



House of Representatives

File No. 631

General Assembly

January Session, 2003

(Reprint of File No. 74)

House Bill No. 6378
As Amended by House
Amendment Schedule "A"

Approved by the Legislative Commissioner
May 2, 2003

AN ACT CONCERNING MINIMUM NONFORFEITURE PROVISIONS FOR CERTAIN ANNUITIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 38a-440 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

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

14 (b) In the case of contracts issued on or after the effective date

15 specified in accordance with the provisions of [subsection (k)]
16 subsections (k) and (l) of this section, no contract of annuity, except as
17 stated in subsection (a) of this section, shall be delivered or issued for
18 delivery in this state unless it contains in substance the following
19 provisions, or corresponding provisions which in the opinion of the
20 commissioner are at least as favorable to the contractholder, upon
21 cessation of payment of considerations under the contract: (1) That
22 upon cessation of payment of considerations under a contract, or upon
23 the written request of the contract owner, the company [will] shall
24 grant a paid-up annuity benefit on a plan stipulated in the contract of
25 such value as is specified in subsections (d), (e), (f), (g) and (i) of this
26 section; (2) if a contract provides for a lump sum settlement at
27 maturity, or at any other time, that upon surrender of the contract at or
28 prior to the commencement of any annuity payments, the company
29 [will] shall pay in lieu of any paid-up annuity benefit a cash surrender
30 benefit of such amount as is specified in subsections (d), (e), (g) and (i)
31 of this section. The company [shall] may reserve the right to defer the
32 payment of such cash surrender benefit for a period [of] not to exceed
33 six months after demand therefor with surrender of the contract after
34 making written request and receiving written approval of the
35 commissioner, provided such request addresses the deferral's necessity
36 and equitability with respect to all policyholders; (3) a statement of the
37 mortality table, if any, and interest rates used in calculating any
38 minimum paid-up annuity, cash surrender or death benefits that are
39 guaranteed under the contract, together with sufficient information to
40 determine the amounts of such benefits; and (4) a statement that any
41 paid-up annuity, cash surrender or death benefits which may be
42 available under the contract are not less than the minimum benefits
43 required by the statutes of the state in which the contract is delivered
44 and an explanation of the manner in which such benefits are altered by
45 the existence of any additional amounts credited by the company to
46 the contract, any indebtedness to the company on the contract or any
47 prior withdrawals from or partial surrenders of the contract.
48 Notwithstanding the requirements of this subsection, any deferred
49 annuity contract may provide that if no considerations have been

50 received under a contract for a period of two full years and the portion
51 of the paid-up annuity benefit at maturity on the plan stipulated in the
52 contract arising from considerations paid prior to such period would
53 be less than twenty dollars monthly, the company may at its option
54 terminate such contract by payment in cash of the then present value
55 of such portion of the paid-up annuity benefit, calculated on the basis
56 of the mortality table, if any, and interest rate specified in the contract
57 for determining the paid-up annuity benefit, and by such payment
58 shall be relieved of any further obligation under such contract.

59 (c) The minimum values as specified in subsections (d), (e), (f), (g)
60 and (i) of this section of any paid-up annuity, cash surrender or death
61 benefits available under an annuity contract shall be based upon
62 minimum nonforfeiture amounts as defined in this subsection: (1)
63 [With respect to contracts providing for flexible considerations, the]
64 The minimum nonforfeiture amount at any time at or prior to the
65 commencement of any annuity payments shall be equal to an
66 accumulation up to such time at [a rate] rates of interest, [of three per
67 cent per annum of percentages] as indicated in subdivision (3) of this
68 subsection, of the net considerations, as [hereinafter] defined in this
69 subsection, paid prior to such time, decreased by the sum of (A) any
70 prior withdrawals from or partial surrenders of the contract
71 accumulated at [a rate] rates of interest [of three per cent per annum,
72 and (B)] as indicated in subdivision (3) of this subsection; (B) an annual
73 contract charge of fifty dollars, accumulated at rates of interest as
74 indicated in subdivision (3) of this subsection; and (C) the amount of
75 any indebtedness to the company on the contract, including interest
76 due and accrued. [; and increased by any existing additional amounts
77 credited by the company to the contract. The] (2) The net
78 considerations for a given contract year used to define the minimum
79 nonforfeiture amount shall be an amount [not less than zero and shall
80 be equal to the corresponding] equal to eighty-seven and one-half per
81 cent of the gross considerations credited to the contract during that
82 contract year, [less an annual contract charge of thirty dollars and less
83 a collection charge of one dollar and twenty-five cents per

