

AMENDED IN ASSEMBLY JUNE 15, 1999

AMENDED IN SENATE MAY 19, 1999

AMENDED IN SENATE MARCH 22, 1999

SENATE BILL

No. 423

Introduced by Senator Johnston

February 16, 1999

An act to amend Section 10168.2 of, *and to repeal and add Section 1620 to*, the Insurance Code, relating to ~~annuities~~ *insurance*.

LEGISLATIVE COUNSEL'S DIGEST

SB 423, as amended, Johnston. ~~Annuities:—minimum nonforfeiture amounts~~ *Insurance: annuities and surplus lines.*

(1) Existing law, which is repealed on January 1, 2000, provides that specified provisions of law regarding actions against nonadmitted insurers do not apply to any contract of insurance issued in this state pursuant to provisions of law governing surplus line brokers, or if the contract is governed by and complies with the law of the state in which the contract was entered. Existing law also provides that a nonadmitted insurer need not file a bond if at the time the insurer files any pleading in any action, suit, or proceeding instituted against it, the insurer is an eligible surplus line insurer, as specified, or with respect to a dispute arising out of certain contracts of reinsurance, the reinsurer has complied with specified requirements.

This bill would reenact these provisions of law.

(2) Existing law governing insurance provides that the minimum values of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based on certain minimum nonforfeiture amounts. 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 is required to be equal to an accumulation up to that time at a rate of interest of 3% per year of percentages of the net considerations, as defined, paid prior to that time, adjusted by certain other specified amounts.

This bill would instead require that the minimum nonforfeiture amount with respect to contracts providing for flexible considerations be equivalent to an accumulation up to any time at or prior to the commencement of any annuity payments at the nonforfeiture rate of interest of the net considerations paid prior to that time, subject to certain specified adjustments. The bill would define the nonforfeiture rate of interest as the lesser of 3% or the average 5-year constant maturity treasury rate over the 12-month period ending on June 30 of the calendar year preceding issuance, less 100 basis points until June 30, 2000, less 150 basis points from July 1, 2000, through December 31, 2000, and less 200 basis points thereafter. The bill would make related changes.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 1620 of the Insurance Code, as*
 2 *added by Section 2 of Chapter 328 of the Statutes of 1996,*
 3 *is repealed.*
 4 ~~1620. (a) The provisions of the preceding sections of~~
 5 ~~this article shall not apply to any action, suit, or~~
 6 ~~proceeding against any unauthorized foreign or alien~~
 7 ~~insurer arising out of any contract of insurance effected~~
 8 ~~in accordance with Sections 1760.5 and 1763 where such~~
 9 ~~contract contains a provision designating a resident of this~~
 10 ~~state or any firm of which one member is a resident of this~~
 11 ~~state to be its true and lawful attorney upon whom may~~



1 ~~be served all lawful process in any such action, suit, or~~
2 ~~proceeding.~~

3 ~~(b) In any such action, suit, or proceeding arising out~~
4 ~~of any such contract of insurance, the court may require~~
5 ~~the insurer to file a bond, in an amount sufficient to secure~~
6 ~~the payment of any final judgment which may be~~
7 ~~rendered unless the insurer makes a showing satisfactory~~
8 ~~to the court that it maintains in a state of the United States~~
9 ~~funds or securities in trust or otherwise, sufficient and~~
10 ~~available to satisfy any such final judgment and that it will~~
11 ~~pay the judgment without requiring suit to be brought~~
12 ~~thereon in the state where the securities or funds are~~
13 ~~located.~~

14 ~~(c) This section shall become operative on January 1,~~
15 ~~2000.~~

16 *SEC. 2. Section 1620 is added to the Insurance Code,*
17 *to read:*

18 *1620. (a) The provisions of the preceding sections of*
19 *this article shall not apply to any action, suit, or*
20 *proceeding against any unauthorized foreign or alien*
21 *insurer arising out of any contract of insurance effected*
22 *in accordance with Section 1760, 1760.5, 1763, or 1763.1, or,*
23 *if the contract is governed by and complies with the laws*
24 *of the state in which the contract was entered. The*
25 *provisions of Section 1610 shall apply to any action, suit,*
26 *or proceeding under this section unless the insurer has*
27 *designated an agent in California for service of process or*
28 *the contract contains a provision designating a resident*
29 *of this state or any firm of which one member is a resident*
30 *of this state to be its true and lawful attorney upon whom*
31 *may be served all lawful process in any such action, suit,*
32 *or proceeding.*

33 *(b) In any such action, suit, or proceeding arising out*
34 *of any such contract of insurance, the court may require*
35 *the insurer to file a bond, in an amount sufficient to secure*
36 *the payment of any final judgment which may be*
37 *rendered unless one or more of the following is*
38 *applicable:*

39 *(1) The insurer makes a showing satisfactory to the*
40 *court that it maintains in a state of the United States funds*



1 or securities in trust or otherwise, sufficient and available
2 to satisfy any such final judgment and that it will pay the
3 judgment without requiring suit to be brought thereon in
4 the state where the securities or funds are located.

