

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

763J0685

SENATE BILL NO. 148

Introduced by: Senators Dempster and Sutton (Dan) and Representatives Williamson and Engels

1 FOR AN ACT ENTITLED, An Act to repeal and reenact the standard nonforfeiture statute for
2 individual deferred annuities.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That §§ 58-15-72 to 58-15-81, inclusive, be repealed.

5 Section 2. That chapter 58-15 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 This Act does not apply to any reinsurance, group annuity purchased under a retirement plan
8 or plan of deferred compensation established or maintained by an employer (including a
9 partnership or sole proprietorship) or by an employee organization, or by both, other than a plan
10 providing individual retirement accounts or individual retirement annuities under Section 408
11 of the Internal Revenue Code, as amended to January 1, 1977, premium deposit fund, variable
12 annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity
13 payments have commenced, or reversionary annuity, nor to any contract which shall be
14 delivered outside this state through an agent or other representative of the company issuing the
15 contract.



1 Section 3. That chapter 58-15 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 In the case of contracts issued on or after the operative date of this Act as defined in section
4 13 of this Act, no contract of annuity, except as stated in section 2 of this Act, may be delivered
5 or issued for delivery in this state unless it contains in substance the following provisions, or
6 corresponding provisions which in the opinion of the commissioner are at least as favorable to
7 the contractholder, upon cessation of payment of considerations under the contract:

8 (1) That upon cessation of payment of considerations under a contract, or upon the
9 written request of the contract owner, the company shall grant a paid-up annuity
10 benefit on a plan stipulated on the contract of such value as is specified in sections
11 5, 6, 7, 8, and 10 of this Act;

12 (2) If a contract provides for a lump sum settlement at maturity, or at any other time, that
13 upon surrender of the contract at or prior to the commencement of any annuity
14 payments, the company shall pay in lieu of a paid-up annuity benefit a cash surrender
15 benefit of such amount as is specified in sections 5, 6, 8, and 10 of this Act. The
16 company may reserve the right to defer the payment of the cash surrender benefit for
17 a period not to exceed six months after demand therefor with surrender of the
18 contract after making written request and receiving written approval of the
19 commissioner. The request shall address the necessity and equitability to all
20 policyholders of the deferral;

21 (3) A statement of the mortality table, if any, and interest rates used in calculating any
22 minimum paid-up annuity, cash surrender, or death benefits that are guaranteed under
23 the contract, together with sufficient information to determine the amounts of the
24 benefits; and

1 (4) A statement that any paid-up annuity, cash surrender, or death benefits that may be
2 available under the contract are not less than the minimum benefits required by any
3 statute of the state in which the contract is delivered and an explanation of the
4 manner in which the benefits are altered by the existence of any additional amounts
5 credited by the company to the contract, and indebtedness to the company on the
6 contract, or any prior withdrawals from or partial surrenders of the contract.

7 Notwithstanding the requirements of this section, a deferred annuity contract may provide
8 that if no considerations have been received under a contract for a period of two full years and
9 the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract
10 arising from prior considerations paid would be less than twenty dollars monthly, the company
11 may, at its option, terminate the contract by payment in cash of the then present value of the
12 portion of the paid-up annuity benefit, calculated on the basis on the mortality table, if any, and
13 interest rate specified in the contract for determining the paid-up annuity benefit, and by this
14 payment shall be relieved of any further obligation under the contract.

15 Section 4. That chapter 58-15 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 The minimum values as specified in sections 5, 6, 7, 8, and 10 of this Act of any paid-up
18 annuity, cash surrender, or death benefits available under an annuity contract shall be based
19 upon minimum nonforfeiture amounts as defined in this section:

- 20 (1) The minimum nonforfeiture amount at any time at or prior to the commencement of
21 any annuity payments shall be equal to an accumulation up to such time at rates of
22 interest as indicated in the second paragraph of this section of considerations (as
23 hereinafter defined) paid prior to such time, decreased by the sum of the following:
24 (a) Any prior withdrawals from or partial surrenders of the contract accumulated

1 at rates of inters as indicated in the second paragraph of this section; and

2 (b) An annual contract charge of fifty dollars accumulated at rates of interest as
3 indicated in second paragraph of this section;

4 (c) Any premium tax paid by the company for the contract, accumulated at rates
5 of interest as indicated in second paragraph of this section; and

6 (d) The amount of any indebtedness to the company on the contract, including
7 interest due and accrued;

8 (2) The net considerations for a given contract year used to define the minimum
9 nonforfeiture amount shall be an amount equal to eighty-seven and one-half percent
10 of the gross considerations credited to the contract during that contract year.

11 The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate
12 of interest determined as the lesser of three percent per annum and the following, which shall
13 be specified in the contract if the interest rate will be reset:

14 (1) The five-year constant maturity treasury rate reported by the Federal Reserve as of
15 a date, or average over a period, rounded to the nearest one-twentieth of one percent,
16 specified in the contract no longer than fifteen months prior to the contract issue date
17 or redetermination date pursuant to this section;

18 (2) Reduced by one hundred twenty-five basis points;

19 (3) Where the resulting interest rate is not less than one percent; and

20 (4) The interest rate shall apply for an initial period and may be redetermined for
21 additional periods.

22 The redetermination date, basis, and period, if any, shall be stated in the contract. The basis
23 is the date or average over a specified period that produces the value of the five-year constant
24 maturity treasury rate to be used at each redetermination date.

