

17B:25-28

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2006 **CHAPTER:** 49

NJSA: 17B:25-28 (Clarifies treatment of two tier annuity products under the "Indexed Standard Nonforfeiture Law Individual Deferred Annuities.")

BILL NO: S170 (Substituted for A2768)

SPONSOR(S) Lesniak and others

DATE INTRODUCED: January 10, 2006

COMMITTEE: **ASSEMBLY:**

SENATE: Commerce

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** June 8, 2006

SENATE: May 18, 2006

DATE OF APPROVAL: July 20, 2006

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (1st reprint enacted)

S170

[SPONSOR'S STATEMENT](#): (Begins on page 3 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

[SENATE:](#) [Yes](#)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL NOTE: No

A2768

[SPONSOR'S STATEMENT](#): (Begins on page 3 of original bill) [Yes](#)

COMMITTEE STATEMENT: **[ASSEMBLY:](#)** [Yes](#)

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

RWH 3/6/08

P.L. 2006, CHAPTER 49, *approved July 20, 2006*
Senate, No. 170 (*First Reprint*)

1 AN ACT concerning surrender charges for certain individual
2 deferred annuities and amending P.L.2005, c.194.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 8 of P.L.2005, c.194 (C.17B:25-28) is amended to
8 read as follows:

9 8. a. For the purpose of determining the benefits calculated
10 under sections 6 and 7 of this act, in the case of annuity contracts
11 for which the maturity date is stated, that maturity date shall not be
12 after the later of: (1) the anniversary of the contract next following
13 the annuitant's seventieth birthday; or (2) the tenth anniversary of
14 the contract. In the case of annuity contracts under which an
15 election may be made to have annuity payments begin at optional
16 maturity dates, the maturity date shall be deemed to be the latest
17 date for which election is permitted by the contract, but shall not be
18 deemed to be later than the latest date permitted for an annuity
19 contract with a stated maturity date.

20 b. The amount of benefits calculated under sections 6 and 7 of
21 this act on or after the stated or deemed maturity date shall not be
22 reduced by any surrender charge. The amount of the benefits
23 calculated under sections 6 and 7 of this act on or after the stated or
24 deemed maturity date shall not be less than the greater of: (1) the
25 present value of annuity benefits available on or after the maturity
26 date, computed according to the assumptions stated in section 5 of
27 this act; ¹**[and] or** ¹(2) the amount available on or after the maturity
28 date to be applied to the purchase of an annuity on a basis stated in
29 a contract.

30 c. Contracts providing for flexible considerations may have
31 separate surrender charge schedules associated with each
32 consideration, provided that the nonforfeiture values are at least as
33 great as they would be if each consideration had been a separate
34 single consideration contract based on the requirements of
35 subsection a. of section 4 of this act. For the purpose of determining
36 the maturity date, the tenth anniversary of the contract shall be
37 determined separately for each consideration.

38 d. (1) The difference between an annuity contract's
39 '**[annuitization]** greater present¹ value¹, utilized for determining
40 any paid-up annuity benefit, and referred to as the contract's
41 accumulation value,¹ and its '**[cash benefit]** lesser present¹ value¹,
42 utilized when an annuitant withdraws from the contract, and
43 referred to as the contract's withdrawal value, on or after the date of
44 maturity,¹ shall not be considered to be a surrender charge for the

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SCM committee amendments adopted May 8, 2006.

1 purposes of this section if:

2 (a) the '[annuitization] accumulation' value of the contract:

3 (i) is never available in a lump sum ', ' and is paid out 'in
4 substantially equal payments' over a '[minimum] period' of 'not
5 less than' five years 'or the surviving lifetime of the annuitant's
6 life, whichever period is shorter' ; and

7 (ii) 'for the contract period prior to the date of maturity and
8 during the period, on or after the date of maturity, of any annuity
9 payments,' credits a fixed rate of at least 1% more than the rate
10 credited to the '[cash benefit] withdrawal' value ', ' or credits a
11 rate that provides substantive participation in an equity indexed
12 benefit '[that is not available for] with an estimated expected value
13 of at least 1% more than the rate credited to' the '[cash benefit]
14 withdrawal' value; and

15 (b) the separately defined '[cash benefit] withdrawal' value of
16 the contract:

17 (i) equals, at maturity, '[the] not less than' the minimum value
18 of the contract as defined in section 4 of P.L.2005, c.194
19 (C.17B:25-24), plus any premium load; and

20 (ii) accumulates, from maturity and later, at the minimum rate
21 as defined in section 4 of P.L.2005, c.194 (C.17B:25-24).

