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WEST VIRGINIA LEGISLATURE

Regular Session, 2003

ENROLLED

SENATE BILL NO. 357

(By Senator Minard, et al)

PASSED March 8, 2003

In Effect ninety days **From Passage**

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SENATE - WEST VIRGINIA

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Senate Bill No. 357

(BY SENATORS MINARD, JENKINS, SHARPE AND MINEAR)

[Passed March 8, 2003; in effect ninety 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.

§33-13-30a. Standard nonforfeiture law for individual deferred annuities.

- 1 (a) This section shall be known as the "Standard
- 2 Nonforfeiture Law for Individual Deferred Annuities".

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

17 (c) In the case of contracts issued on or after the opera-
18 tive date of this section as defined in subsection(l) of this
19 section, no contract of annuity, except as stated in subsec-
20 tion(b) of this section, shall be delivered or issued for
21 delivery in this state unless it contains in substance the
22 following provisions, or corresponding provisions which,
23 in the opinion of the commissioner, are at least as favor-
24 able to the contract holder, upon cessation of payment of
25 considerations under the contract:

26 (1) That upon cessation of payment of considerations
27 under a contract, the company will grant a paid-up
28 annuity benefit on a plan stipulated in the contract of the
29 value as is specified in subsections (e), (f), (g), (h) and (j) of
30 this section;

31 (2) If a contract provides for a lump sum settlement at
32 maturity or at any other time, that, upon surrender of the
33 contract at or prior to the commencement of any annuity
34 payments, the company will pay in lieu of any paid-up
35 annuity benefit a cash surrender benefit of the amount as
36 is specified in subsections (e), (f), (h) and (j) of this section.
37 The company shall reserve the right to defer the payment
38 of the cash surrender benefit for a period of six months
39 after demand therefor with surrender of the contract;

40 (3) A statement of the mortality table, if any, and
41 interest rates used in calculating any minimum paid-up
42 annuity, cash surrender or death benefits that are guaran-
43 teed under the contract, together with sufficient informa-
44 tion to determine the amounts of the benefits; and

45 (4) A statement that any paid-up annuity, cash surrender
46 or death benefits that may be available under the contract
47 are not less than the minimum benefits required by any
48 statute of the state in which the contract is delivered and
49 an explanation of the manner in which the benefits are
50 altered by the existence of any additional amounts cred-
51 ited by the company to the contract, any indebtedness to
52 the company on the contract or any prior withdrawals
53 from or partial surrenders of the contract.

54 Notwithstanding the requirements of this subsection,
55 any deferred annuity contract may provide that if no
56 considerations have been received under a contract for a
57 period of two full years and the portion of the paid-up
58 annuity benefit at maturity on the plan stipulated in the
59 contract arising from considerations paid prior to
60 the period would be less than twenty dollars monthly, the
61 company may at its option terminate the contract by
62 payment in cash of the then present value of the portion of
63 the paid-up annuity benefit, calculated on the basis of the
64 mortality table, if any, and interest rate specified in the
65 contract for determining the paid-up annuity benefit and
66 by the payment shall be relieved of any further obligation
67 under the contract.

68 (d) The minimum values as specified in subsections (e),
69 (f), (g), (h) and (j) of this section of any paid-up annuity,
70 cash surrender or death benefits available under an
71 annuity contract shall be based upon minimum
72 nonforfeiture amounts as defined in this section:

73 (1) With respect to contracts providing for flexible
74 considerations, the minimum nonforfeiture amount at any
75 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

111 amounts may not be less than one and one-half percent per
112 annum.

113 (2) With respect to contracts providing for fixed sched-
114 uled considerations, minimum nonforfeiture amounts shall
115 be calculated on the assumption that considerations are
116 paid annually in advance and shall be defined as for
117 contracts with flexible considerations which are paid
118 annually with two exceptions:

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

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

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

137 (e) Any paid-up annuity benefit available under a
138 contract shall be such that its present value on the date
139 annuity payments are to commence is at least equal to the
140 minimum nonforfeiture amount on that date. The present
141 value shall be computed using the mortality table, if any,
142 and the interest rate specified in the contract for determin-
143 ing the minimum paid-up annuity benefits guaranteed in
144 the contract.

145 (f) For contracts which provide cash surrender benefits,
146 the cash surrender benefits available prior to maturity
147 shall not be less than the present value as of the date of
148 surrender of that portion of the maturity value of the paid-
149 up annuity benefit which would be provided under the
150 contract at maturity arising from consideration paid prior
151 to the time of cash surrender reduced by the amount
152 appropriate to reflect any prior withdrawals from or
153 partial surrenders of the contract, the present value being
154 calculated on the basis of an interest rate not more than
155 one percent higher than the interest rate specified in the
156 contract for accumulating the net considerations to
157 determine the maturity value, decreased by the amount of
158 any indebtedness to the company on the contract, includ-
159 ing interest due and accrued, and increased by any existing
160 additional amounts credited by the company to the
161 contract. In no event shall any cash surrender benefit be
162 less than the minimum nonforfeiture amount at that time.
163 The death benefit under the contracts shall be at least
164 equal to the cash surrender benefit.

165 (g) For contracts which do not provide cash surrender
166 benefits, the present value of any paid-up annuity benefit
167 available as a nonforfeiture option at any time prior to
168 maturity shall not be less than the present value of that
169 portion of the maturity value of the paid-up annuity
170 benefit provided under the contract arising from consider-
171 ations paid prior to the time the contract is surrendered in
172 exchange for, or changed to, a deferred paid-up annuity,
173 the present value being calculated for the period prior to
174 the maturity date on the basis of the interest rate specified
175 in the contract for accumulating the net considerations to
176 determine the maturity value and increased by any
177 existing additional amounts credited by the company to
178 the contract. For contracts which do not provide any
179 death benefits prior to the commencement of any annuity
180 payments, the present values shall be calculated on a basis
181 of the interest rate and the mortality table specified in the
182 contract for determining the maturity value of the paid-up

183 annuity benefit. However, in no event shall the present
184 value of a paid-up annuity benefit be less than the mini-
185 mum nonforfeiture amount at that time.

186 (h) For the purpose of determining the benefits calcu-
187 lated under subsections(f) and (g) of this section, in the
188 case of annuity contracts under which an election may be
189 made to have annuity payments commence at optional
190 maturity dates, the maturity date shall be deemed to be the
191 latest date for which election shall be permitted by the
192 contract, but shall not be deemed to be later than the
193 anniversary of the contract next following the annuitant's
194 seventieth birthday or the tenth anniversary of the con-
195 tract, whichever is later.

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

202 (j) Any paid-up annuity, cash surrender or death benefits
203 available at any time, other than on the contract anniver-
204 sary under any contract with fixed scheduled consider-
205 ations, shall be calculated with allowance for the lapse of
206 time and the payment of any scheduled considerations
207 beyond the beginning of the contract year in which
208 cessation of payment of considerations under the contract
209 occurs.

210 (k) For any contract which provides, within the same
211 contract by rider or supplemental contract provision, both
212 annuity benefits and life insurance benefits that are in
213 excess of the greater of cash surrender benefits or a return
214 of the gross considerations with interest, the minimum
215 nonforfeiture benefits shall be equal to the sum of the
216 minimum nonforfeiture benefits for the annuity portion
217 and the minimum nonforfeiture benefits, if any, for the life
218 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

PRESENTED TO THE
GOVERNOR

Date 3/27/03

Time 10:10am