1 During the period or term that a contract provides substantive participation in an equity
2 indexed benefit, it may increase the reduction described above by up to an additional one
3 hundred basis points to reflect the value of the equity index benefit. The present value at the
4 contract issue date, and at each redetermination date thereafter, of the additional reduction may
5 not exceed the market value of the benefit. The commissioner may require a demonstration that
6 the present value of the additional reduction does not exceed the market value of the benefit.
7 Lacking such a demonstration that is acceptable to the commissioner, the commissioner may
8 disallow or limit the additional reduction.

9 The commissioner may promulgate rules pursuant to chapter 1-26 to implement the
10 provisions of this section and to provide for further adjustments to the calculation of minimum
11 nonforfeiture amounts for contracts that provide substantive participation in an equity index
12 benefit and for other contracts that the commissioner determines adjustments are justified.

13 Section 5. That chapter 58-15 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 Any paid-up annuity benefit available under a contract shall be such that its present value
16 on the date annuity payments are to commence is at least equal to the minimum nonforfeiture
17 amount on that date. Present value shall be computed using the mortality table, if any, and the
18 interest rates specified in the contract for determining the minimum paid-up annuity benefits
19 guaranteed in the contract.

20 Section 6. That chapter 58-15 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 For contracts that provide cash surrender benefits, the cash surrender benefits available prior
23 to maturity may not be less than the present value as of the date of surrender of that portion of
24 the maturity value of the paid-up annuity benefit that would be provided under the contract at

1 maturity arising from considerations paid prior to the time of cash surrender reduced by the
2 amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract,
3 such present value being calculated on the basis of an interest rate not more than one percent
4 higher than the interest rate specified in the contract for accumulating the net considerations to
5 determine maturity value, decreased by the amount of any indebtedness to the company on the
6 contract, including interest due and accrued, and increased by any existing additional amounts
7 credited by the company to the contract. In no event may any cash surrender benefit be less than
8 the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be
9 at least equal to the cash surrender benefit.

10 Section 7. That chapter 58-15 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 For contracts that do not provide cash surrender benefits, the present value of any paid-up
13 annuity benefit available as a nonforfeiture option at any time prior to maturity may not be less
14 than the present value of that portion of the maturity value of the paid-up annuity benefit
15 provided under the contract arising from considerations paid prior to the time the contract is
16 surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being
17 calculated for the period prior to the maturity date on the basis of the interest rate specified in
18 the contract for accumulating the net considerations to determine maturity value, and increased
19 by any additional amounts credited by the company to the contract. For contracts that do not
20 provide any death benefits prior to the commencement of any annuity payments, present values
21 shall be calculated on the basis of such interest rate and the mortality table specified in the
22 contract for determining the maturity value of the paid-up annuity benefit. However, in no event
23 may the present value of a paid-up annuity benefit be less than the minimum nonforfeiture
24 amount at that time.

1 Section 8. That chapter 58-15 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 For the purpose of determining the benefits calculated under sections 6 and 7 of this Act,
4 in the case of annuity contracts under which an election may be made to have annuity payments
5 commence at optional maturity dates, the maturity date shall be deemed to be the latest date for
6 which election shall be permitted by the contract, but may not be deemed to be later than the
7 anniversary of the contract next following the annuitant's seventieth birthday or the tenth
8 anniversary of the contract, whichever is later.

9 Section 9. That chapter 58-15 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 A contract that does not provide cash surrender benefits or does not provide death benefits
12 at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity
13 payments shall include a statement in a prominent place in the contract that such benefits are
14 not provided.

15 Section 10. That chapter 58-15 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 Any paid-up annuity, cash surrender, or death benefits available at any time, other than on
18 the contract anniversary under any contract with fixed scheduled considerations, shall be
19 calculated with allowance for the lapse of time and the payment of any scheduled considerations
20 beyond the beginning of the contract year in which cessation of payment of considerations under
21 the contract occurs.

22 Section 11. That chapter 58-15 be amended by adding thereto a NEW SECTION to read as
23 follows:

24 For a contract which provides, within the same contract by rider or supplemental contract

1 provision, both annuity benefits and life insurance benefits that are in excess of the greater of
2 cash surrender benefits or a return of the gross considerations with interest, the minimum
3 nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the
4 annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion
5 computed as if each portion were a separate contract. Notwithstanding the provisions of sections
6 5, 6, 7, 8, and 10 of this Act, additional benefits payable in the event of total and permanent
7 disability, as reversionary annuity or deferred reversionary annuity benefits, or as other policy
8 benefits additional to life insurance, endowment and annuity benefits, and considerations for all
9 such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture
10 amounts, paid-up annuity, cash surrender, and death benefits that may be required by this Act.
11 The inclusion of such benefits may not be required in any paid-up benefits, unless the additional
12 benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash
13 surrender, and death benefits.

14 Section 12. That chapter 58-15 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 The commissioner may promulgate rules pursuant to chapter 1-26 to implement the
17 provisions of this Act.

18 Section 13. That chapter 58-15 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 After the effective date of this Act, a company may elect to apply its provisions to annuity
21 contracts on a contract form-by-contract form basis before the second anniversary of the
22 effective date of this Act. In all other instances, this Act shall become operative with respect to
23 annuity contracts issued by the company after the second anniversary of this Act.