

3
4 **SENATE BILL No. 388**

5
6 By Committee on Financial Institutions and Insurance

7
8 1-16

9
10 AN ACT concerning insurance; relating to risk-based capital require-
11 ments; **relating to licensure of insurance agents; relating to stan-**
12 **standard nonforfeiture provisions for annuities**; amending K.S.A. **40-**
13 **428a and K.S.A. 2001 Supp. 40-2c01 and 40-4909** and repealing the
14 existing ~~section~~ sections.

15
16 *Be it enacted by the Legislature of the State of Kansas:*

17 **Section 1. K.S.A. 40-428a is hereby amended to read as fol-**
18 **lows: 40-428a. (a) This section shall be known as the standard non-**
19 **forfeiture law for individual deferred annuities.**

20 **(b) This section shall not apply to any reinsurance, group an-**
21 **nuity purchased under a retirement plan or plan of deferred com-**
22 **ensation established or maintained by an employer (including a**
23 **partnership or sole proprietorship) or by an employee organiza-**
24 **tion, or by both, other than a plan providing individual retirement**
25 **accounts or individual retirement annuities under section 408 of**
26 **the internal revenue code, as now or hereafter amended, premium**
27 **deposit fund, variable annuity, investment annuity, immediate an-**
28 **nuity, any deferred annuity contract after annuity payments have**
29 **commenced, or reversionary annuity, nor to any contract which**
30 **shall be delivered outside this state through an agent or other rep-**
31 **resentative of the company issuing the contract.**

32 **(c) In the case of contracts issued on or after the operative date**
33 **of this section as defined in ~~subsection (1)~~ paragraph (1) of this sub-**
34 **section, no contract of annuity, except as stated in subsection (b),**
35 **shall be delivered or issued for delivery in this state unless it con-**
36 **tains in substance the following provisions, or corresponding pro-**
37 **visions which in the opinion of the commissioner are at least as**
38 **favorable to the contractholder, upon cessation of payment of con-**
39 **siderations under the contract.**

40 **(1) That upon cessation of payment of considerations under a**
41 **contract, the company will grant a paid-up annuity benefit on a**
42 **plan stipulated in the contract of such value as is specified in sub-**
43 **section (e), (f), (g), (h), and (j).**

1 (2) If a contract provides for a lump sum settlement at matur-
2 ity, or at any other time, that upon surrender of the contract at or
3 prior to the commencement of any annuity payments, the company
4 will pay in lieu of any paid-up annuity benefit a cash surrender
5 benefit of such amount as is specified in subsections (e), (f), (h),
6 and (j). The company shall reserve the right to defer the payment
7 of such cash surrender benefit for a period of six ~~(6)~~ months after
8 demand therefor with surrender of the contract.

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

14 (4) A statement that any paid-up annuity, cash surrender or
15 death benefits that may be available under the contract are not
16 less than the minimum benefits required by any statute of the state
17 in which the contract is delivered and an explanation of the man-
18 ner in which such benefits are altered by the existence of any ad-
19 ditional amounts credited by the company to the contract, any in-
20 debtedness to the company on the contract or any prior
21 withdrawals from or partial surrenders of the contract. Notwith-
22 standing the requirements of this subsection, any deferred annuity
23 contract may provide that if no considerations have been received
24 under a contract for a period of two ~~(2)~~ full years and the portion
25 of the paid-up annuity benefit at maturity on the plan stipulated
26 in the contract arising from considerations paid prior to such pe-
27 riod would be less than ~~twenty dollars (\$20)~~ \$20 monthly, the com-
28 pany may at its option terminate such contract by payment in cash
29 of the then present value of such portion of the paid-up annuity
30 benefit, calculated on the basis of the mortality table, if any, and
31 interest rate specified in the contract for determining the paid-up
32 annuity benefit, and by such payment shall be relieved of any fur-
33 ther obligation under such contract.

34 (d) The minimum values as specified in subsections (e), (f), (g),
35 (h) and (j) of any paid-up annuity, cash surrender or death benefits
36 available under an annuity contract shall be based upon minimum
37 nonforfeiture amounts as defined in this subsection.

