~~
14 ~~value" means an accumulation up to the maturity date at the rate~~
15 ~~of interest guaranteed in the contract for accumulating the net~~
16 ~~considerations to determine the maturity value, but in no event~~
17 ~~less than 3% per annum, of the percentages of the net~~
18 ~~considerations, as defined in subsection (5), paid before that~~
19 ~~time, decreased by the sum of prior withdrawals from or partial~~
20 ~~surrenders of the contract accumulated at the rate of interest~~
21 ~~guaranteed in the contract for accumulating net considerations to~~
22 ~~determine the maturity value but in no event less than 3% per~~
23 ~~annum and the amount of any indebtedness to the company on the~~
24 ~~contract, including interest due and accrued, and increased by~~
25 ~~excess interest previously credited by the company to the~~
26 ~~contract. Beginning on the effective date of the amendatory act~~
27 ~~that added subsection (5)(b) and continuing until~~ **Until**

1 January 1, 2005, as used in this subsection, "maturity value"
2 means an accumulation up to the maturity date at the rate of
3 interest guaranteed in the contract for accumulating the net
4 considerations to determine the maturity value, but in no event
5 less than 1.5% per annum, of the percentages of the net
6 considerations, as defined in subsection (5), paid before that
7 time, decreased by the sum of prior withdrawals from or partial
8 surrenders of the contract accumulated at the rate of interest
9 guaranteed in the contract for accumulating net considerations to
10 determine the maturity value but in no event less than 1.5% per
11 annum and the amount of any indebtedness to the company on the
12 contract, including interest due and accrued, and increased by
13 excess interest previously credited by the company to the
14 contract. As used in this subsection, the excess interest is the
15 amount credited over and above the guaranteed interest.

16 (10) ~~(8)~~ For contracts that do not provide cash surrender
17 benefits, the present value of any paid-up annuity benefit
18 available as a nonforfeiture option at any time before maturity
19 shall not be less than the present value of that portion of the
20 maturity value of the paid-up annuity benefit provided under the
21 contract arising from considerations paid before the contract is
22 surrendered in exchange for, or changed to, a deferred paid-up
23 annuity. The present value shall be calculated for the period
24 before the maturity date on the basis of the interest rate
25 specified in the contract for accumulating the net considerations
26 to determine the maturity value, and increased by any ~~existing~~
27 additional amounts credited by the company to the contract. For

1 contracts that do not provide death benefits before the
2 commencement of annuity payments, the present values shall be
3 calculated on the basis of the interest rate and the mortality
4 table specified in the contract for determining the maturity
5 value of the paid-up annuity benefit. However, the present value
6 of a paid-up annuity benefit shall not be less than the minimum
7 nonforfeiture amount at that time.

8 **(11)** ~~-(9) For the purpose of-~~ In determining the benefits
9 calculated under subsections ~~-(7) and (8), in the case of-~~ **(9)**
10 **and (10), for** annuity contracts under which an election may be
11 made to have annuity payments commence at optional maturity
12 dates, the maturity date shall be considered to be the latest
13 date for which election shall be permitted by the contract, but
14 shall not be later than the anniversary of the contract next
15 following the annuitant's seventieth birthday, or the tenth
16 anniversary of the contract, whichever is later.

17 **(12)** ~~-(10)-~~ A contract that does not provide cash surrender
18 benefits or does not provide death benefits at least equal to the
19 minimum nonforfeiture amount before the commencement of annuity
20 payments shall include a statement in a prominent place in the
21 contract that those benefits are not provided.

22 **(13)** ~~-(11)-~~ Any paid-up annuity, cash surrender, or death
23 benefits available at any time, other than on the contract
24 anniversary under a contract with fixed scheduled considerations,
25 shall be calculated with allowance for the lapse of time and the
26 payment of any scheduled considerations beyond the beginning of
27 the contract year in which cessation of payment of considerations

1 under the contract occurs.

2 **(14)** ~~—(12)—~~ For a contract that provides, within the same
3 contract by rider or supplemental contract provision, both
4 annuity benefits and life insurance benefits that are in excess
5 of the greater of cash surrender benefits or a return of the
6 gross considerations with interest, the minimum nonforfeiture
7 benefits shall be equal to the sum of the minimum nonforfeiture
8 benefits for the annuity portion and the minimum nonforfeiture
9 benefits, if any, for the life insurance portion computed as if
10 each portion were a separate contract. Notwithstanding
11 subsections ~~—(6), (7), (8), (9), and (11)—~~ **(8), (9), (10), (11),**
12 **and (13)**, additional benefits payable for total and permanent
13 disability, as reversionary annuity or deferred reversionary
14 annuity benefits, or as other policy benefits additional to life
15 insurance, endowment and annuity benefits, and considerations for
16 all such additional benefits, shall be disregarded in
17 ascertaining the minimum nonforfeiture amounts, paid-up annuity,
18 cash surrender, and death benefits that may be required by this
19 section. The inclusion of the additional benefits shall not be
20 required in any paid-up benefits, unless the additional benefits
21 separately would require minimum nonforfeiture amounts, paid-up
22 annuity, cash surrender, and death benefits.

23 ~~(13) After October 1, 1980, a company may file with the~~
24 ~~commissioner a written notice of its election to comply with this~~
25 ~~section after a specified date before October 1, 1982. After the~~
26 ~~filing of this notice, then on that specified date, which shall~~
27 ~~be the operative date of this section for the company, this~~

~~1 section shall become operative with respect to annuity contracts
2 thereafter issued by the company. If a company does not make the
3 election, the operative date of this section for the company
4 shall be October 1, 1982.~~

~~5 (14) Notwithstanding the other provisions of this section,
6 upon cancellation of an annuity subject to an assignment under
7 section 2080(6), the minimum nonforfeiture amount of the annuity
8 shall be 92% of the sum of the total premiums paid by the
9 assignor at the time of the cancellation plus interest on such
10 premiums at an annual rate of not less than 5% or the consumer
11 price index, whichever is greater. As used in this subsection,
12 "consumer price index" means that term as defined in
13 section 2080.~~

**14 (15) Until January 1, 2005, an insurer may elect to proceed
15 under subsection (5)(a) or (b). On and after January 1, 2005, an
16 insurer shall proceed under subsection (5)(b).**