22 (2) For the purpose of this subsection, the Department of
23 Banking and Insurance may approve other methods of providing
24 enhanced value to the '[annuitization] accumulation' value 'of a
25 contract in comparison to the withdrawal value of the contract. Any
26 method approved by the department shall be reasonably determined
27 to provide an enhanced value to the contract's accumulation value
28 which is at least as favorable to the contract holder as the
29 accumulation value provided by the provisions of this subsection'.

30 The provisions of this section shall apply notwithstanding
31 section 1 of P.L.2001, c.237 (C.17B:25-18.4), shall take precedence
32 over that section of law, and shall apply to annuity contracts
33 regardless of whether the requirements of that section have been
34 met.

35 (cf: P.L.2005, c.194, s.8)

36

37 2. This act shall take effect immediately.

38

39

40

41

42 Clarifies treatment of two tier annuity products under the
43 "Indexed Standard Nonforfeiture Law for Individual Deferred
44 Annuities."

SENATE, No. 170

STATE OF NEW JERSEY 212th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

Sponsored by:

Senator RAYMOND J. LESNIAK

District 20 (Union)

Co-Sponsored by:

Senator Cardinale

SYNOPSIS

Clarifies treatment of two tier annuity products under the "Indexed Standard Nonforfeiture Law for Individual Deferred Annuities."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 5/9/2006)

1 AN ACT concerning surrender charges for certain individual
2 deferred annuities and amending P.L.2005, c.194.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 8 of P.L.2005, c.194 (C.17B:25-28) is amended to
8 read as follows:

9 8. a. For the purpose of determining the benefits calculated
10 under sections 6 and 7 of this act, in the case of annuity contracts
11 for which the maturity date is stated, that maturity date shall not be
12 after the later of: (1) the anniversary of the contract next following
13 the annuitant's seventieth birthday; or (2) the tenth anniversary of
14 the contract. In the case of annuity contracts under which an
15 election may be made to have annuity payments begin at optional
16 maturity dates, the maturity date shall be deemed to be the latest
17 date for which election is permitted by the contract, but shall not be
18 deemed to be later than the latest date permitted for an annuity
19 contract with a stated maturity date.

20 b. The amount of benefits calculated under sections 6 and 7 of
21 this act on or after the stated or deemed maturity date shall not be
22 reduced by any surrender charge. The amount of the benefits
23 calculated under sections 6 and 7 of this act on or after the stated or
24 deemed maturity date shall not be less than the greater of: (1) the
25 present value of annuity benefits available on or after the maturity
26 date, computed according to the assumptions stated in section 5 of
27 this act; and (2) the amount available on or after the maturity date to
28 be applied to the purchase of an annuity on a basis stated in a
29 contract.

30 c. Contracts providing for flexible considerations may have
31 separate surrender charge schedules associated with each
32 consideration, provided that the nonforfeiture values are at least as
33 great as they would be if each consideration had been a separate
34 single consideration contract based on the requirements of
35 subsection a. of section 4 of this act. For the purpose of determining
36 the maturity date, the tenth anniversary of the contract shall be
37 determined separately for each consideration.

38 d. (1) The difference between an annuity contract's
39 annuitization value and its cash benefit value shall not be
40 considered to be a surrender charge for the purposes of this section
41 if:

42 (a) the annuitization value of the contract:

43 (i) is never available in a lump sum and is paid out over a
44 minimum of five years; and

45 (ii) credits a fixed rate of at least 1% more than the rate

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 credited to the cash benefit value or credits a rate that provides
2 substantive participation in an equity indexed benefit that is not
3 available for the cash benefit value; and

4 (b) the separately defined cash benefit value of the contract:

5 (i) equals, at maturity, the minimum value of the contract as
6 defined in section 4 of P.L.2005, c.194 (C.17B:25-24), plus any
7 premium load; and

8 (ii) accumulates, from maturity and later, at the minimum
9 rate as defined in section 4 of P.L.2005, c.194 (C.17B:25-24).

10 (2) For the purpose of this subsection, the Department of
11 Banking and Insurance may approve other methods of providing
12 enhanced value to the annuitization value.

13 The provisions of this section shall apply notwithstanding
14 section 1 of P.L.2001, c.237 (C.17B:25-18.4), shall take precedence
15 over that section of law, and shall apply to annuity contracts
16 regardless of whether the requirements of that section have been
17 met.

18 (cf: P.L.2005, c.194, s.8)

19

20 2. This act shall take effect immediately.

