Act No. 85
Public Acts of 1991
Approved by the Governor
July 18, 1991
Filed with the Secretary of State
July 18, 1991

STATE OF MICHIGAN
86TH LEGISLATURE
REGULAR SESSION OF 1991

Introduced by Senator Wartner

ENROLLED SENATE BILL No. 307

AN ACT to amend Act No. 218 of the Public Acts of 1956, entitled as amended "An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to repeal certain acts and parts of acts; to repeal certain acts and parts of acts on specific dates; to repeal certain parts of this act on specific dates; and to provide penalties for the violation of this act," as amended, being sections 500.100 to 500.8302 of the Michigan Compiled Laws, by adding chapter 41.

The People of the State of Michigan enact:

Section 1. Act No. 218 of the Public Acts of 1956, as amended, being sections 500.100 to 500.8302 of the Michigan Compiled Laws, is amended by adding chapter 41 to read as follows:

CHAPTER 41
MODIFIED GUARANTEED ANNUITIES

Sec. 4101. As used in this chapter:

(a) "Interest credits" means all interest that is credited to a deferred annuity contract.

(b) "Modified guaranteed annuity" means a deferred annuity contract, the underlying assets of which are held in a separate account, and the values of which are guaranteed if held for specified periods. It contains nonforfeiture values that are based upon a market-value adjustment formula if held for shorter periods. This formula may, or may not, reflect the value of assets held in the separate account. The assets underlying the contract shall be in a separate account during the period the contract holder can surrender the contract.

(c) "Separate account" means a separate account established pursuant to this chapter or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

Sec. 4103. (1) An insurer shall not deliver or issue for delivery a modified guaranteed annuity within this state unless it is licensed or organized to do a life insurance or annuity business in this state, and the commissioner is satisfied that its condition or method of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this state. In making this determination, the commissioner shall consider among other things the insurer's history and financial condition, the character, responsibility, and fitness of the insurer's officers and directors, and the law and regulation under which the insurer is authorized in the state of domicile to issue such annuities.

(2) If the insurer is a subsidiary of an admitted life insurance company or affiliated with such insurer by common management or ownership, the commissioner may consider subsection (1) satisfied if either the subsidiary or affiliated insurer or the admitted life company satisfies subsection (1) and the insurer is licensed and has a satisfactory record of doing business in this state for a period of at least 3 years.

(3) Before an insurer delivers or issues for delivery a modified guaranteed annuity within this state, it shall submit to the commissioner the following:

(a) A general description of the kinds of modified guaranteed annuities it intends to issue.

(b) If requested by the commissioner, a copy of the statutes and regulations of its state of domicile under which it is authorized to issue modified guaranteed annuities.

(c) If requested by the commissioner, biographical data of the insurer's officers and directors.

Sec. 4105. (1) An insurer authorized to transact modified guaranteed annuity business in this state shall not use any sales material, advertising material, or descriptive literature or other materials of any kind in connection with its modified guaranteed annuity business in this state that is false, misleading, deceptive, or inaccurate.

(2) Illustrations of benefits payable under a modified guaranteed annuity shall not include projections of past investment experience into the future or attempted predictions of future investment experience. However, hypothetical assumed interest credits may be used to illustrate possible levels of benefits.

(3) Before an insurer delivers or issues for delivery a modified guaranteed annuity contract in this state, the commissioner may require the filing of a copy of any prospectus or other sales material to be used in connection with the marketing of the insurer's modified guaranteed annuity contract. The sales material shall clearly illustrate that there can be both upward and downward adjustments due to the application of the market-value adjustment formula in determining nonforfeiture benefits.

Sec. 4107. An insurer authorized to transact modified guaranteed annuity business in this state shall submit to the commissioner both of the following:

(a) A separate account annual statement that includes the business of its modified guaranteed annuities.

(b) Such additional information concerning its modified guaranteed annuity operations or separate accounts as the commissioner considers necessary.

Sec. 4109. Material required to be filed with and approved by the commissioner is subject to disapproval if at any time it is found by the commissioner not to comply with this chapter.

Sec. 4111. The filing requirements applicable to modified guaranteed annuities are those filing requirements otherwise applicable under existing statutes and regulations of this state concerning individual and group life insurance and annuity contract form filings, to the extent appropriate, provided, however, filings shall include a demonstration in a form satisfactory to the commissioner that the nonforfeiture provisions of the contract comply with section 4115.

Sec. 4113. (1) A modified guaranteed annuity contract delivered or issued for delivery in this state shall contain a statement of the essential features of the procedures to be followed by the insurer in determining the dollar amount of nonforfeiture benefits.