84 consideration credited to the contract during that contract year. The
85 percentages of net considerations shall be sixty-five per cent of the net
86 consideration for the first contract year and eighty-seven and one-half
87 per cent of the net considerations for the second and later contract
88 years, except the percentage shall be sixty-five per cent of the portion
89 of the total net consideration for any renewal contract year which
90 exceeds by not more than two times the sum of those portions of the
91 net considerations in all prior contract years for which the percentage
92 was sixty-five per cent; (2) with respect to contracts providing for fixed
93 scheduled considerations, minimum nonforfeiture amounts shall be
94 calculated on the assumption that considerations are paid annually in
95 advance and shall be defined as for contracts with flexible
96 considerations which are paid annually with two exceptions: (A) The
97 portion of the net consideration for the first contract year to be
98 accumulated shall be the sum of sixty-five per cent of the net
99 consideration for the first contract year plus twenty-two and one-half
100 per cent of the excess of the net consideration for the first contract year
101 over the lesser of the net considerations for the second and third
102 contract years; (B) the annual contract charge shall be the lesser of (i)
103 thirty dollars or (ii) ten per cent of the gross annual consideration. (3)
104 With respect to contracts providing for a single consideration,
105 minimum nonforfeiture amounts shall be defined as for contracts with
106 flexible considerations except that the percentage of net consideration
107 used to determine the minimum nonforfeiture amount shall be equal
108 to ninety per cent and the net consideration shall be the gross
109 consideration less a contract charge of seventy-five dollars.] (3) The
110 interest rate used in determining minimum nonforfeiture amounts
111 shall be an annual rate of interest determined as the lesser of three per
112 cent per annum or the rate calculated pursuant to subparagraphs (A)
113 to (D), inclusive, of this subdivision, which shall be specified in the
114 contract if the interest rate will be reset: (A) The five-year Constant
115 Maturity Treasury Rate reported by the Federal Reserve as of a date, or
116 average over a period of time, rounded to the nearest one-twentieth of
117 one per cent, specified in the contract no later than fifteen months prior
118 to the contract issue date or redetermination date under subparagraph

119 (D) of this subdivision; (B) reduced by one hundred twenty-five basis
120 points; (C) where the resulting interest rate is not less than one per
121 cent; and (D) where such interest rate applies for an initial period of
122 time and may be redetermined for additional periods of time. The
123 redetermination date, basis and period, if any, shall be stated in the
124 contract. The basis is the date or average over a specified period of
125 time that produces the value of the five-year Constant Maturity
126 Treasury Rate to be used at each redetermination date. (4) During the
127 period of time or term that a contract provides substantive
128 participation in an equity indexed benefit, the contract may increase
129 the reduction described in subparagraph (B) of subdivision (3) of this
130 subsection by an amount up to an additional one hundred basis points
131 to reflect the value of the equity index benefit. The present value at the
132 contract issue date, and at each redetermination date thereafter, of the
133 additional reduction shall not exceed the market value of the benefit.
134 The commissioner may require a demonstration that the present value
135 of the additional reduction does not exceed the market value of the
136 benefit. If there is no such demonstration that is acceptable to the
137 commissioner, the commissioner may disallow or limit the additional
138 reduction. (5) The commissioner may adopt regulations, in accordance
139 with chapter 54, to implement the provisions of subdivision (4) of this
140 subsection and to provide for further adjustments to the calculation of
141 minimum nonforfeiture amounts for contracts that provide substantive
142 participation in an equity index benefit and for other contracts for
143 which the commissioner determines adjustments are justified.

144 (d) Any paid-up annuity benefit available under a contract shall be
145 such that its present value on the date annuity payments are to
146 commence is at least equal to the minimum nonforfeiture amount on
147 that date. Such present value shall be computed using the mortality
148 table, if any, and the interest [rate] rates specified in the contract for
149 determining the minimum paid-up annuity benefits guaranteed in the
150 contract.

