

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
SENATE BILL NO. 522

By: Robinson of the Senate

and

Cox of the House

COMMITTEE SUBSTITUTE

An Act relating to insurance; amending 36 O.S. 2001, Section 1928, which relates to offsets; deleting certain filing requirement; amending 36 O.S. 2001, Section 3604, which relates to insurable interest with respect to personal insurance; modifying limitations on beneficiaries; 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; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. 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 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 2. AMENDATORY 36 O.S. 2001, Section 3604, is amended to read as follows:

Section 3604. A. 1. Any individual of competent legal capacity may procure or effect an insurance contract upon his own life or body for the benefit of any person. Except as provided in subsection D of this section, no person shall procure or cause to be procured any insurance contract upon the life or body of another individual unless the benefits under the contract are payable to the individual insured or a personal ~~representatives~~ representative, or

to a person having, at the time when the contract was made, an insurable interest in the individual insured.

2. In the absence of an agreement to the contrary, a policy procured and owned by a corporation, partnership, association, limited liability company, or other legal entity on the life or body of an officer, director, manager, member, or employee, other than a sole proprietor, upon the termination of the insurable interest, the owner of the policy shall, if permitted by the terms of the policy, offer to sell, transfer, or assign the policy to the insured in exchange for the cash surrender value of the policy or, if there is no cash value, in exchange for an amount equal to the total of any premiums paid for the policy, minus any dividends received, plus interest. This offer shall be made in writing to the insured after termination of the insurable interest. The offer shall state the time for acceptance which shall not be less than thirty (30) days after receipt of the offer by the insured. If the insured rejects the offer or fails to accept the offer in the time provided, the owner of the policy may continue to own the policy subject to its terms.

B. If the beneficiary, assignee, or other payee under any contract made in violation of this section receives from the insurer any benefits thereunder accruing upon the death, disability, or injury of the individual insured, the individual insured or an executor or administrator, as the case may be, may maintain an action to recover such benefits from the person receiving them.

C. "Insurable interest" with reference to personal insurance includes only interests as follows:

1. In the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection;

2. In the case of other persons, a lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest

which would arise only by, or would be enhanced in value by, the death, disability, or injury of the individual insured;

3. An individual heretofore or hereafter party to a contract or option for the purchase or sale of an interest in a business partnership or firm, or of shares of stock of a closed corporation or of an interest in such shares, has an insurable interest in the life of each individual party to the contract and for the purposes of the contract only, in addition to any insurable interest which may otherwise exist as to the life of the individual; and

4. a. An employer, or a trust which is sponsored by an employer for the benefit of its employees, shall have an insurable interest in each of the lives of the employees, directors, or retired employees of the employer. Notwithstanding paragraph 2 of subsection C of this section or Section 4101 of this title, and amendments thereto, the employer or trust may insure the life of any employee, director, or retired employee for the benefit of the employer or trust on an individual or group basis only with the written consent of the insured.

b. The consent requirement of Section 3607 of this title shall be accomplished as follows:

(1) the employer shall notify the employee, director, or retired employee by a written notice that the employer or trust would like to obtain life insurance coverage with respect to the person's life, and

(2) if the employee, director, or retired employee fails to provide written consent to the employer or trust, the employer or trust shall not purchase or obtain such insurance.

- c. It shall be unlawful for the employer or trust to retaliate against any person for refusing to consent to the issuance of insurance on the person.
- d. The insurable interest of the employer or trust in nonmanagement and retired employees shall be limited to an amount agreed to by the employee or, in the absence of an agreement, an amount of aggregate projected death benefits commensurate with the aggregate projected liabilities to the employee under all employee welfare benefit plans, as defined in Section 1002(1) of Title 29 of the United States Code. Calculations of life insurance benefits and welfare benefit liabilities shall be made in accordance with generally accepted actuarial principles. Matching of life insurance benefits and welfare benefit liabilities may be done on cash flow, present value, or other appropriate basis.
- e. For purposes of this section:
  - (1) "employer" means any individual, sole proprietorship, partnership, limited liability company, corporation, or other legal entity that is legally doing business in this state; the term shall also include all entities or persons which are controlled by or affiliated with any of the foregoing. The determination of whether any entity or person is controlled by or affiliated with another shall be made by applying the principles set forth in subsection (b) or (c) of Section 414 of Title 26 of the United States Code, as in effect on January 1, 1993, except that all references therein to eighty percent

(80%) shall be changed to fifty-one percent (51%), and

(2) "employee" means any common law employee of an employer.

f. This section shall not be interpreted to limit other insurable interests which may exist by statute or at common law.

g. Determination of the existence and extent of the insurable interest under any life insurance policy shall be made at the time the contract of insurance becomes effective, provided however, the insurable interest need not exist at the time the loss occurs.

D. Life insurance contracts and annuity contracts may be entered into in which the person paying the consideration for the insurance has no insurable interest in the life of the individual insured, ~~where charitable~~ if:

1. Charitable, benevolent, educational or religious institutions, or their agencies, are designated as the beneficiary or beneficiaries thereof;

2. Organizations or entities to whom a charitable contribution could be made under Section 170(c)(1) of the Internal Revenue Code are designated as the beneficiary or beneficiaries thereof; or

3. A trust, corporation, partnership, association, limited liability company, or other legal entity approved in writing by a charitable, benevolent, educational or religious institution, or agency thereof, or organizations or entities to whom a charitable contribution could be made under Section 170(c)(1) of the Internal Revenue Code with the written consent of the individual insured is designated as the beneficiary or beneficiaries thereof.

In no event shall an individual be named as a beneficiary. In making these contracts, the person paying the premium shall make and sign the application therefor as owner and shall designate a

~~charitable, benevolent, educational, or religious institution, or an agency thereof,~~ the institution, agency, organization, or entity described in paragraph 1, 2, or 3 of this subsection as the beneficiary or beneficiaries of the contract. The application or any subsequent change of beneficiary designation shall be signed by the individual whose life is to be insured. These contracts shall be valid and binding among the parties, notwithstanding the absence otherwise of an insurable interest in the life of the individual insured.

E. Life insurance contracts may be entered into in which the members of an alumni association of an institution of higher education accredited by the Oklahoma State Regents for Higher Education are insured under a group insurance policy and either the institution is the designated beneficiary thereof or the association is the designated beneficiary with the stipulation that the association will use the proceeds of the policies for direct grants to the institution or for scholarships for students of such institutions. In no event shall an individual be named as a beneficiary to such a policy. In making such contracts, the person paying the premium shall make and sign the application therefor as owner and shall designate an institution or alumni association as the beneficiary or beneficiaries of such contract. The application or any subsequent change of beneficiary designation shall be signed also by the individual whose life is to be insured. These contracts shall be valid and binding among the parties thereto, notwithstanding the absence of an insurable interest in the life of the individual insured.

SECTION 3. 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 4. 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 5. 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; as~~ indicated in subsection C of this section,
  - b. an annual contract charge of Fifty Dollars (\$50.00), accumulated at rates of interest as 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 6. 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 7. 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 8. 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~~ elect to apply ~~a written notice of its election to comply with the~~ 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.

SECTION 9. This act shall become effective November 1, 2004.

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