(2) A modified guaranteed annuity contract calling for the payment of periodic stipulated payments shall not be delivered or issued for delivery in this state unless it contains in substance both of the following provisions:

(a) A grace period of 30 days or of 1 month, within which any stipulated payment to the insurer falling due after the first may be made and during which grace period the contract shall continue in force. The contract may include a statement of the basis for determining the date as of which any such payment received during the grace period shall be applied to produce the values under the contract arising therefrom.

(b) A provision that, at any time within 1 year from the date of default, in making periodic stipulated payments to the insurer during the life of the annuitant and unless the cash surrender value has been paid, the contract may be reinstated upon payment to the insurer of the overdue payments as required by contract, and of all indebtedness to the insurer on the contract, including interest. The contract may include a statement of the basis for determining the date as of which the amount to cover the overdue payments and indebtedness shall be applied to produce the values under the contract arising therefrom.

(3) The market-value adjustment formula, used in determining nonforfeiture benefits, shall be stated in the contract and shall be applicable for both upward and downward adjustments. When a contract is filed, it shall be accompanied by an actuarial statement indicating the basis for the market-value adjustment formula and that the formula provides reasonable equity to both the contract holder and the insurer.

(4) The portion of the assets of any separate account equal to the reserves and other contract liabilities with respect to such account are not chargeable with liabilities arising out of any other business the insurer conducts.

Sec. 4115. (1) This section does not apply to any of the following:

(a) Reinsurance.

(b) A group annuity contract purchased in connection with 1 or more retirement plans or plans of deferred compensation established or maintained by or for 1 or more employers, employee organizations, or any combination thereof, other than plans providing individual retirement accounts or individual retirement annuities under section 408 of the internal revenue code of 1986, 26 U.S.C. 408.

(c) Premium deposit fund.

(d) Investment annuity.

(e) Immediate annuity.

(f) Deferred annuity contract after annuity payments have commenced.

(g) Reversionary annuity.

(h) A contract that is to be delivered outside this state through an agent or other representative of the insurer issuing the contract.

(2) A modified guaranteed annuity contract shall not be delivered or issued for delivery in this state unless it contains in substance both of the following provisions:

(a) That upon cessation of payment of considerations under a contract, the insurer will grant a paid-up annuity benefit on a plan described in the contract that complies with subsection (5). The description shall include a statement of the mortality table, if any, and guaranteed or assumed interest rates used in calculating annuity payments.

(b) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the insurer will pay in lieu of any paid-up annuity benefit a cash surrender benefit as described in the contract that complies with subsection (6). The contract may provide that the insurer may defer payment of this cash surrender benefit for a period of 6 months after demand.

(3) The minimum values as specified in this section of any paid-up annuity, cash surrender, or death benefits available under a modified guaranteed annuity contract shall be based upon nonforfeiture amounts meeting the requirements of this subsection. Guaranteed interest credits in each year for any period of time for which interest credits are guaranteed shall be reasonably related to the average guaranteed interest credits over that period of time. The minimum nonforfeiture amount shall be the unadjusted minimum nonforfeiture amount adjusted by the market-value adjustment formula contained in the contract. The unadjusted minimum nonforfeiture amount on any date prior to the annuity commencement date shall be an amount equal to the percentages of net considerations as specified in subsection (4) increased by the interest credits allocated to the percentage of net considerations, which amount shall be reduced to reflect the effect of the following:

(a) Any partial withdrawals from or partial surrender of the contract.

(b) The amount of any indebtedness on the contract, including interest due and accrued.

(c) An annual contract charge not less than 0 and equal to the lesser of $30.00 and 2% of the end of year contract value, less the amount of any annual contract charge deducted from any gross considerations credited to the contract during the contract year. The $30.00 annual contract charge shall be adjusted as provided in subsection (4).

(d) A transaction charge of $10.00 for each transfer to another investment division within the same contract. The $10.00 transaction charge shall be adjusted as provided in subsection (4).

(4) The percentages of net considerations used to define the minimum nonforfeiture amount in subsection (3) shall meet the following requirements:

(a) For contracts providing for periodic considerations, the net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than 0 and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of $30.00 and less a collection charge of $1.25 per consideration credited to the contract during that contract year and less any charges for premium taxes. The percentages of net considerations shall be 65% for the first contract year and 87-1/2% for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be 65% of the portion of the total net consideration for any renewal contract year that exceeds by not more than 2 times the sum of those portions of the net considerations in all prior contract years for which the percentage was 65%. The $30.00 annual contract charge and the $1.25 collection charge shall be adjusted pursuant to subdivision (c).