38 (1) With respect to contracts providing for flexible considera-
39 tions, the minimum nonforfeiture amount at any time at or prior
40 to the commencement of any annuity payments shall be equal to
41 an accumulation up to such time at a rate of interest of ~~three percent~~
42 ~~(3%)~~ 3% per annum of percentages of the net considerations (as
43 hereinafter defined) paid prior to such time, decreased by the sum

1 of:

2 ~~(i)~~ (A) Any prior withdrawals from or partial surrenders of the
3 contract accumulated at a rate of interest of ~~three percent (3%)~~ 3%
4 per annum; and

5 ~~(ii)~~ (B) the amount of any indebtedness to the company on the
6 contract, including interest due and accrued, and increased by any
7 existing additional amounts credited by the company to the
8 contract.

9 The net considerations for a given contract year used to define
10 the minimum nonforfeiture amount shall be an amount not less
11 than zero and shall be equal to the corresponding gross consid-
12 erations credited to the contract during that contract year less an
13 annual contract charge of ~~thirty dollars (\$30)~~ \$30 and less a collection
14 charge of ~~one dollar and twenty-five cents (\$1.25)~~ \$1.25 per consid-
15 eration credited to the contract during that contract year. The per-
16 centages of net considerations shall be ~~sixty-five percent (65%)~~ 65%
17 of the net consideration for the first contract year and ~~eighty-seven~~
18 ~~and one-half percent (87½%)~~ 87.5% of the net considerations for the
19 second and later contract years. Notwithstanding the provisions of
20 the preceding sentence, the percentage shall be ~~sixty-five percent~~
21 ~~(65%)~~ 65% of the portion of the total net consideration for any
22 renewal contract year which exceeds by not more than two times
23 the sum of those portions of the net considerations in all prior
24 contract years for which the percentage was ~~sixty-five percent (65%)~~
25 65%. *Notwithstanding any other provision of this paragraph, for any*
26 *contract issued on or after July 1, 2002, and before July 1, 2005, the*
27 *interest rate at which net considerations, prior withdrawals and partial*
28 *surrenders shall be accumulated, for the purpose of determining nonfor-*
29 *feiture amounts, shall be 1.5% per annum.*

30 (2) With respect to contracts providing for fixed scheduled con-
31 siderations, minimum nonforfeiture amounts shall be calculated
32 on the assumption that considerations are paid annually in advance
33 and shall be defined as for contracts with flexible considerations
34 which are paid annually with two exceptions:

35 ~~(a)~~ (A) The portion of the net consideration for the first con-
36 tract year to be accumulated shall be the sum of ~~sixty-five percent~~
37 ~~(65%)~~ 65% of the net consideration for the first contract year plus
38 ~~twenty-two and one-half percent (22½%)~~ 22.5% of the excess of the
39 net consideration for the first contract year over the lesser of the
40 net considerations for the second and third contract years.

41 ~~(b)~~ (B) The annual contract charge shall be the lesser of (i) ~~thirty~~
42 ~~dollars (\$30)~~ \$30 or (ii) ~~ten percent (10%)~~ 10% of the gross annual
43 consideration.

1 (3) With respect to contracts providing for a single considera-
2 tion, minimum nonforfeiture amounts shall be defined as for con-
3 tracts with flexible considerations except that the percentage of
4 net consideration used to determine the minimum nonforfeiture
5 amount shall be equal to ~~ninety percent (90%)~~ 90% and the net con-
6 sideration shall be the gross consideration less a contract charge
7 of ~~seventy-five dollars (\$75)~~ \$75.

8 (e) Any paid-up annuity benefit available under a contract shall
9 be such that its present value on the date annuity payments are to
10 commence is at least equal to the minimum nonforfeiture amount
11 on that date. Such present value shall be computed using the mor-
12 tality table, if any, and the interest rate specified in the contract
13 for determining the minimum paid-up annuity benefits guaran-
14 teed in the contract.

15 (f) For contracts which provide cash surrender benefits, such
16 cash surrender benefits available prior to maturity shall not be less
17 than the present value as of the date of surrender of that portion
18 of the maturity value of the paid-up annuity benefit which would
19 be provided under the contract at maturity arising from consid-
20 erations paid prior to the time of cash surrender reduced by the
21 amount appropriate to reflect any prior withdrawals from or partial
22 surrenders of the contract, such present value being calculated
23 on the basis of an interest rate not more than ~~one percent (1%)~~ 1%
24 higher than the interest rate specified in the contract for accu-
25 mulating the net considerations to determine such maturity value,
26 decreased by the amount of any indebtedness to the company on
27 the contract, including interest due and accrued, and increased by
28 any existing additional amounts credited by the company to the
29 contract. In no event shall any cash surrender benefit be less than
30 the minimum nonforfeiture amount at that time. The death benefit
31 under such contracts shall be at least equal to the cash surrender
32 benefit.

