

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 938
92ND GENERAL ASSEMBLY

Reported from the Committee on Financial and Governmental Organization, Veterans' Affairs and Elections, April 6, 2004, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

3608S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal section 376.671, RSMo, and to enact in lieu thereof two new sections relating to annuity contracts, with an expiration date and an emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 376.671, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 376.669 and 376.671, to read as follows:

376.669. 1. This section 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 Internal Revenue Code of 1986, as 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.

2. In the case of contracts issued on or after the effective date of this section as defined in subsection 11 of this section, no contract of annuity, except as stated in subsection 1 of this section, 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 director are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 (1) That upon cessation of payment of considerations under a
20 contract, or upon the written request of the contract owner, the company
21 shall grant a paid-up annuity benefit on a plan stipulated in the contract of
22 such value as is specified in subsections 4, 5, 6, 7 and 9 of this section;

23 (2) If a contract provides for a lump sum settlement at maturity, or at
24 any other time, that upon surrender of the contract at or prior to the
25 commencement of any annuity payments, the company shall pay in lieu of a
26 paid-up annuity benefit a cash surrender benefit of such amount as is
27 specified in subsections 4, 5, 7 and 9 of this section. The company may
28 reserve the right to defer the payment of the cash surrender benefit for a
29 period not to exceed six months after demand therefor with surrender of the
30 contract after making written request and receiving written approval of the
31 director. The request shall address the necessity and equitability to all
32 policyholders of the deferral;

33 (3) A statement of the mortality table, if any, and interest rates used
34 in calculating any minimum paid-up annuity, cash surrender or death benefits
35 that are guaranteed under the contract, together with sufficient information
36 to determine the amounts of the benefits; and

37 (4) A statement that any paid-up annuity, cash surrender or death
38 benefits that may be available under the contract are not less than the
39 minimum benefits required by any statute of the state in which the contract
40 is delivered and an explanation of the manner in which the benefits are
41 altered by the existence of any additional amounts credited by the company
42 to the contract, any indebtedness to the company on the contract or any prior
43 withdrawals from or partial surrenders of the contract.

44 Notwithstanding the requirements of this subsection, a deferred annuity
45 contract may provide that if no considerations have been received under a
46 contract for a period of two full years and the portion of the paid-up annuity
47 benefit at maturity on the plan stipulated in the contract arising from prior
48 considerations paid would be less than twenty dollars monthly, the company
49 may at its option terminate the contract by payment in cash of the then
50 present value of the portion of the paid-up annuity benefit, calculated on the
51 basis on the mortality table, if any, and interest rate specified in the contract
52 for determining the paid-up annuity benefit, and by this payment shall be
53 relieved of any further obligation under the contract.

54 3. The minimum values as specified in subsections 4, 5, 6, 7 and 9 of
55 this section of any paid-up annuity, cash surrender or death benefits

56 available under an annuity contract shall be based upon minimum
57 nonforfeiture amounts as defined in this section.

58 (1) The minimum nonforfeiture amount at any time at or prior to the
59 commencement of any annuity payments shall be equal to an accumulation up
60 to such time at rates of interest as indicated in subdivision (3) of this
61 subsection of the net considerations (as hereinafter defined) paid prior to
62 such time, decreased by the sum of paragraphs (a) to (d) below:

63 (a) Any prior withdrawals from or partial surrenders of the contract
64 accumulated at rates of interest as indicated in subdivision (3) of this
65 subsection; and

66 (b) An annual contract charge of fifty dollars, accumulated at rates of
67 interest as indicated in subdivision (3) of this subsection;

68 (c) Any premium tax paid by the company for the contract,
69 accumulated at rates of interest as indicated in subdivision (3) of this
70 subsection; and

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

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

77 (3) The interest rate used in determining minimum nonforfeiture
78 amounts shall be an annual rate of interest determined as the lesser of three
79 percent per annum and the following, which shall be specified in the contract
80 if the interest rate will be reset:

81 (a) The five-year Constant Maturity Treasury Rate reported by the
82 Federal Reserve as of a date, or average over a period, rounded to the nearest
83 one-twentieth of one percent, specified in the contract no longer than fifteen
84 months prior to the contract issue date or redetermination date under
85 paragraph (d) of this subdivision;

86 (b) Reduced by one hundred twenty-five basis points;

87 (c) Where the resulting interest rate is not less than one percent; and

88 (d) The interest rate shall apply for an initial period and may be
89 redetermined for additional periods. The redetermination date, basis and
90 period, if any, shall be stated in the contract. The basis is the date or average
91 over a specified period that produces the value of the five-year Constant
92 Maturity Treasury Rate to be used at each redetermination date.

