

SECOND REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 938

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LUETKEMEYER.

Pre-filed January 5, 2004, and copies ordered printed.

Read 1st time January 7, 2004, and copies ordered printed.

Read 2nd time January 8, 2004, and referred to the Committee on Financial Services January 15, 2004.

Reported from the Committee on Financial Services February 25, 2004, with recommendation that the bill Do Pass by Consent.

Perfected by Consent March 4, 2004.

STEPHEN S. DAVIS, Chief Clerk

3608L.01P

AN ACT

To repeal section 376.671, RSMo, and to enact in lieu thereof two new sections relating to annuity contracts.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 376.671, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 376.669 and 376.671, to read as follows:

- 376.669. 1. This section shall not apply to any reinsurance, group annuity purchased under a retirement plan, or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code of 1986, as amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which shall be delivered outside this state through an agent or other representative of the company issuing the contract.**
- 2. In the case of contracts issued on or after the effective date of this section as defined in subsection 11 of this section, no contract of annuity, except as stated in**

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.

12 subsection 1 of this section, shall be delivered or issued for delivery in this state unless it
13 contains in substance the following provisions, or corresponding provisions which in the
14 opinion of the director are at least as favorable to the contract holder, upon cessation of
15 payment of considerations under the contract:

16 (1) That upon cessation of payment of considerations under a contract, or upon the
17 written request of the contract owner, the company shall grant a paid-up annuity benefit
18 on a plan stipulated in the contract of such value as is specified in subsections 4, 5, 6, 7 and
19 9 of this section;

20 (2) If a contract provides for a lump sum settlement at maturity, or at any other
21 time, that upon surrender of the contract at or prior to the commencement of any annuity
22 payments, the company shall pay in lieu of a paid-up annuity benefit a cash surrender
23 benefit of such amount as is specified in subsections 4, 5, 7 and 9 of this section. The
24 company may reserve the right to defer the payment of the cash surrender benefit for a
25 period not to exceed six months after demand therefor with surrender of the contract after
26 making written request and receiving written approval of the director. The request shall
27 address the necessity and equitability to all policyholders of the deferral;

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

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

38
39 Notwithstanding the requirements of this subsection, a deferred annuity contract may
40 provide that if no considerations have been received under a contract for a period of two
41 full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated
42 in the contract arising from prior considerations paid would be less than twenty dollars
43 monthly, the company may at its option terminate the contract by payment in cash of the
44 then present value of the portion of the paid-up annuity benefit, calculated on the basis on
45 the mortality table, if any, and interest rate specified in the contract for determining the
46 paid-up annuity benefit, and by this payment shall be relieved of any further obligation
47 under the contract.

48 **3. The minimum values as specified in subsections 4, 5, 6, 7 and 9 of this section of**
49 **any paid-up annuity, cash surrender or death benefits available under an annuity contract**
50 **shall be based upon minimum nonforfeiture amounts as defined in this section.**

51 **(1) The minimum nonforfeiture amount at any time at or prior to the**
52 **commencement of any annuity payments shall be equal to an accumulation up to such time**
53 **at rates of interest as indicated in subdivision (3) of this subsection of the net considerations**
54 **(as hereinafter defined) paid prior to such time, decreased by the sum of paragraphs (a)**
55 **to (d) below:**

56 **(a) Any prior withdrawals from or partial surrenders of the contract accumulated**
57 **at rates of interest as indicated in subdivision (3) of this subsection; and**

58 **(b) An annual contract charge of fifty dollars, accumulated at rates of interest as**
59 **indicated in subdivision (3) of this subsection;**

60 **(c) Any premium tax paid by the company for the contract, accumulated at rates**
61 **of interest as indicated in subdivision (3) of this subsection; and**

62 **(d) The amount of any indebtedness to the company on the contract, including**
63 **interest due and accrued.**

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

67 **(3) The interest rate used in determining minimum nonforfeiture amounts shall be**
68 **an annual rate of interest determined as the lesser of three percent per annum and the**
69 **following, which shall be specified in the contract if the interest rate will be reset:**