33 (g) For contracts which do not provide cash surrender benefits,
34 the present value of any paid-up annuity benefit available as a
35 nonforfeiture option at any time prior to maturity shall not be less
36 than the present value of that portion of the maturity value of the
37 paid-up annuity benefit provided under the contract arising from
38 considerations paid prior to the time the contract is surrendered
39 in exchange for, or changed to, a deferred paid-up annuity, such
40 present value being calculated for the period prior to the maturity
41 date on the basis of the interest rate specified in the contract for
42 accumulating the net considerations to determine such maturity
43 value, and increased by any existing additional amounts credited

1 by the company to the contract. For contracts which do not provide
2 any death benefits prior to the commencement of any annuity pay-
3 ments, such present values shall be calculated on the basis of such
4 interest rate and the mortality table specified in the contract for
5 determining the maturity value of the paid-up annuity benefit.
6 However, in no event shall the present value of a paid-up annuity
7 benefit be less than the minimum nonforfeiture amount at that
8 time.

9 (h) For the purpose of determining the benefits calculated under
10 subsections (f) and (g), in the case of annuity contracts under
11 which an election may be made to have annuity payments com-
12 mence at optional maturity dates, the maturity date shall be
13 deemed to be the latest date for which election shall be permitted
14 by the contract, but shall not be deemed to be later than the an-
15 niversary of the contract next following the annuitant's seventieth
16 birthday or the tenth anniversary of the contract, whichever is
17 later.

18 (i) Any contract which does not provide cash surrender bene-
19 fits or does not provide death benefits at least equal to the mini-
20 mum nonforfeiture amount prior to the commencement of any
21 annuity payments shall include a statement in a prominent place
22 in the contract that such benefits are not provided.

23 (j) Any paid-up annuity, cash surrender or death benefits avail-
24 able at any time, other than on the contract anniversary under any
25 contract with fixed scheduled considerations, shall be calculated
26 with allowance for the lapse of time and the payment of any sched-
27 uled considerations beyond the beginning of the contract year in
28 which cessation of payment of considerations under the contract
29 occurs.

30 (k) For any contract which provides, within the same contract
31 by rider or supplemental contract provision, both annuity benefits
32 and life insurance benefits that are in excess of the greater of cash
33 surrender benefits or a return of the gross considerations with
34 interest, the minimum nonforfeiture benefits shall be equal to the
35 sum of the minimum nonforfeiture benefits for the annuity portion
36 and the minimum nonforfeiture benefits, if any, for the life insur-
37 ance portion computed as if each portion were a separate contract.
38 Notwithstanding the provisions of subsections (e), (f), (g), (h) and
39 (j), additional benefits payable (1) in the event of total and per-
40 manent disability, (2) as reversionary annuity or deferred rever-
41 sionary annuity benefits, or (3) as other policy benefits additional
42 to life insurance, endowment, and annuity benefits, and consid-
43 erations for all such additional benefits, shall be disregarded in

1 ascertaining the minimum nonforfeiture amounts, paid-up annu-
2 ity, cash surrender and death benefits that may be required by this
3 section. The inclusion of such additional benefits shall not be re-
4 quired in any paid-up benefits, unless such additional benefits sep-
5 arately would require minimum nonforfeiture amounts, paid-up
6 annuity, cash surrender and death benefits.

7 (l) After July 1, 1978, any company may file with the commis-
8 sioner a written notice of its election to comply with the provisions
9 of this section after a specified date before July 1, 1980. After the
10 filing of such notice, then upon such specified date, which shall be
11 the operative date of this section for such company, this section
12 shall become operative with respect to annuity contracts thereaf-
13 ter issued by such company. If a company makes no such election,
14 the operative date of this section for such company shall be July
15 1, 1980.

16 Sec. 2. K.S.A. 2001 Supp. 40-4909 is hereby amended to read
17 as follows: 40-4909. (a) The commissioner may *deny*, suspend, re-
18 voke or refuse renewal of any license issued under this act if the
19 commissioner finds that the applicant or license holder has:

20 (1) Provided incorrect, misleading, incomplete or untrue in-
21 formation in the license application.

