

ENGROSSED SENATE AMENDMENTS
TO
ENGROSSED HOUSE
BILL NO. 2385

By: Cox of the House

and

Robinson of the Senate

An Act relating to insurance; amending 36 O.S. 2001, Sections 311, as last amended by Section 1, Chapter 150, O.S.L. 2003 and 321, as amended by Section 3, Chapter 307, O.S.L. 2002 (36 O.S. Supp. 2003, Sections 311 and 321), which relate to the Insurance Department; **** allowing for revocation of license if censured or placed on probation in other jurisdiction; amending 36 O.S. 2001, Section 1450, which relates to the Third-party Administrator Act; requiring partners in entity to be licensed; requiring notification of termination; amending 36 O.S. 2001, Section 1902, which relates to rehabilitation and liquidation; **** expanding eligibility for coverage to certain persons; providing exemption from preexisting conditions limitation for certain persons; repealing 36 O.S. 2001, Section 1435.38, which relates to the Oklahoma Producer Licensing Act; providing for codification; providing an effective date; and declaring an emergency.

AMENDMENT NO. 1. Page 10, line 14, delete all new language and restore the stricken language

AMENDMENT NO. 2. Page 22, line 1, delete all of Section 11 and insert new Sections 11 through 17 to read

"SECTION 11. AMENDATORY 36 O.S. 2001, Section 1928, is amended to read as follows:

Section 1928. A. ~~1.~~ In all cases of mutual debts or mutual credits between the insurer and another person, whether arising out of one or more contracts between the insurer and another person, in connection with any action or proceeding under this article, such credits and debts shall be offset and the balance only shall be allowed or paid, except as provided in subsection B of this section.

~~2. Any mutual debt or mutual credit to be offset shall be filed and approved as a claim against the insurer in accordance with~~

~~Sections 1918 and 1930 of this title. Any debt or credit not filed in accordance with this paragraph shall be deemed to have been waived.~~

B. No offset shall be allowed if:

1. The obligation of the insurer would not, at the date of the entry of any liquidation order or otherwise as provided in Section 1925 of this title, entitle the claimant to share in the assets of the insurer;

2. The obligation of the insurer was purchased by or transferred to the claimant to be used as an offset;

3. The obligation is to pay an assessment levied against the members of a mutual insurer, or against the subscribers of a reciprocal insurer, or to pay a balance upon the subscription to the capital stock of a stock insurer;

4. The obligation of the insurer is owed to an affiliate of such person, or any other entity or association other than the person;

5. The obligation of the person is owed to an affiliate of the insurer, or any other entity or association other than the insurer; or

6. The obligation between the person and the insurer ~~arise~~ arises from business where either the person or the insurer has assumed risks and obligations from the other party and then has ceded back to that party substantially the same risks and obligations.

SECTION 12. AMENDATORY 36 O.S. 2001, Section 4030.2, is amended to read as follows:

Section 4030.2 Sections ~~16~~ 4030.2 through ~~27~~ 4030.13 of this ~~act~~ title shall be known and may be cited as the "Standard Nonforfeiture Law for Individual Deferred Annuities".

SECTION 13. AMENDATORY 36 O.S. 2001, Section 4030.4, is amended to read as follows:

Section 4030.4 A. In the case of contracts issued on or after ~~the effective date of this act~~ November 1, 2000, except as provided in Section ~~25~~ 4030.3 of this ~~act~~ title, no contract of annuity, except as stated in Section ~~25~~ 4030.13 of this ~~act~~ title, 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 Insurance 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~~ shall grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in Sections ~~28, 29, 30, 31~~ 4030.6, 4030.7, 4030.9 and ~~33~~ 4030.11 of this ~~act~~ title;

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~~ shall pay in lieu of a paid-up annuity benefit a cash surrender benefit of such amount as is specified in Sections ~~28, 29, 31~~ 4030.6, 4030.7, 4030.9 and ~~33~~ 4030.11 of this ~~act~~ title. The company ~~shall~~ may reserve the right to defer the payment of the cash surrender benefit for a period ~~of~~ not to exceed six (6) months after demand therefor with surrender of the contract after making written request and receiving the 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; 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.