70 **(a) The five-year Constant Maturity Treasury Rate reported by the Federal**
71 **Reserve as of a date, or average over a period, rounded to the nearest one-twentieth of one**
72 **percent, specified in the contract no longer than fifteen months prior to the contract issue**
73 **date or redetermination date under paragraph (d) of this subdivision;**

74 **(b) Reduced by one hundred twenty-five basis points;**

75 **(c) Where the resulting interest rate is not less than one percent; and**

76 **(d) The interest rate shall apply for an initial period and may be redetermined for**
77 **additional periods. The redetermination date, basis and period, if any, shall be stated in**
78 **the contract. The basis is the date or average over a specified period that produces the**
79 **value of the five-year Constant Maturity Treasury Rate to be used at each redetermination**
80 **date.**

81 **(4) During the period or term that a contract provides substantive participation in**
82 **an equity indexed benefit, it may increase the reduction described in paragraph (b) of**
83 **subdivision (3) of this subsection by up to an additional one hundred basis points to reflect**

84 the value of the equity index benefit. The present value at the contract issue date, and at
85 each redetermination date thereafter, of the additional reduction shall not exceed the
86 market value of the benefit. The director may require a demonstration that the present
87 value of the additional reduction does not exceed the market value of the benefit. Lacking
88 such a demonstration that is acceptable to the director, the director may disallow or limit
89 the additional reduction.

90 (5) The director may adopt rules to implement the provisions of subdivision (4) of
91 this subsection and to provide for further adjustments to the calculation of minimum
92 nonforfeiture amounts for contracts that provide substantive participation in an equity
93 index benefit and for other contracts that the director determines adjustments are justified.

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

99 5. For contracts that provide cash surrender benefits, the cash surrender benefits
100 available prior to maturity shall not be less than the present value as of the date of
101 surrender of that portion of the maturity value of the paid-up annuity benefit that would
102 be provided under the contract at maturity arising from considerations paid prior to the
103 time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals
104 from or partial surrenders of the contract, such present value being calculated on the basis
105 of an interest rate not more than one percent higher than the interest rate specified in the
106 contract for accumulating the net considerations to determine maturity value, decreased
107 by the amount of any indebtedness to the company on the contract, including interest due
108 and accrued, and increased by any existing additional amounts credited by the company
109 to the contract. In no event shall any cash surrender benefit be less than the minimum
110 nonforfeiture amount at that time. The death benefit under such contracts shall be at least
111 equal to the cash surrender benefit.

112 6. For contracts that do not provide cash surrender benefits, the present value of
113 any paid-up annuity benefit available as a nonforfeiture option at any time prior to
114 maturity shall not be less than the present value of that portion of the maturity value of the
115 paid-up annuity benefit provided under the contract arising from considerations paid prior
116 to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up
117 annuity, such present value being calculated for the period prior to the maturity date on
118 the basis of the interest rate specified in the contract for accumulating the net
119 considerations to determine maturity value, and increased by any additional amounts

120 credited by the company to the contract. For contracts that do not provide any death
121 benefits prior to the commencement of any annuity payments, present values shall be
122 calculated on the basis of such interest rate and the mortality table specified in the contract
123 for determining the maturity value of the paid-up annuity benefit. However, in no event
124 shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture
125 amount at that time.

126 7. For the purpose of determining the benefits calculated under subsections 5 and
127 6 of this section, in the case of annuity contracts under which an election may be made to
128 have annuity payments commence at optional maturity dates, the maturity date shall be
129 deemed to be the latest date for which election shall be permitted by the contract, but shall
130 not be deemed to be later than the anniversary of the contract next following the
131 annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

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

136 9. Any paid-up annuity, cash surrender, or death benefits available at any time,
137 other than on the contract anniversary under any contract with fixed scheduled
138 considerations, shall be calculated with allowance for the lapse of time and the payment
139 of any scheduled considerations beyond the beginning of the contract year in which
140 cessation of payment of considerations under the contract occurs.

