

## CHAPTER 245

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**INSURANCE**

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**HOUSE BILL 04-1079**

BY REPRESENTATIVE(S) Cadman, Briggs, and Frangas;  
also SENATOR(S) Veiga.

**AN ACT****CONCERNING STANDARD NONFORFEITURE REGULATION FOR INDIVIDUAL DEFERRED ANNUITIES  
OFFERED BY INSURERS.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 10-7-503 (1) (a), (1) (b), and (1) (d), Colorado Revised Statutes, are amended, and the said 10-7-503 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**10-7-503. Compulsory contract provisions.** (1) No contract of annuity, except as stated in section 10-7-502, 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:

(a) That, upon cessation of payment of considerations under a contract OR UPON WRITTEN REQUEST OF THE CONTRACT OWNER, 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 10-7-505 to 10-7-508 and 10-7-509 (1);

(b) 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 any paid-up annuity benefit a cash surrender benefit of such amount as is specified in sections 10-7-505, 10-7-506, 10-7-508, and 10-7-509 (1). The company ~~shall~~ MAY reserve the right to defer the payment of such cash surrender benefit for a period ~~of~~ NOT TO EXCEED six months after demand ~~therefor~~ with surrender of the contract AFTER REQUESTING IN WRITING AND RECEIVING APPROVAL IN WRITING FROM THE COMMISSIONER. THE REQUEST SHALL ADDRESS THE NECESSITY AND EQUITABILITY OF THE DEFERRAL TO ALL

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

## POLICY HOLDERS.

(d) A statement that any paid-up annuity, cash surrender, or death benefits that may be available under the contract shall not be 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 such 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 section, 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 such period would be less than twenty dollars monthly, the company may at its option terminate such contract by payment in cash of the then present value of such 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 such payment shall be relieved of any further obligation under such contract. Any contract which does not provide cash surrender or death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.~~

(2) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, A 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 SUCH PERIOD WOULD BE LESS THAN TWENTY DOLLARS MONTHLY, THE COMPANY MAY TERMINATE SUCH CONTRACT BY PAYMENT IN CASH OF THE THEN PRESENT VALUE OF SUCH PORTION OF THE PAID-UP ANNUITY BENEFIT, CALCULATED ON THE BASIS OF THE MORTALITY TABLE AND INTEREST RATE SPECIFIED IN THE CONTRACT FOR DETERMINING THE PAID-UP ANNUITY BENEFIT, AND BY SUCH PAYMENT SHALL BE RELIEVED OF ANY FURTHER OBLIGATION UNDER SUCH CONTRACT. A CONTRACT THAT DOES NOT PROVIDE CASH SURRENDER OR DEATH BENEFITS AT LEAST EQUAL TO THE MINIMUM NONFORFEITURE AMOUNT PRIOR TO THE COMMENCEMENT OF AN ANNUITY PAYMENT SHALL INCLUDE A STATEMENT IN A PROMINENT PLACE IN THE CONTRACT THAT SUCH BENEFITS ARE NOT PROVIDED.

**SECTION 2.** 10-7-504, Colorado Revised Statutes, is amended to read:

**10-7-504. Minimum nonforfeiture amounts - rules.** (1) The minimum values specified in sections 10-7-505 to 10-7-508 and 10-7-509 (1) of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon the following minimum nonforfeiture amounts:

(a) (I) ~~Beginning July 1, 2006, with respect to contracts providing for flexible considerations,~~ 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 of interest ~~of three percent per annum of percentages~~ AUTHORIZED BY SUBSECTION (3) OF THIS SECTION of the net considerations, as defined in subsection (2) of this section, paid prior to such time, decreased by THE FOLLOWING:

(A) The sum of any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of ~~three percent per annum and~~ AUTHORIZED BY SUBSECTION (3) OF THIS SECTION;

(B) AN ANNUAL CONTRACT CHARGE OF FIFTY DOLLARS, ACCUMULATED AT RATES OF INTEREST AUTHORIZED BY SUBSECTION (3) OF THIS SECTION;

(C) 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.~~

(II) (A) ~~With respect to contracts providing for flexible considerations, 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 of interest of one and one-half percent per annum of percentages of the net considerations, as defined in subsection (2) of this section, paid prior to such time, decreased by the sum of any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of one and one-half percent per annum and 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.~~

(B) ~~This subparagraph (H) is repealed, effective July 1, 2006.~~

(b) ~~With respect to contracts providing for fixed scheduled considerations, the minimum nonforfeiture amount 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; except that:~~

(f) ~~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;~~

(H) ~~The annual contract charge shall be the lesser of thirty dollars and ten percent of the gross annual considerations.~~

(c) ~~With respect to contracts providing for a single consideration, the minimum nonforfeiture amount 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.~~

(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 gross considerations EIGHTY-SEVEN AND ONE-HALF PERCENT OF THE GROSS CONSIDERATIONS credited to the contract during such contract year. less an annual contract charge of thirty dollars and less a collection charge of one dollar and twenty-five cents per consideration credited to the contract during the contract year. The percentages of net considerations shall be sixty-five percent of the net~~