93 **(4) During the period or term that a contract provides substantive**
94 **participation in an equity indexed benefit, it may increase the reduction**
95 **described in paragraph (b) of subdivision (3) of this subsection by up to an**
96 **additional one hundred basis points to reflect the value of the equity index**
97 **benefit. The present value at the contract issue date, and at each**
98 **redetermination date thereafter, of the additional reduction shall not exceed**
99 **the market value of the benefit. The director may require a demonstration**
100 **that the present value of the additional reduction does not exceed the market**
101 **value of the benefit. Lacking such a demonstration that is acceptable to the**
102 **director, the director may disallow or limit the additional reduction.**

103 **(5) The director may adopt rules to implement the provisions of**
104 **subdivision (4) of this subsection and to provide for further adjustments to**
105 **the calculation of minimum nonforfeiture amounts for contracts that provide**
106 **substantive participation in an equity index benefit and for other contracts**
107 **that the director determines adjustments are justified.**

108 **4. Any paid-up annuity benefit available under a contract shall be such**
109 **that its present value on the date annuity payments are to commence is at**
110 **least equal to the minimum nonforfeiture amount on that date. Present value**
111 **shall be computed using the mortality table, if any, and the interest rates**
112 **specified in the contract for determining the minimum paid-up annuity**
113 **benefits guaranteed in the contract.**

114 **5. For contracts that provide cash surrender benefits, the cash**
115 **surrender benefits available prior to maturity shall not be less than the**
116 **present value as of the date of surrender of that portion of the maturity value**
117 **of the paid-up annuity benefit that would be provided under the contract at**
118 **maturity arising from considerations paid prior to the time of cash surrender**
119 **reduced by the amount appropriate to reflect any prior withdrawals from or**
120 **partial surrenders of the contract, such present value being calculated on the**
121 **basis of an interest rate not more than one percent higher than the interest**
122 **rate specified in the contract for accumulating the net considerations to**
123 **determine maturity value, decreased by the amount of any indebtedness to**
124 **the company on the contract, including interest due and accrued, and**
125 **increased by any existing additional amounts credited by the company to the**
126 **contract. In no event shall any cash surrender benefit be less than the**
127 **minimum nonforfeiture amount at that time. The death benefit under such**
128 **contracts shall be at least equal to the cash surrender benefit.**

129 **6. For contracts that do not provide cash surrender benefits, the**

130 present value of any paid-up annuity benefit available as a nonforfeiture
131 option at any time prior to maturity shall not be less than the present value
132 of that portion of the maturity value of the paid-up annuity benefit provided
133 under the contract arising from considerations paid prior to the time the
134 contract is surrendered in exchange for, or changed to, a deferred paid-up
135 annuity, such present value being calculated for the period prior to the
136 maturity date on the basis of the interest rate specified in the contract for
137 accumulating the net considerations to determine maturity value, and
138 increased by any additional amounts credited by the company to the
139 contract. For contracts that do not provide any death benefits prior to the
140 commencement of any annuity payments, present values shall be calculated
141 on the basis of such interest rate and the mortality table specified in the
142 contract for determining the maturity value of the paid-up annuity
143 benefit. However, in no event shall the present value of a paid-up annuity
144 benefit be less than the minimum nonforfeiture amount at that time.

145 7. For the purpose of determining the benefits calculated under
146 subsections 5 and 6 of this section, in the case of annuity contracts under
147 which an election may be made to have annuity payments commence at
148 optional maturity dates, the maturity date shall be deemed to be the latest
149 date for which election shall be permitted by the contract, but shall not be
150 deemed to be later than the anniversary of the contract next following the
151 annuitant's seventieth birthday or the tenth anniversary of the contract,
152 whichever is later.

153 8. A contract that does not provide cash surrender benefits or does not
154 provide death benefits at least equal to the minimum nonforfeiture amount
155 prior to the commencement of any annuity payments shall include a
156 statement in a prominent place in the contract that such benefits are not
157 provided.