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 (2) 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 on 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.

SECTION 14. AMENDATORY 36 O.S. 2001, Section 4030.5, as amended by Section 30, Chapter 307, O.S.L. 2002 (36 O.S. Supp. 2003, Section 4030.5), is amended to read as follows:

Section 4030.5 A. The minimum values as specified in Sections ~~4046.1, 4049, 4085, 4086~~ 4030.6, 4030.7, 4030.8, 4030.9 and ~~4088~~ 4030.11 of this title, 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.

B. ~~With respect to contracts providing for flexible considerations, the~~ 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 ~~a rate~~ rates of interest

~~of one and one-half percent (1 1/2%) per annum of percentages as indicated in subsection C of this section of the net considerations~~ (, as hereinafter defined), paid prior to such time, decreased by the sum of:

- ~~1. Any~~ a. any prior withdrawals from or partial surrenders of the contract accumulated at a ~~rate~~ rates of interest ~~of one and one-half percent (1 1/2%) per annum;~~ indicated in subsection C of this section,
 - b. an annual contract charge of Fifty Dollars (\$50.00), accumulated at rates of interest indicated in subsection C of this section,
 - c. any premium tax paid by the company for the contract, accumulated at rates of interest indicated in subsection C of this section, and
- ~~2. The~~ d. 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.~~

2. The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount ~~not less than zero and shall be equal to the corresponding~~ eighty-seven and one-half percent (87.5%) of the gross considerations credited to the contract during that contract year ~~less an annual contract charge of Thirty Dollars (\$30.00) and less a collection charge of One Dollar and twenty-five cents (\$1.25) per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five percent (65%) of the net consideration for the first contract year and eighty-seven and one-half percent (87.5%) of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five percent (65%) of the portion of the total net consideration for any renewal~~

~~contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five percent (65%).~~

~~C. 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:~~

~~1. The portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five percent (65%) of the net consideration for the first contract year plus twenty-two and one-half percent (22.5%) 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; and~~

~~2. The annual contract charge shall be the lesser of Thirty Dollars (\$30.00) or ten percent (10%) of the gross annual consideration.~~

~~D. 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 the net consideration used to determine the minimum nonforfeiture amount shall be equal to ninety percent (90%) and the net consideration shall be the gross consideration less a contract charge of Seventy-five Dollars (\$75.00).~~

C. 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 (1/20 of 1%), specified in the contract no longer than fifteen (15) months prior to the

contract issue date or redetermination date under paragraph 4 of this subsection;

2. Reduced by one hundred twenty-five (125) basis points;

3. If the resulting interest rate is not less than one percent (1%); 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 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.

D. During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in paragraph 2 of subsection C of this section by up to an additional one hundred (100) basis points to reflect the value of the equity index benefit. The present value at the contract issue date, 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.

E. The Commissioner may adopt rules to implement the provisions of paragraph 4 of subsection C of this section 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 that the Commissioner determines are justified.

SECTION 15. AMENDATORY 36 O.S. 2001, Section 4030.9, is amended to read as follows:

Section 4030.9 For the purpose of determining the benefits calculated under Sections ~~29~~ 4030.7 and ~~30~~ 4030.8 of this ~~act~~ title, 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 contract, whichever is later.

SECTION 16. AMENDATORY 36 O.S. 2001, Section 4030.12, is amended to read as follows:

Section 4030.12 For a 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 ~~28,~~ ~~29,~~ ~~30,~~ ~~31~~ 4030.6, 4030.7, 4030.8, 4030.9, and ~~33~~ 4030.11 of this ~~act~~ title, 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 Standard Nonforfeiture Law for Individual Deferred Annuities. 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.