~~consideration for the first contract year and eighty-seven and one-half percent of the net considerations for the second and later contract years. Notwithstanding such provisions, the percentage shall be sixty-five percent of the portion of the total net considerations 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.~~

(3) (a) THE INTEREST RATE USED TO DETERMINE MINIMUM NONFORFEITURE AMOUNTS SHALL BE THE LESSER OF THE FOLLOWING:

(I) THREE PERCENT PER ANNUM; OR

(II) IF SPECIFIED IN THE CONTRACT THAT THE INTEREST RATE WILL RESET, THE FIVE-YEAR CONSTANT MATURITY TREASURY RATE REPORTED BY THE FEDERAL RESERVE AS OF A SPECIFIED DATE OR AVERAGED OVER A PERIOD REDUCED BY ONE HUNDRED TWENTY-FIVE BASIS POINTS SO LONG AS:

(A) THE RATE IS ROUNDED TO THE NEAREST ONE-TWENTIETH OF ONE PERCENT;

(B) THE RESET IS SPECIFIED IN THE CONTRACT TO BE NO LONGER THAN FIFTEEN MONTHS BEFORE THE CONTRACT ISSUE OR REDETERMINATION DATE UNDER SUB-SUBPARAGRAPH (E) OF THIS SUBPARAGRAPH (II);

(C) THE RESULTING INTEREST IS NOT LESS THAN ONE PERCENT;

(D) THE INTEREST RATE APPLIES FOR AN INITIAL PERIOD AND MAY BE REDETERMINED FOR ADDITIONAL PERIODS;

(E) ANY REDETERMINATION DATE, BASIS, AND PERIOD IS STATED IN THE CONTRACT; AND

(F) THE BASIS IS THE DATE OR AVERAGE OVER A SPECIFIED PERIOD THAT PRODUCES THE VALUE OF THE FIVE-YEAR CONSTANT MATURITY TREASURY RATE USED AT EACH REDETERMINATION DATE.

(b) DURING THE PERIOD OR TERM THAT A CONTRACT PROVIDES SUBSTANTIVE PARTICIPATION IN AN EQUITY INDEXED BENEFIT, THE CONTRACT MAY INCREASE THE REDUCTION AUTHORIZED IN SUBPARAGRAPH (II) OF PARAGRAPH (a) OF THIS SUBSECTION (3) BY AN ADDITIONAL RATE NOT TO EXCEED ONE HUNDRED BASIS POINTS TO REFLECT THE VALUE OF THE EQUITY INDEXED BENEFIT. THE PRESENT VALUE OF THE ADDITIONAL REDUCTION AT THE CONTRACT ISSUE DATE AND AT EACH REDETERMINATION DATE SHALL NOT EXCEED THE MARKET VALUE OF THE BENEFIT. THE COMMISSIONER MAY DISALLOW OR LIMIT THE ADDITIONAL REDUCTION.

(c) THE COMMISSIONER MAY ADOPT RULES TO IMPLEMENT PARAGRAPH (b) OF THIS SUBSECTION (3) AND TO PROVIDE FURTHER ADJUSTMENTS TO THE MINIMUM FORFEITURE AMOUNTS FOR CONTRACTS THAT PROVIDE SUBSTANTIVE PARTICIPATION IN AN EQUITY INDEXED BENEFIT AND FOR OTHER CONTRACTS FOR WHICH THE COMMISSIONER DETERMINES ADJUSTMENTS ARE JUSTIFIED.

**SECTION 3.** 10-7-510, Colorado Revised Statutes, is amended to read:

**10-7-510. Effective date - applicability of part.** ~~On or after July 1, 1977, any company may file with the commissioner of insurance a written notice of its election to comply with the provisions of this part 5 on and after a specified date before July 1, 1979. After the filing of such notice, and upon such specified date, which shall be the operative date of this section for such company, this part 5 shall become operative with respect to annuity contracts thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be July 1, 1979.~~ ON OR AFTER JULY 1, 2004, A COMPANY MAY ELECT TO APPLY THIS PART 5 TO ANNUITY CONTRACTS ON A CONTRACT FORM-BY-CONTRACT FORM BASIS. OTHERWISE, THIS PART 5 SHALL APPLY TO ALL ANNUITY CONTACTS CREATED ON OR AFTER JULY 1, 2005, AND BETWEEN JULY 1, 2004, AND JULY 1, 2005, THIS PART 5 AS IT EXISTED ON JUNE 30, 2004, SHALL APPLY TO ALL OTHER ANNUITY CONTRACTS.

**SECTION 4.** Part 5 of article 7 of title 10, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**10-7-511. Rule-making authority.** THE COMMISSIONER MAY ADOPT RULES TO IMPLEMENT THIS PART 5.

**SECTION 5. Effective date - applicability.** This act shall take effect July 1, 2004, and shall apply to annuity contracts issued on or after said date.

**SECTION 6. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 21, 2004