158 9. Any paid-up annuity, cash surrender, or death benefits available at
159 any time, other than on the contract anniversary under any contract with
160 fixed scheduled considerations, shall be calculated with allowance for the
161 lapse of time and the payment of any scheduled considerations beyond the
162 beginning of the contract year in which cessation of payment of
163 considerations under the contract occurs.

164 10. For a contract which provides, within the same contract by rider
165 or supplemental contract provision, both annuity benefits and life insurance
166 benefits that are in excess of the greater of cash surrender benefits or a

167 **return of the gross considerations with interest, the minimum nonforfeiture**
168 **benefits shall be equal to the sum of the minimum nonforfeiture benefits for**
169 **the annuity portion and the minimum nonforfeiture benefits, if any, for the**
170 **life insurance portion computed as if each portion were a separate**
171 **contract. Notwithstanding the provisions of subsections 4, 5, 6, 7 and 9 of this**
172 **section, additional benefits payable in the event of total and permanent**
173 **disability, as reversionary annuity or deferred reversionary annuity benefits,**
174 **or as other policy benefits additional to life insurance, endowment, and**
175 **annuity benefits, and considerations for all such additional benefits shall be**
176 **disregarded in ascertaining the minimum nonforfeiture amounts, paid-up**
177 **annuity, cash surrender and death benefits that may be required by this**
178 **section. The inclusion of such benefits shall not be required in any paid-up**
179 **benefits, unless the additional benefits separately would require minimum**
180 **nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.**

181 **11. Notwithstanding the provisions of section 376.671, after the**
182 **effective date of this section, a company may elect to apply the provisions of**
183 **this section in lieu of section 376.671 to annuity contracts on a contract form-**
184 **by-contract form basis before July 1, 2006. In all other instances, this section**
185 **shall become operative with respect to annuity contracts issued by the**
186 **company after July 1, 2006.**

376.671. 1. This section shall not apply to any reinsurance, group annuity
2 purchased under a retirement plan or plan of deferred compensation established or
3 maintained by an employer (including a partnership or sole proprietorship) or by an
4 employee organization, or by both, other than a plan providing individual retirement
5 accounts or individual retirement annuities under Section 408 of the Internal Revenue
6 Code, as now or hereafter amended, premium deposit fund, variable annuity, investment
7 annuity, immediate annuity, any deferred annuity contract after annuity payments have
8 commenced, or reversionary annuity, nor to any contract which shall be delivered outside
9 this state through an agent or other representative of the company issuing the contract.

10 2. In the case of contracts issued on or after the operative date of this section as
11 defined in subsection 11 **of this section**, no contract of annuity, except as stated in
12 subsection 1 **of this section**, shall be delivered or issued for delivery in this state
13 unless it contains in substance the following provisions, or corresponding provisions
14 which in the opinion of the director are at least as favorable to the contractholder, upon
15 cessation of payment of considerations under the contract:

16 (1) That upon cessation of payment of considerations under a contract, the

17 company will grant a paid-up annuity benefit on a plan stipulated in the contract of such
18 value as is specified in subsections 4, 5, 6, 7, and 9 **of this section**;

19 (2) If a contract provides for a lump sum settlement at maturity, or at any other
20 time, that upon surrender of the contract at or prior to the commencement of any
21 annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash
22 surrender benefit of such amount as is specified in subsections 4, 5, 7, and 9 **of this**
23 **section**. The company shall reserve the right to defer the payment of such cash
24 surrender benefit for a period of six months after demand therefor with surrender of the
25 contract;

26 (3) A statement of the mortality table, if any, and interest rates used in
27 calculating any minimum paid-up annuity, cash surrender or death benefits that are
28 guaranteed under the contract, together with sufficient information to determine the
29 amounts of such benefits;

30 (4) A statement that any paid-up annuity, cash surrender or death benefits that
31 may be available under the contract are not less than the minimum benefits required by
32 any statute of the state in which the contract is delivered and an explanation of the
33 manner in which such benefits are altered by the existence of any additional amounts
34 credited by the company to the contract, any indebtedness to the company on the
35 contract or any prior withdrawals from or partial surrenders of the contract.