5 (2) At the time the insurer files any pleading in any
6 action, suit, or proceeding instituted against it, the insurer
7 is listed as an eligible surplus line insurer in accordance
8 with subdivision (f) of Section 1765.1, unless by facts
9 presented to the court there is created a reasonable doubt
10 as to the present ability of the insurer to satisfy any final
11 judgment in the action, suit, or proceeding. Upon request
12 of a party or the court, the unauthorized foreign or alien
13 insurer or reinsurer shall provide the court and the party
14 requesting the bond with copies of documents relating to
15 the financial condition of the insurer, including, but not
16 limited to, copies of the insurer's most recent annual
17 statement and audited financial report and, where
18 applicable, a certified copy of the trust agreement
19 required by subdivision (b) of Section 1765.1 and a
20 verified copy of the most recent quarterly statement or
21 list of assets in the trust.

22 (3) With respect to a contract of reinsurance issued in
23 accordance with Section 1760.5, the reinsurer has
24 complied with the provisions of this code necessary to
25 permit the ceding insurer to take credit on its financial
26 statement for the reinsurance as set forth in Section 922.4
27 or 922.5.

28 SEC. 3. Section 10168.2 of the Insurance Code is
29 amended to read:

30 10168.2. The minimum values as specified in Sections
31 10168.3, 10168.4, 10168.5, 10168.6, and 10168.8 of any
32 paid-up annuity, cash surrender, or death benefits
33 available under an annuity contract shall be based upon
34 minimum nonforfeiture amounts as defined in this
35 section.

36 (a) (1) With respect to contracts providing for
37 flexible considerations, the minimum nonforfeiture
38 amount at any time at or prior to the commencement of
39 any annuity payments shall be equivalent to an
40 accumulation up to that time at the nonforfeiture rate of



1 interest, as defined in paragraph (2), of percentages of
2 the net considerations (as hereinafter defined) paid prior
3 to that time, decreased by the sum of (i) any prior
4 withdrawals from or partial surrenders of the contract
5 accumulated at the nonforfeiture rate of interest, as
6 defined in paragraph (2), and (ii) the amount of any
7 indebtedness to the company on the contract, including
8 interest due and accrued, and increased by any existing
9 additional amounts credited by the company to the
10 contract.

11 (2) The nonforfeiture rate of interest referenced in
12 paragraph (1) for determining the minimum
13 nonforfeiture amount for fixed annuities and for the fixed
14 portion of combination annuities shall be the lesser of the
15 following amounts:

16 (A) Three percent.

17 (B) The average Five-Year Constant Maturity
18 Treasury Rate, as defined in paragraph (4), over the
19 12-month period ending on June 30 of the calendar year
20 preceding issue, less 100 basis points until June 30, 2000,
21 less 150 basis points from July 1, 2000, through December
22 31, 2000, and less 200 basis points thereafter.

23 (3) Notwithstanding anything to the contrary in
24 paragraph (1) or (2), the nonforfeiture rate of interest
25 shall not fall below zero at any time.

26 (4) “Five-Year Constant Maturity Treasury Rate”
27 means the weekly average yield of United States Treasury
28 securities adjusted to a constant maturity of five years as
29 published by the United States Federal Reserve Board. If
30 publication of the Five-Year Constant Maturity Treasury
31 Rate ceases, or if the rate otherwise becomes unavailable
32 or is altered in such a way as to be unusable, the
33 commissioner shall substitute a rate the commissioner
34 deems suitable.

35 (5) The net considerations for a given contract year
36 used to define the minimum nonforfeiture amount shall
37 be an amount not less than zero and shall be equal to the
38 corresponding gross considerations credited to the
39 contract during that contract year less an annual contract
40 charge of thirty dollars (\$30) and less a collection charge



1 of one dollar and twenty-five cents (\$1.25) per
2 consideration credited to the contract during that
3 contract year. The percentages of net considerations shall
4 be 65 percent of the net consideration for the first
5 contract year and 87¹/₂ percent of the net considerations
6 for the second and later contract years. Notwithstanding
7 the provisions of the preceding sentence, the percentage
8 shall be 65 percent of the portion of the total net
9 consideration for any renewal contract year which
10 exceeds by not more than two times the sum of those
11 portions of the net considerations in all prior contract
12 years for which the percentage was 65 percent.

13 (b) With respect to contracts providing for fixed
14 scheduled considerations, minimum nonforfeiture
15 amounts shall be calculated on the assumption that
16 considerations are paid annually in advance and shall be
17 defined as for contracts with flexible considerations
18 which are paid annually with two exceptions:

19 (1) The portion of the net consideration for the first
20 contract year to be accumulated shall be the sum of 65
21 percent of the net consideration for the first contract year
22 plus 22¹/₂ percent of the excess of the net consideration
23 for the first contract year over the lesser of the net
24 considerations for the second and third contract years.

25 (2) The annual contract charge shall be the lesser of
26 thirty dollars (\$30) or 10 percent of the gross annual
27 consideration.

28 (c) With respect to contracts providing for a single
29 consideration, minimum nonforfeiture amounts shall be
30 defined as for contracts with flexible considerations
31 except that the percentage of net consideration used to
32 determine the minimum nonforfeiture amount shall be
33 equal to 90 percent and the net consideration shall be the
34 gross consideration less a contract charge of seventy-five
35 dollars (\$75).

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