(b) For contracts providing for a single consideration, the net consideration used to define the minimum nonforfeiture amount shall be the gross consideration less a contract charge of $75.00 and less any charge for premium taxes. The percentage of the net consideration shall be 90%. The $75.00 contract charge shall be adjusted pursuant to subdivision (c).

(c) The contract and collection charges shall be multiplied by the ratio of the consumer price index for June of the calendar year preceding the date of filing, to the consumer price index for June 1979. As used in this subdivision, the consumer price index means such index for all urban consumers for all items as published by the United States department of labor and as certified by the commissioner.

(5) A paid-up annuity benefit available under a modified guaranteed annuity contract shall be such that its present value on the annuity commencement date is at least equal to the minimum nonforfeiture amount on that date. This present value shall be computed using the mortality table, if any, and the guaranteed or assumed interest rates used in calculating the annuity payments.

(6) For modified guaranteed annuity contracts that provide cash surrender benefits, the cash surrender benefit at any time prior to the annuity commencement date shall not be less than the minimum nonforfeiture amount next computed after the request for surrender is received by the insurer. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

(7) A modified guaranteed annuity contract that does not provide cash surrender benefits, or does not provide death benefits at least equal to the minimum nonforfeiture amount, prior to the annuity commencement date shall include a statement in a prominent place in the contract that such benefits are not provided.

(8) Notwithstanding the requirements of this section, a modified guaranteed annuity contract may provide that under either of the following situations the insurer, at its option, may cancel the annuity and pay the contract holder the larger of the unadjusted minimum nonforfeiture amount and the minimum nonforfeiture amount, and by such payment be released of any further obligation under the contract:

(a) If at the time the annuity becomes payable, the larger of the unadjusted minimum nonforfeiture amount and the minimum nonforfeiture amount is less than $2,000.00, or would provide an income the initial amount of which is less than $20.00 per month.

(b) If prior to the time the annuity becomes payable under a periodic payment contract no considerations have been received under the contract for a period of 2 full years and both the total considerations paid prior to such period, reduced to reflect any partial withdrawals from or partial surrenders of the contract, and the larger of the unadjusted minimum nonforfeiture amount and the minimum nonforfeiture amount is less than $2,000.00.

(9) For a modified guaranteed annuity contract that 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 subsection (2), 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 nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits that may be required by this section. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits.

Sec. 4117. The application for a modified guaranteed annuity shall prominently set forth immediately preceding the signature line language denoting that amounts payable under the contract are subject to a market-value adjustment prior to a date or dates specified in the contract.

Sec. 4119. Reserve liabilities for a modified guaranteed annuity shall be established in accordance with actuarial procedures that recognize that assets of the separate account are based on market values, the variable nature of benefits provided, and any mortality guarantees. At a minimum, the separate account liability shall equal the surrender value based upon the market-value adjustment formula contained in the contract. If that liability is greater than the asset's market value, a transfer of assets shall be made into the separate account so that the asset's market value at least equals that of the liabilities. Also, any additional reserve that is needed to cover future guaranteed benefits shall also be set up by the valuation actuary. The market-value adjustment formula, the interest guarantees, and the degree to which projected cash flow of assets and liabilities are matched shall also be considered. Each year, the valuation actuary shall provide an opinion on whether the assets in the separate account are adequate to provide all future benefits that are guaranteed.

Sec. 4121. The following requirements apply to the establishment and administration of modified guaranteed annuity separate accounts by a domestic insurer:

(a) An insurer issuing a modified guaranteed annuity shall establish 1 or more separate accounts pursuant to this chapter.

(b) The insurer shall maintain in each separate account assets with a market value or other value comporting to standards set out in this chapter, at least equal to the valuation reserves and other contract liabilities respecting the account.

(c) Investments of the separate account shall be valued at their market value on the date of valuation, or at amortized cost if it approximates market value, or pursuant to standards contained in this chapter.

(d) Unless otherwise approved by the commissioner, separate accounts relating to modified guaranteed annuities shall be subject to investment laws applicable to the insurer's general asset account.

Sec. 4123. An insurer shall annually provide their contract holders with a report showing both the account value and the cash surrender value. The report shall clearly indicate that the account value is prior to the application of any surrender charges or market-value adjustment formula and shall specify the surrender charge and market-value adjustment used to determine the cash surrender value.

Sec. 4125. If the law or regulation in the place of domicile of a foreign insurer provides a degree of protection to the policyholders and the public that is substantially similar to that provided by these regulations, the commissioner to the extent considered appropriate by him or her may consider compliance with that law or regulation as compliance with this chapter.

Sec. 4127. A person, corporation, partnership, or other legal entity shall not sell or offer for sale in this state any modified guaranteed annuity contract unless licensed to sell variable annuities under this act.