36 Notwithstanding the requirements of this section, any deferred annuity contract may
37 provide that if no considerations have been received under a contract for a period of two
38 full years and the portion of the paid-up annuity benefit at maturity on the plan
39 stipulated in the contract arising from considerations paid prior to such period would be
40 less than twenty dollars monthly, the company may at its option terminate such contract
41 by payment in cash of the then present value of such portion of the paid-up annuity
42 benefit, calculated on the basis of the mortality table, if any, and interest rate specified
43 in the contract for determining the paid-up annuity benefit, and by such payment shall
44 be relieved of any further obligation under such contract.

45 3. The minimum values as specified in subsections 4, 5, 6, 7, and 9 **of this**
46 **section** of any paid-up annuity, cash surrender or death benefits available under an
47 annuity contract shall be based upon minimum nonforfeiture amounts as defined in this
48 section.

49 (1) With respect to contracts providing for flexible considerations, the minimum
50 nonforfeiture amount at any time at or prior to the commencement of any annuity
51 payment shall be equal to an accumulation up to such time at a rate of interest of three
52 percent per annum of percentages of the net considerations (as hereinafter defined) paid

53 prior to such time, decreased by the sum of

54 (a) Any prior withdrawals from or partial surrenders of the contract accumulated
55 at a rate of interest of three percent per annum; and

56 (b) The amount of any indebtedness to the company on the contract, including
57 interest due and accrued and increased by any existing additional amounts credited by
58 the company to the contract. The net considerations for a given contract year used to
59 define the minimum nonforfeiture amount shall be an amount not less than zero and
60 shall be equal to the corresponding gross considerations credited to the contract during
61 that contract year less an annual contract charge of thirty dollars and less a collection
62 charge of one dollar and twenty-five cents per consideration credited to the contract
63 during that contract year. The percentages of net considerations shall be sixty-five
64 percent of the net consideration for the first contract year and eighty-seven and one-half
65 percent of the net considerations for the second and later contract
66 years. Notwithstanding the provisions of the preceding sentence, the percentage shall
67 be sixty-five percent of the portion of the total net consideration for any renewal contract
68 year which exceeds by not more than two times the sum of those portions of the net
69 considerations in all prior contract years for which the percentage was sixty-five percent;

70 (2) With respect to contracts providing for fixed scheduled considerations,
71 minimum nonforfeiture amounts shall be calculated on the assumption that
72 considerations are paid annually in advance and shall be defined as for contracts with
73 flexible considerations which are paid annually with two exceptions:

74 (a) The portion of the net consideration for the first contract year to be
75 accumulated shall be the sum of sixty-five percent of the net consideration for the first
76 contract year plus twenty-two and one-half percent of the excess of the net consideration
77 for the first contract year over the lesser of the net considerations for the second and
78 third contract years;

79 (b) The annual contract charge shall be the lesser of thirty dollars or ten percent
80 of the gross annual consideration;

81 (3) With respect to contracts providing for a single consideration, minimum
82 nonforfeiture amounts shall be defined as for contracts with flexible considerations
83 except that the percentage of net consideration used to determine the minimum
84 nonforfeiture amount shall be equal to ninety percent, and the net consideration shall
85 be the gross consideration less a contract charge of seventy-five dollars;

86 (4) Notwithstanding any other provision of this subsection, for any contract
87 issued on or after July 1, 2002, and before July 1, [2004] **2006**, the interest rate at which
88 net considerations, prior withdrawals, and partial surrenders shall be accumulated, for

89 the purpose of determining minimum nonforfeiture amounts, shall be one and one-half
90 percent per annum.

91 4. Any paid-up annuity benefit available under a contract shall be such that its
92 present value on the date annuity payments are to commence is at least equal to the
93 minimum nonforfeiture amount on that date. Such present value shall be computed
94 using the mortality table, if any, and the interest rate specified in the contract for
95 determining the minimum paid-up annuity benefits guaranteed in the contract.