141 10. For a contract which provides, within the same contract by rider or
142 supplemental contract provision, both annuity benefits and life insurance benefits that are
143 in excess of the greater of cash surrender benefits or a return of the gross considerations
144 with interest, the minimum nonforfeiture benefits shall be equal to the sum of the
145 minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture
146 benefits, if any, for the life insurance portion computed as if each portion were a separate
147 contract. Notwithstanding the provisions of subsections 4, 5, 6, 7 and 9 of this section,
148 additional benefits payable in the event of total and permanent disability, as reversionary
149 annuity or deferred reversionary annuity benefits, or as other policy benefits additional
150 to life insurance, endowment, and annuity benefits, and considerations for all such
151 additional benefits shall be disregarded in ascertaining the minimum nonforfeiture
152 amounts, paid-up annuity, cash surrender and death benefits that may be required by this
153 section. The inclusion of such benefits shall not be required in any paid-up benefits, unless
154 the additional benefits separately would require minimum nonforfeiture amounts, paid-up
155 annuity, cash surrender and death benefits.

156 **11. Notwithstanding the provisions of section 376.671, after the effective date of this**
157 **section, a company may elect to apply the provisions of this section in lieu of section**
158 **376.671 to annuity contracts on a contract form-by-contract form basis before July 1, 2006.**
159 **In all other instances, this section shall become operative with respect to annuity contracts**
160 **issued by the company after July 1, 2006.**

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

10 2. In the case of contracts issued on or after the operative date of this section as defined
11 in subsection 11 **of this section**, no contract of annuity, except as stated in subsection 1 **of this**
12 **section**, shall be delivered or issued for delivery in this state unless it contains in substance the
13 following provisions, or corresponding provisions which in the opinion of the director are at least
14 as favorable to the contractholder, upon cessation of payment of considerations under the
15 contract:

16 (1) That upon cessation of payment of considerations under a contract, the company will
17 grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified
18 in subsections 4, 5, 6, 7, and 9 **of this section**;

19 (2) If a contract provides for a lump sum settlement at maturity, or at any other time, that
20 upon surrender of the contract at or prior to the commencement of any annuity payments, the
21 company will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount
22 as is specified in subsections 4, 5, 7, and 9 **of this section**. The company shall reserve the right
23 to defer the payment of such cash surrender benefit for a period of six months after demand
24 therefor with surrender of the contract;

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

28 (4) A statement that any paid-up annuity, cash surrender or death benefits that may be
29 available under the contract are not less than the minimum benefits required by any statute of the
30 state in which the contract is delivered and an explanation of the manner in which such benefits
31 are altered by the existence of any additional amounts credited by the company to the contract,

32 any indebtedness to the company on the contract or any prior withdrawals from or partial
33 surrenders of the contract.

34

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

43 3. The minimum values as specified in subsections 4, 5, 6, 7, and 9 **of this section** of any
44 paid-up annuity, cash surrender or death benefits available under an annuity contract shall be
45 based upon minimum nonforfeiture amounts as defined in this section.

46 (1) With respect to contracts providing for flexible considerations, the minimum
47 nonforfeiture amount at any time at or prior to the commencement of any annuity payment shall
48 be equal to an accumulation up to such time at a rate of interest of three percent per annum of
49 percentages of the net considerations (as hereinafter defined) paid prior to such time, decreased
50 by the sum of

51 (a) Any prior withdrawals from or partial surrenders of the contract accumulated at a rate
52 of interest of three percent per annum; and