22 (2) Violated:

23 (A) Any provision of chapter 40 of the Kansas Statutes Anno-
24 tated, and amendments thereto, or any rule and regulation prom-
25 ulgated thereunder;

26 (B) any subpoena or order of the commissioner;

27 (C) any insurance law or regulation of another state; or

28 (D) any subpoena or order issued by the regulatory official for
29 insurance in another state.

30 (3) Obtained or attempted to obtain a license under this act
31 through misrepresentation or fraud.

32 (4) Improperly withheld, misappropriated or converted any
33 moneys or properties received in the course of doing insurance
34 business.

35 (5) Intentionally misrepresented the provisions, terms and
36 conditions of an actual or proposed insurance contract or appli-
37 cation for insurance.

38 (6) Been convicted of a misdemeanor or felony.

39 (7) Admitted to or been found to have committed any insur-
40 ance unfair trade practice or fraud in violation of K.S.A. 40-2404
41 and amendments thereto.

42 (8) Used any fraudulent, coercive, or dishonest practice, or
43 demonstrated any incompetence, untrustworthiness or financial

1 irresponsibility in the conduct of business in this state or
2 elsewhere.

3 (9) Had an insurance agent license, or its equivalent, denied,
4 suspended or revoked in any other state, district or territory.

5 (10) Forged another person's name to an application for in-
6 surance or to any document related to an insurance transaction.

7 (11) Improperly used notes or any other reference material to
8 complete an examination for an insurance license issued under this
9 act.

10 (12) Knowingly accepted insurance business from an individ-
11 ual who is not licensed.

12 (13) Failed to comply with any administrative or court order
13 imposing a child support obligation upon the applicant or license
14 holder.

15 (14) Failed to pay any state income tax or comply with any ad-
16 ministrative or court order directing payment of state income tax.

17 (15) Rebated the whole or any part of any insurance premium
18 or offered in connection with the presentation of any contract of
19 insurance any other inducement not contained in the contract of
20 insurance.

21 (16) Made any misleading representation or incomplete com-
22 parison of policies to any person for the purposes of inducing or
23 tending to induce such person to lapse, forfeit or surrender such
24 person's insurance then in force.

25 (b) In addition, the commissioner may suspend, revoke or re-
26 fuse renewal of any license issued under this act if the commis-
27 sioner finds that the interests of the insurer or the insurable in-
28 terests of the public are not properly served under such license.

29 (c) Any action taken under this section which affects any li-
30 cense or imposes any administrative penalty shall be taken only
31 after notice and an opportunity for a hearing conducted in ac-
32 cordance with the provisions of the Kansas administrative proced-
33 ures act.

34 (d) The license of any business entity may be suspended, re-
35 voked or refused renewal if the insurance commissioner finds that
36 any violation committed by an individual licensee employed by or
37 acting on behalf of such business entity was known by or should
38 have been known by one or more of the partners, officers or man-
39 agers acting on behalf of the business entity and:

40 (1) Such violation was not reported to the insurance commis-
41 sioner by such business entity; or

42 (2) such business entity failed to take any corrective action.

43 (e) None of the following actions shall deprive the commis-

1 sioner of any jurisdiction or right to institute or proceed with any
2 disciplinary proceeding against such license, to render a decision
3 suspending, revoking or refusing to renew such license, or to es-
4 tablish and make a record of the facts of any violation of law for
5 any lawful purpose:

6 (1) The imposition of an administrative penalty under this
7 section;

8 (2) the lapse or suspension of any license issued under this act
9 by operation of law;

10 (3) the licensee's failure to renew any license issued under this
11 act; or

12 (4) the licensee's voluntary surrender of any license issued un-
13 der this act. No such disciplinary proceeding shall be instituted
14 against any licensee after the expiration of two years from the ter-
15 mination of the license.

16 (f) Whenever the commissioner imposes any administrative
17 penalty or denies, suspends, revokes or refuses renewal of any li-
18 cense pursuant to subsection (a), any costs incurred as a result of
19 conducting an administrative hearing authorized under the pro-
20 visions of this section shall be assessed against the person who is
21 the subject of the hearing or any business entity represented by
22 such person who is the party to the matters giving rise to the hear-
23 ing. As used in this subsection, "costs" shall include witness fees,
24 mileage allowances, any costs associated with the reproduction of
25 documents which become a part of the hearing record and the
26 expense of making a record of the hearing.