21

22

23

STATEMENT

24

25 This bill allows the sale of "two tier" individual deferred
26 annuities to resume in New Jersey. These annuity contracts utilize
27 a design that contains a cash value and a separate annuity value
28 which is only available to the policyholder when it is taken as a
29 series of payments over some period of time (hence the "two tiers").
30 Prior to the enactment of two laws in 2005, two tier annuity
31 contracts represented a small, but nevertheless significant, segment
32 of the individual deferred annuity market in New Jersey. Both
33 laws, one of which amended the older standard nonforfeiture law
34 for individual deferred annuities, and the other of which enacted an
35 entirely new indexed standard nonforfeiture law, limit the treatment
36 of surrender charges in such a way that the two tier products no
37 longer qualify for sale in New Jersey.

38 The first of the two enactments, entitled the "Senior Citizen
39 Investment Protection Act," P.L.2005, c.45, amended the
40 preexisting standard nonforfeiture law for individual deferred
41 annuities, but only applies to contracts previously issued under that
42 law and to newly issued contracts, at the election of the issuer, over
43 the next two years. This bill amends only the more recently enacted
44 "Indexed Standard Nonforfeiture Law for Individual Deferred
45 Annuities," P.L.2005, c.194 (C.17B:25-21 et seq.), which applies to
46 certain annuities issued currently, at the election of the issuer, and
47 will apply to all individual deferred annuities issued more than two
48 years after its effective date, to clarify that the difference between

S170 LESNIAK

4

- 1 the two valuations of a two tier annuity is not to be considered a
- 2 surrender charge.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 170

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 8, 2006

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 170.

This bill, as amended, allows the issuance of "two tier" individual deferred annuities to resume in New Jersey. This type of insurance product utilizes two separate rates of return, or tiers, on a person's investment: a higher rate if the person invests in and holds the annuity to maturity, and thereafter receives income payments pursuant to the annuity contract over an established payout period of several years; and a lower rate, including the possible surrender of a fraction of the person's accumulated investment, if after holding the annuity to maturity, the person instead withdraws from the annuity contract prior to the completion of the established payout period.

The difference between these higher and lower rates of return constitutes an impermissible "surrender charge" against a person who would withdraw from a two tier annuity under two laws enacted in 2005, effectively prohibiting the issuing of such annuities in New Jersey after these laws became effective. See the "Senior Citizen Investment Protection Act," P.L.2005, c.45, and the "Indexed Standard Nonforfeiture Law for Individual Deferred Annuities," P.L.2005, c.194 (C.17B:25-21 et seq.).

The bill, as amended, once again permits the issuance of two tier annuities by clarifying that the difference between the higher and lower rates of return on an annuity shall not be considered a surrender charge, so long as the annuity: 1) never permits a lump sum payout under the higher rate of return, and this payout occurs in substantially equal payments over a period of not less than five years or the surviving lifetime of the annuitant's life, whichever period is shorter; 2) credits the higher rate of return with a fixed rate of at least 1% more than the rate credited to the lower rate of return, or credits a rate providing substantive participation in an equity indexed benefit with an estimated expected value of at least 1% more than the rate credited to the lower rate of return; and 3) the investment value returned to a person withdrawing from the annuity contract, based upon the lower rate of return, equals, at the annuity's maturity, not less than the minimum value of the contract as defined in section 4 of P.L.2005,

c.194 (C.17B:25-24), plus any premium load, and accumulates, after the annuity's maturity, at the minimum rate as defined in that same section of the law.

The committee amendments to the bill:

- clarify terminology with respect to the two rates of return, referring to the annuity's "accumulation value" for purposes of measuring income payments on the investment, and the annuity's "withdrawal value," for determining the lower return on investment by withdrawing from the annuity contract;

- require income payments on a matured annuity contract in substantially equal payments over a period of not less than five years or the surviving lifetime of the annuitant's life, whichever period is shorter;

- require an annuity contract to credit the higher rate of return with the more favorable ratings designated in the bill for both the contract period prior to the annuity's maturity, and afterwards during any period of income payments; and

- provide the Department of Banking and Insurance with the authority to approve other methods of enhancing an annuity's higher rate of return in comparison to its lower, withdrawal rate of return, so long as the methods approved are reasonably determined to provide an enhanced value to the higher rate of return that is at least as favorable to the contract holder as the higher rate provided by the provisions of the bill.

This bill was pre-filed for introduction in the 2006-2007 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

ASSEMBLY, No. 2768

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED MARCH 6, 2006

Sponsored by:

Assemblyman NEIL M. COHEN

District 20 (Union)

Assemblywoman CHARLOTTE VANDERVALK

District 39 (Bergen)

SYNOPSIS

Clarifies treatment of two tier annuity products under the "Indexed Standard Nonforfeiture Law for Individual Deferred Annuities."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/19/2006)

1 AN ACT concerning surrender charges for certain individual
2 deferred annuities and amending P.L.2005, c.194.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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8 read as follows:

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11 for which the maturity date is stated, that maturity date shall not be
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13 the annuitant's seventieth birthday; or (2) the tenth anniversary of
14 the contract. In the case of annuity contracts under which an
15 election may be made to have annuity payments begin at optional
16 maturity dates, the maturity date shall be deemed to be the latest
17 date for which election is permitted by the contract, but shall not be
18 deemed to be later than the latest date permitted for an annuity
19 contract with a stated maturity date.