151 (e) For contracts which provide cash surrender benefits, such cash

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

167 (f) For contracts which do not provide cash surrender benefits, the
168 present value of any paid-up annuity benefit available as a
169 nonforfeiture option at any time prior to maturity shall not be less than
170 the present value of that portion of the maturity value of the paid-up
171 annuity benefit, provided under the contract arising from
172 consideration paid prior to the time the contract is surrendered in
173 exchange for, or changed to, a deferred paid-up annuity, such present
174 value being calculated for the period prior to the maturity date on the
175 basis of the interest rate specified in the contract for accumulating the
176 net considerations to determine such maturity value, and increased by
177 any existing additional amounts credited by the company to the
178 contract. For contracts which do not provide any death benefits prior
179 to the commencement of any annuity payments, such present values
180 shall be calculated on the basis of such interest rate and the mortality
181 table specified in the contract for determining the maturity value of the
182 paid-up annuity benefit. In no event shall the present value of a paid-
183 up annuity benefit be less than the minimum nonforfeiture amount at
184 that time.

185 (g) For the purpose of determining the benefits calculated under

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

193 (h) Any contract which does not provide cash surrender benefits or
194 does not provide death benefits at least equal to the minimum
195 nonforfeiture amount prior to the commencement of any annuity
196 payments shall include a statement in a prominent place in the
197 contract that such benefits are not provided.

198 (i) Any paid-up annuity, cash surrender or death benefits available
199 at any time, other than on the contract anniversary under any contract
200 with fixed scheduled considerations, shall be calculated with
201 allowance for the lapse of time and the payment of any scheduled
202 considerations beyond the beginning of the contract year in which
203 cessation of payment of considerations under the contract occurs.

204 (j) For any contract which provides, within the same contract by
205 rider or supplemental contract provision, both annuity benefits and life
206 insurance benefits that are in excess of the greater of cash surrender
207 benefits or a return of the gross considerations with interest, the
208 minimum nonforfeiture benefits shall be equal to the sum of the
209 minimum nonforfeiture benefits for the annuity portion and the
210 minimum nonforfeiture benefits, if any, for the life insurance portion
211 computed as if each portion were a separate contract. Notwithstanding
212 the provisions of subsections (d), (e), (f), (g) and (i) of this section,
213 additional benefits payable (1) in the event of total and permanent
214 disability, (2) as reversionary annuity or deferred reversionary annuity
215 benefits, or (3) as other policy benefits additional to life insurance,
216 endowment and annuity benefits, and considerations for all such
217 additional benefits, shall be disregarded in ascertaining the minimum
218 nonforfeiture amounts, paid-up annuity, cash surrender and death

219 benefits that may be required by this section. The inclusion of such
220 additional benefits shall not be required in any paid-up benefits, unless
221 such additional benefits separately would require minimum
222 nonforfeiture amounts, paid-up annuity, cash surrender and death
223 benefits.

224 (k) On or after October 1, 1978, but prior to January 1, 1981, any
225 company may file with the commissioner a written notice of its
226 election to comply with the provisions of this section after a specified
227 date and the provisions of this section shall apply to annuity contracts
228 issued by such company on or after such specified date. On or after
229 January 1, 1981, the provisions of this section shall apply to annuity
230 contracts issued by any company.

231 (l) On or after the effective date of this section, but prior to July 1,
232 2005, any company may file with the commissioner a written notice of
233 its election to comply with the provisions of this section with respect to
234 contract forms specified in the notice and issued on and after the
235 effective date of this section, except that (1) no such notice shall be
236 required for a company that elects to comply with the provisions of
237 this section as set forth in the general statutes, revision of 1958, revised
238 to January 1, 2003, and (2) on and after July 1, 2005, the provisions of
239 this section shall apply to all annuity contracts issued by any company
240 on and after July 1, 2005.

241 (m) The commissioner may adopt regulations, in accordance with
242 chapter 54, to implement the provisions of this section.

This act shall take effect as follows:	
Section 1	<i>from passage</i>

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Type	FY 04 \$	FY 05 \$
Insurance Dept.	IF - None	None	None

Note: IF=Insurance Fund

Municipal Impact: None

Explanation

The bill requires certain notices to be filed and approved by the Insurance Commissioner related to minimum nonforfeiture provisions for certain annuities and allows the adoption of regulations. These changes would not result in a fiscal impact.

House "A" established the notice and regulation provisions and did not result in a fiscal impact.