53 (b) The amount of any indebtedness to the company on the contract, including interest
54 due and accrued and increased by any existing additional amounts credited by the company to
55 the contract. The net considerations for a given contract year used to define the minimum
56 nonforfeiture amount shall be an amount not less than zero and shall be equal to the
57 corresponding gross considerations credited to the contract during that contract year less an
58 annual contract charge of thirty dollars and less a collection charge of one dollar and twenty-five
59 cents per consideration credited to the contract during that contract year. The percentages of net
60 considerations shall be sixty-five percent of the net consideration for the first contract year and
61 eighty-seven and one-half percent of the net considerations for the second and later contract
62 years. Notwithstanding the provisions of the preceding sentence, the percentage shall be
63 sixty-five percent of the portion of the total net consideration for any renewal contract year which
64 exceeds by not more than two times the sum of those portions of the net considerations in all
65 prior contract years for which the percentage was sixty-five percent;

66 (2) With respect to contracts providing for fixed scheduled considerations, minimum
67 nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually

68 in advance and shall be defined as for contracts with flexible considerations which are paid
69 annually with two exceptions:

70 (a) The portion of the net consideration for the first contract year to be accumulated shall
71 be the sum of sixty-five percent of the net consideration for the first contract year plus
72 twenty-two and one-half percent of the excess of the net consideration for the first contract year
73 over the lesser of the net considerations for the second and third contract years;

74 (b) The annual contract charge shall be the lesser of thirty dollars or ten percent of the
75 gross annual consideration;

76 (3) With respect to contracts providing for a single consideration, minimum
77 nonforfeiture amounts shall be defined as for contracts with flexible considerations except that
78 the percentage of net consideration used to determine the minimum nonforfeiture amount shall
79 be equal to ninety percent, and the net consideration shall be the gross consideration less a
80 contract charge of seventy-five dollars;

81 (4) Notwithstanding any other provision of this subsection, for any contract issued on
82 or after July 1, 2002, and before July 1, [2004] **2006**, the interest rate at which net considerations,
83 prior withdrawals, and partial surrenders shall be accumulated, for the purpose of determining
84 minimum nonforfeiture amounts, shall be one and one-half percent per annum.

85 4. Any paid-up annuity benefit available under a contract shall be such that its present
86 value on the date annuity payments are to commence is at least equal to the minimum
87 nonforfeiture amount on that date. Such present value shall be computed using the mortality
88 table, if any, and the interest rate specified in the contract for determining the minimum paid-up
89 annuity benefits guaranteed in the contract.

90 5. For contracts which provide cash surrender benefits, such cash surrender benefits
91 available prior to maturity shall not be less than the present value as of the date of surrender of
92 that portion of the maturity value of the paid-up annuity benefit which would be provided under
93 the contract at maturity arising from considerations paid prior to the time of cash surrender
94 reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of
95 the contract, such present value being calculated on the basis of an interest rate not more than
96 one percent higher than the interest rate specified in the contract for accumulating the net
97 considerations to determine such maturity value, decreased by the amount of any indebtedness
98 to the company on the contract, including interest due and accrued, and increased by any existing
99 additional amounts credited by the company to the contract. In no event shall any cash surrender
100 benefit be less than the minimum nonforfeiture amount at that time. The death benefit under
101 such contracts shall be at least equal to the cash surrender benefit.

102 6. For contracts which do not provide cash surrender benefits, the present value of any
103 paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not

be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the company to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

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

8. Any contract which does not provide cash surrender benefits or does not provide 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.

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

10. For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of subsections 4, 5, 6, 7, and 9 of **this section**, additional benefits payable in the event of total and permanent disability, as reversionary annuity or deferred reversionary annuity benefits, or as other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum

140 nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required
141 by this section. The inclusion of such additional benefits shall not be required in any paid-up
142 benefits, unless such additional benefits separately would require minimum nonforfeiture
143 amounts, paid-up annuity, cash surrender and death benefits.

144 11. After September 28, 1979, any company may file with the director a written notice
145 of its election to comply with the provisions of this section after a specified date before
146 September 28, 1981. After the filing of such notice, then upon such specified date, which shall
147 be the operative date of this section for such company, this section shall become operative with
148 respect to annuity contracts thereafter issued by such company. If a company makes no such
149 election, the operative date of this section for such company shall be September 28, 1981.

150 **12. The provisions of this section shall expire on July 1, 2006.**