20 b. The amount of benefits calculated under sections 6 and 7 of
21 this act on or after the stated or deemed maturity date shall not be
22 reduced by any surrender charge. The amount of the benefits
23 calculated under sections 6 and 7 of this act on or after the stated or
24 deemed maturity date shall not be less than the greater of: (1) the
25 present value of annuity benefits available on or after the maturity
26 date, computed according to the assumptions stated in section 5 of
27 this act; and (2) the amount available on or after the maturity date to
28 be applied to the purchase of an annuity on a basis stated in a
29 contract.

30 c. Contracts providing for flexible considerations may have
31 separate surrender charge schedules associated with each
32 consideration, provided that the nonforfeiture values are at least as
33 great as they would be if each consideration had been a separate
34 single consideration contract based on the requirements of
35 subsection a. of section 4 of this act. For the purpose of determining
36 the maturity date, the tenth anniversary of the contract shall be
37 determined separately for each consideration.

38 d. (1) The difference between an annuity contract's
39 annuitization value and its cash benefit value shall not be
40 considered to be a surrender charge for the purposes of this section
41 if:

42 (a) the annuitization value of the contract:

43 (i) is never available in a lump sum and is paid out over a
44 minimum of five years; and

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

A2768 COHEN VANDERVALK,

4

- 1 years after its effective date, to clarify that the difference between
- 2 the two valuations of a two tier annuity is not to be considered a
- 3 surrender charge.

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2768

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 18, 2006

The Assembly Financial Institutions and Insurance Committee reports favorably and with committee amendments Assembly Bill No. 2768.

This bill, as amended, allows the issuance of "two tier" individual deferred annuities to resume in New Jersey. This type of insurance product utilizes two separate rates of return, or tiers, on a person's investment: a higher rate if the person invests in and holds the annuity to maturity, and thereafter receives income payments pursuant to the annuity contract over an established payout period of several years; and a lower rate, including the possible surrender of a fraction of the person's accumulated investment, if after holding the annuity to maturity, the person instead withdraws from the annuity contract prior to the completion of the established payout period.

The difference between these higher and lower rates of return constitutes an impermissible "surrender charge" against a person who would withdraw from a two tier annuity under two laws enacted in 2005, effectively prohibiting the issuing of such annuities in New Jersey after these laws became effective. See the "Senior Citizen Investment Protection Act," P.L.2005, c.45, and the "Indexed Standard Nonforfeiture Law for Individual Deferred Annuities," P.L.2005, c.194 (C.17B:25-21 et seq.).

The bill, as amended, once again permits the issuance of two tier annuities by clarifying that the difference between the higher and lower rates of return on an annuity shall not be considered a surrender charge, so long as the annuity: 1) never permits a lump sum payout under the higher rate of return, and this payout occurs in substantially equal payments over a period of not less than five years or the surviving lifetime of the annuitant's life, whichever period is shorter; 2) credits the higher rate of return with a fixed rate of at least 1% more than the rate credited to the lower rate of return, or credits a rate providing substantive participation in an equity indexed benefit with an estimated expected value of at least 1% more than the rate credited to the lower rate of return; and 3) the investment value returned to a

person withdrawing from the annuity contract, based upon the lower rate of return, equals, at the annuity's maturity, not less than the minimum value of the contract as defined in section 4 of P.L.2005, c.194 (C.17B:25-24), plus any premium load, and accumulates, after the annuity's maturity, at the minimum rate as defined in that same section of the law.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- clarify terminology with respect to the two rates of return, referring to the annuity's "accumulation value" for purposes of measuring income payments on the investment, and the annuity's "withdrawal value," for determining the lower return on investment by withdrawing from the annuity contract;
- require income payments on a matured annuity contract in substantially equal payments over a period of not less than five years or the surviving lifetime of the annuitant's life, whichever period is shorter;
- require an annuity contract to credit the higher rate of return with the more favorable ratings designated in the bill for both the contract period prior to the annuity's maturity, and afterwards during any period of income payments; and
- provide the Department of Banking and Insurance with the authority to approve other methods of enhancing an annuity's higher rate of return in comparison to its lower, withdrawal rate of return, so long as the methods approved are reasonably determined to provide an enhanced value to the higher rate of return that is at least as favorable to the contract holder as the higher rate provided by the provisions of the bill.