SECTION 17. AMENDATORY 36 O.S. 2001, Section 4030.13, is amended to read as follows:

Section 4030.13 ~~After the effective date of this act~~ Beginning November 1, 2004, a company may file with the Insurance Commissioner ~~a written notice of its election to comply with the~~ elect to apply its provisions of this act after a specified date before the second anniversary of the effective date of this act to annuity contracts filed and approved before November 1, 2004, on a form-by-contract-form basis. Annuity contracts filed for approval and to be issued on or before November 1, 2004, must comply with the provisions of the Standard Nonforfeiture Law for Individual Deferred Annuities. ~~After the filing of notice, then upon the specified date, which shall be the operative date of this act for that company, this act~~ In all other instances, the Standard Nonforfeiture Law for Individual Deferred Annuities shall become operative with respect to annuity contracts thereafter issued by the company. If a company makes no election, the operative date of this act for the company shall be the second anniversary of the effective date of this act after November 1, 2006."

and renumber subsequent sections

and amend the title to conform as follows

"An Act relating to insurance; amending 36 O.S. 2001, Sections 311, as last amended by Section 1, Chapter 150, O.S.L. 2003 and 321, as amended by Section 3, Chapter 307, O.S.L. 2002 (36 O.S. Supp. 2003, Sections 311 and 321), which relate to the Insurance Department; providing conditions for renewal of license or certificate of authority; adding certain entities and contracts to fee list; exempting certain filings from fees; requiring domestic insurers to keep certain information current; defining term; amending 36 O.S. 2001, Sections 629 and 630, which relate to authorization of insurance companies; changing term insurer to insurance company; amending 36 O.S. 2001, Section 903, which relates to rating organizations; modifying definition of homeowner's insurance to exclude certain dwellings; amending 36 O.S. 2001, Section 1250.2, as amended by Section 53, Chapter 197, O.S.L. 2003 (36 O.S. Supp. 2003, Section 1250.2), which relates to the Unfair Claims Settlement Practices Act; modifying definition of Insurer to include certain organizations; amending 36 O.S. 2001, Sections 1435.6, as amended by

Section 13, Chapter 307, O.S.L. 2002 and 1435.13 (36 O.S. Supp. 2003, Section 1435.6), which relate to the Oklahoma Producer Licensing Act; allowing for retesting after thirty days; prohibiting waiver of fees; allowing for revocation of license if censured or placed on probation in other jurisdiction; amending 36 O.S. 2001, Section 1450, which relates to the Third-party Administrator Act; requiring partners in entity to be licensed; requiring notification of termination; amending 36 O.S. 2001, Section 1928, which relates to offsets; deleting certain filing requirement; amending 36 O.S. 2001, Sections 4030.2, 4030.4, 4030.5, as amended by Section 30, Chapter 307, O.S.L. 2002, 4030.9, 4030.12 and 4030.13 (36 O.S. Supp. 2003, Section 4030.5), which relate to the Standard Nonforfeiture Law for Individual Deferred Annuities; correcting statutory cites; modifying conditions for approval of annuity contracts; modifying certain minimum nonforfeiture amounts; modifying operative dates; amending 36 O.S. 2001, Sections 6532, as amended by Section 1, Chapter 439, O.S.L. 2002, 6534, as amended by Section 2, Chapter 439, O.S.L. 2002 and 6542, as amended by Section 7, Chapter 439, O.S.L. 2002 (36 O.S. Supp. 2003, Sections 6532, 6534 and 6542), which relate to the Health Insurance High Risk Pool Act; modifying definition of federally defined eligible individual; modifying eligibility requirements to include certain individuals; expanding eligibility for coverage to certain persons; providing exemption from preexisting conditions limitation for certain persons; repealing 36 O.S. 2001, Section 1435.38, which relates to the Oklahoma Producer Licensing Act; providing for codification; providing an effective date; and declaring an emergency."

Passed the Senate the 22nd day of April, 2004.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2004.

Presiding Officer of the House
of Representatives