96 5. For contracts which provide cash surrender benefits, such cash surrender
97 benefits available prior to maturity shall not be less than the present value as of the
98 date of surrender of that portion of the maturity value of the paid-up annuity benefit
99 which would be provided under the contract at maturity arising from considerations paid
100 prior to the time of cash surrender reduced by the amount appropriate to reflect any
101 prior withdrawals from or partial surrenders of the contract, such present value being
102 calculated on the basis of an interest rate not more than one percent higher than the
103 interest rate specified in the contract for accumulating the net considerations to
104 determine such maturity value, decreased by the amount of any indebtedness to the
105 company on the contract, including interest due and accrued, and increased by any
106 existing additional amounts credited by the company to the contract. In no event shall
107 any cash surrender benefit be less than the minimum nonforfeiture amount at that
108 time. The death benefit under such contracts shall be at least equal to the cash
109 surrender benefit.

110 6. For contracts which do not provide cash surrender benefits, the present value
111 of any paid-up annuity benefit available as a nonforfeiture option at any time prior to
112 maturity shall not be less than the present value of that portion of the maturity value
113 of the paid-up annuity benefit provided under the contract arising from considerations
114 paid prior to the time the contract is surrendered in exchange for, or changed to, a
115 deferred paid-up annuity, such present value being calculated for the period prior to the
116 maturity date on the basis of the interest rate specified in the contract for accumulating
117 the net considerations to determine such maturity value, and increased by any existing
118 additional amounts credited by the company to the contract. For contracts which do not
119 provide any death benefits prior to the commencement of any annuity payments, such
120 present values shall be calculated on the basis of such interest rate and the mortality
121 table specified in the contract for determining the maturity value of the paid-up annuity
122 benefit. However, in no event shall the present value of a paid-up annuity benefit be
123 less than the minimum nonforfeiture amount at that time.

124 7. For the purpose of determining the benefits calculated under subsections 5 and

125 **6 of this section**, in the case of annuity contracts under which an election may be made
126 to have annuity payments commence at optional maturity date, the maturity date shall
127 be deemed to be the latest date for which election shall be permitted by the contract, but
128 shall not be deemed to be later than the anniversary of the contract next following the
129 annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is
130 later.

131 8. Any contract which does not provide cash surrender benefits or does not
132 provide death benefits at least equal to the minimum nonforfeiture amount prior to the
133 commencement of any annuity payments shall include a statement in a prominent place
134 in the contract that such benefits are not provided.

135 9. Any paid-up annuity, cash surrender or death benefits available at any time,
136 other than on the contract anniversary under any contract with fixed scheduled
137 considerations, shall be calculated with allowance for the lapse of time and the payment
138 of any scheduled considerations beyond the beginning of the contract year in which
139 cessation of payment of considerations under the contract occurs.

140 10. For any contract which provides, within the same contract by rider or
141 supplemental contract provision, both annuity benefits and life insurance benefits that
142 are in excess of the greater of cash surrender benefits or a return of the gross
143 considerations with interest, the minimum nonforfeiture benefits shall be equal to the
144 sum of the minimum nonforfeiture benefits for the annuity portion and the minimum
145 nonforfeiture benefits, if any, for the life insurance portion computed as if each portion
146 were a separate contract. Notwithstanding the provisions of subsections 4, 5, 6, 7, and
147 **9 of this section**, additional benefits payable in the event of total and permanent
148 disability, as reversionary annuity or deferred reversionary annuity benefits, or as other
149 policy benefits additional to life insurance, endowment and annuity benefits, and
150 considerations for all such additional benefits, shall be disregarded in ascertaining the
151 minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits
152 that may be required by this section. The inclusion of such additional benefits shall not
153 be required in any paid-up benefits, unless such additional benefits separately would
154 require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death
155 benefits.

156 11. After September 28, 1979, any company may file with the director a written
157 notice of its election to comply with the provisions of this section after a specified date
158 before September 28, 1981. After the filing of such notice, then upon such specified date,
159 which shall be the operative date of this section for such company, this section shall
160 become operative with respect to annuity contracts thereafter issued by such company If

161 a company makes no such election, the operative date of this section for such company
162 shall be September 28, 1981.

163 **12. The provisions of this section shall expire on July 1, 2006.**

Section B. Because of the need to avoid a fifty-eight day period of time where no
2 minimum nonforfeiture interest rates for individual deferred annuities would exist,
3 section A of this act is deemed necessary for the immediate preservation of the public
4 health, welfare, peace and safety, and is hereby declared to be an emergency act within
5 the meaning of the constitution, and section A of this act shall be in full force and effect
6 upon its passage and approval.

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