OLR Bill Analysis

HB 6378 (as Amended by House "A")*

AN ACT CONCERNING MINIMUM NONFORFEITURE PROVISIONS FOR CERTAIN ANNUITIES**SUMMARY:**

This bill replaces the 3% statutory guaranteed minimum interest rate used to calculate individual annuity nonforfeiture benefit amounts (paid-up annuity, cash surrender value, or reduced death benefit) with a formula that uses in part an indexed interest rate tied to the five-year Constant Maturity Treasury Rate reported by the Federal Reserve. The bill phases in the indexed interest rate and applies it to annuity contracts issued on or after its effective date. The bill requires insurers who want to use the indexed rate between the bill's effective date and July 1, 2005 to file with the insurance commissioner a written notice of election that it will comply with the bill's interest rate provision. The bill authorizes insurers that wish to use the current 3% interest rate to continue doing so. But, after July 1, 2005, it requires all annuity nonforfeiture benefit amounts to be determined by the indexed interest rate.

The bill permits, rather than requires, insurers to defer cash surrender benefit payments for up to six months and adds the requirement that they submit a written request to, and receive written approval from, the insurance commissioner before deferring such payments. The request must include an explanation of the deferral's necessity and equity.

The bill expands the right of annuity holders to receive nonforfeiture benefits, changes the net consideration percentage used to define minimum nonforfeiture benefit amounts, increases the annual annuity contract charge, and requires the payment of interest on any unpaid charge.

Finally, the bill authorizes the commissioner to (1) require certain evidence about the present value of any nonforfeiture benefit and (2) adopt implementing regulations.

*House Amendment "A" adds the provisions requiring (1) an indexed interest rate, (2) contract charge increase and interest, (3) net consideration percentage and present value, (4) regulations, and (5) written notice of election.

EFFECTIVE DATE: Upon passage

INDEX INTEREST RATE

The bill requires the interest rate used to calculate the minimum nonforfeiture benefit amount to be based on the lesser of 3% or the five-year Constant Maturity Treasury Rate as reported by the Federal Reserve (as of a specific date or average over a period of time, rounded to the nearest 1/20 of 1%) less 125 basis points (1.25%). This calculated interest rate cannot be less than 1%.

The bill requires that the redetermination date, basis, and time period be stated in the contract. The indexed interest rate applies for an initial period of time and may be redetermined for an additional period of time. The bill defines the "basis" as the date or average over a specified period of time that produces the value of the five-year Constant Maturity Treasury Rate used at each redetermination date.

The bill authorizes an increase in the basis point reduction of up to 100 basis points (1%), if the annuity participates in an equity index benefit. The present value of the additional basis point reduction on the contract's issue or redetermination date must not exceed the market value of the benefit. The bill authorizes the commissioner to require the insurer to demonstrate that the present value of the additional reduction does not exceed the benefit's market value. It specifies that if the evidence is not acceptable to the commissioner, she may disallow or limit the additional reduction.

NONFORFEITURE BENEFIT

Current law requires annuity contracts to offer a paid-up annuity benefit to an annuity holder who stops making future premium payments. The bill permits an annuity holder who submits a written request to receive this benefit as well.

NET CONSIDERATION PERCENTAGE

Current law requires that the percentage of the net consideration for

any given contract year used to define the minimum nonforfeiture amount must be 65% of the net consideration for the first year and 87.5% for the second and subsequent years. The bill changes the net consideration to 87.5% of gross consideration for all years.

ANNUAL CHARGE WITH INTEREST

The bill increase from \$30 to \$50 the annual charge assessed on annuity contracts and subjects unpaid annual charges to the payment of interest calculated according to the indexed interest rate tied to the five-year Constant Maturity Rate.

EVIDENCE OF PRESENT VALUE

The bill prohibits the present value of the additional 100-basis point (1%) reduction on the contract issuance or redetermination date from exceeding the market value of the benefit.

IMPLEMENTING REGULATIONS

The bill authorizes the commissioner to adopt implement regulations, including the provisions (1) permitting increases in the additional basis point reduction (2) providing for adjustments to the calculation of minimum nonforfeiture amounts for annuity contracts that participate in an equity index benefit and other contracts for which the commissioner determines that adjustments are justified and (3) to implement any other provision of the bill.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable Report
Yea 11 Nay 3