ENROLLED

SENATE BILL NO. 357

(By Senator Minard, et al)

PASSED March 8, 2003

In Effect 30 days from Passage
AN ACT to amend and reenact section thirty-a, article thirteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the standard nonforfeiture law for individual deferred annuities.

Be it enacted by the Legislature of West Virginia:

That section thirty-a, article thirteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 13. LIFE INSURANCE.


1 (a) This section shall be known as the “Standard Nonforfeiture Law for Individual Deferred Annuities”.

[Passed March 8, 2003; in effect ninety days from passage.]
(b) This section may 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, 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) In the case of contracts issued on or after the operative date of this section as defined in subsection(l) 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 which, 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, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of the value as is specified in subsections (e), (f), (g), (h) and (j) 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 prior to the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash surrender benefit of the amount as is specified in subsections (e), (f), (h) and (j) of this section. The company shall reserve the right to defer the payment of the cash surrender benefit for a period of six months after demand therefor with surrender of the contract;
(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.

Notwithstanding the requirements of this subsection, any 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 considerations paid prior to the period would be less than twenty dollars 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 the payment shall be relieved of any further obligation under the contract.

(d) The minimum values as specified in subsections (e), (f), (g), (h) and (j) 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:

(1) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity
76 payments shall be equal to an accumulation up to the time
77 at a rate of interest of three percent per annum of percent-
78 ages of the net considerations (as hereinafter defined) paid
79 prior to the time, decreased by the sum of:

80 (A) Any prior withdrawals from or partial surrenders of
81 the contract accumulated at a rate of interest of three
82 percent per annum; and

83 (B) The amount of any indebtedness to the company on
84 the contract, including interest due and accrued; and
85 increased by any existing additional amounts credited by
86 the company to the contract.

87 The net considerations for a given contract year used to
88 define the minimum nonforfeiture amount shall be an
89 amount not less than zero and shall be equal to the corre-
90 sponding gross considerations credited to the contract
91 during that contract year less than an annual contract
92 charge of thirty dollars and less a collection charge of one
93 dollar and twenty-five cents per consideration credited to
94 the contract during that contract year. The percentages of
95 net considerations shall be sixty-five percent of the net
96 consideration for the first contract year and eighty-seven
97 and one-half percent of the net considerations for the
98 second and later contract years. Notwithstanding the
99 provisions of the preceding sentence, the percentage shall
100 be sixty-five percent of the portion of the total net consid-
101 eration for any renewal contract year which exceeds by
102 not more than two times the sum of those portions of the
103 net considerations in all prior contract years for which the
104 percentage was sixty-five percent.

105 Notwithstanding any other provision of this section, any
106 contract issued on or after the first day of July, two
107 thousand three, and before the first day of July, two
108 thousand five, the interest rate at which net consider-
109 ations, prior withdrawals and partial surrenders shall be
110 accumulated for the purpose of determining nonforfeiture
amounts may not be less than one and one-half percent per annum.

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

(A) The portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five percent of the net consideration for the first contract year plus twenty-two and one-half percent of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.

(B) The annual contract charge shall be the lesser of: (i) Thirty dollars; or (ii) ten percent of the gross annual consideration.

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

(e) 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. The present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.
(f) For contracts which 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 which would be provided under the contract at maturity arising from consideration 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, the 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 the 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 the contracts shall be at least equal to the cash surrender benefit.

(g) For contracts which 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, the 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 the maturity value and increased by any existing additional amounts credited by the company to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, the present values shall be calculated on a 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
current value of a paid-up annuity benefit be less than the mini-
imum nonforfeiture amount at that time.

(h) For the purpose of determining the benefits calcu-
lated under subsections(f) and (g) 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 deemed to be the
latest date for which election shall be permitted by the
contract, but shall not be deemed to be later than the
anniversary of the contract next following the annuitant’s
seventieth birthday or the tenth anniversary of the con-
tract, whichever is later.

(i) Any contract which does not provide cash surrender
benefits or does not provide death benefits at least equal
to the minimum nonforfeiture amount prior to the com-
mencement of any annuity payments shall include a
statement in a prominent place in the contract that
the benefits are not provided.

(j) Any paid-up annuity, cash surrender or death benefits
available at any time, other than on the contract anniver-
sary under any contract with fixed scheduled consider-
ations, 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
cession of payment of considerations under the contract
occurs.

(k) For any 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
219 separate contract. Notwithstanding the provisions of 220 subsections (e), (f), (g), (h) and (j) of this section, additional 221 benefits payable: (1) In the event of total and permanent 222 disability; (2) as reversionary annuity or deferred rever- 223 sionary annuity benefits; or (3) as other policy benefits 224 additional to life insurance, endowment and annuity 225 benefits and considerations for all the additional benefits 226 shall be disregarded in ascertaining the minimum 227 nonforfeiture amounts, paid-up annuity, cash surrender 228 and death benefits that may be required by this section. 229 The inclusion of the additional benefits shall not be 230 required in any paid-up benefits unless the additional 231 benefits separately would require minimum nonforfeiture 232 amounts, paid-up annuity, cash surrender and death 233 benefits.

234 (l) After the effective date of this section, any company 235 may file with the commissioner a written notice of its 236 election to comply with the provisions of this section after 237 a specified date before the second anniversary of the 238 effective date of this section. After the filing of the notice, 239 then upon the specified date which shall be the operative 240 date of this section for the company, this section shall 241 become operative with respect to annuity contracts 242 thereafter issued by the company. If a company makes no 243 election, the operative date of this section for the company 244 shall be the second anniversary of the effective date of this 245 section.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within is approved this the 1st Day of April, 2003.

[Signature]
Governor