27 (g) No person whose license as an agent or broker had been
28 suspended or revoked shall be employed by any insurance com-
29 pany doing business in this state either directly, indirectly, as an
30 independent contractor or otherwise to negotiate or effect con-
31 tracts of insurance, suretyship or indemnity or perform any act
32 toward the solicitation of or transaction of any business of insur-
33 ance during the period of such suspension or revocation.

34 (h) In lieu of taking any action under subsection (a), the com-
35 missioner may:

36 (1) Censure the person; or

37 (2) issue an order imposing an administrative penalty up to a
38 maximum of \$500 for each violation but not to exceed \$2,500 for
39 the same violation occurring within any six consecutive calendar
40 months from the date of the original violation unless such person
41 knew or should have known that the violative act could give rise
42 to disciplinary action under subsection (a). If such person knew or
43 reasonably should have known the violative act could give rise to

1 **any disciplinary proceeding authorized by subsection (a), the com-**
2 **missioner may impose a penalty up to a maximum of \$1,000 for**
3 **each violation but not to exceed \$5,000 for the same violation oc-**
4 **curring within any six consecutive calendar months from the date**
5 **of the imposition of the original administrative penalty.**

6 Section ~~1~~ 3. K.S.A. 2001 Supp. 40-2c01 is hereby amended to read
7 as follows: 40-2c01. As used in this act:

8 (a) “Adjusted RBC report” means an RBC report which has been
9 adjusted by the commissioner in accordance with K.S.A. 40-2c04, and
10 amendments thereto.

11 (b) “Corrective order” means an order issued by the commissioner
12 specifying corrective actions which the commissioner has determined are
13 required to address a RBC level event.

14 (c) “Domestic insurer” means any insurance company or risk reten-
15 tion group which is licensed and organized in this state.

16 (d) “Foreign insurer” means any insurance company or risk retention
17 group not domiciled in this state which is licensed or registered to do
18 business in this state pursuant to article 41 of chapter 40 of the Kansas
19 Statutes Annotated or K.S.A. 40-209, and amendments thereto.

20 (e) “NAIC” means the national association of insurance
21 commissioners.

22 (f) “Life and health insurer” means any insurance company licensed
23 under article 4 or 5 of chapter 40 of the Kansas Statutes Annotated or a
24 licensed property and casualty insurer writing only accident and health
25 insurance.

26 (g) “Property and casualty insurer” means any insurance company
27 licensed under articles 9, 10, 11, 12, 12a, 15 or 16 of chapter 40 of the
28 Kansas Statutes Annotated, but shall not include monoline mortgage
29 guaranty insurers, financial guaranty insurers and title insurers.

30 (h) “Negative trend” means, with respect to a life and health insurer,
31 a negative trend over a period of time, as determined in accordance with
32 the “trend test calculation” included in the RBC instructions defined in
33 subsection (j).

34 (i) “RBC” means risk-based capital.

35 (j) “RBC instructions” mean the risk-based capital instructions prom-
36 ulgated by the NAIC, which are in effect on December 31, ~~2000~~ 2001.

37 (k) “RBC level” means an insurer’s company action level RBC, reg-
38 ulatory action level RBC, authorized control level RBC, or mandatory
39 control level RBC where:

40 (1) “Company action level RBC” means, with respect to any insurer,
41 the product of 2.0 and its authorized control level RBC;

42 (2) “regulatory action level RBC” means the product of 1.5 and its
43 authorized control level RBC;

1 (3) “authorized control level RBC” means the number determined
2 under the risk-based capital formula in accordance with the RBC instruc-
3 tions; and

4 (4) “mandatory control level RBC” means the product of .70 and the
5 authorized control level RBC.

6 (l) “RBC plan” means a comprehensive financial plan containing the
7 elements specified in K.S.A. 40-2c06, and amendments thereto. If the
8 commissioner rejects the RBC plan, and it is revised by the insurer, with
9 or without the commissioner’s recommendation, the plan shall be called
10 the “revised RBC plan.”

11 (m) “RBC report” means the report required by K.S.A. 40-2c02, and
12 amendments thereto.

13 (n) “Total adjusted capital” means the sum of:

14 (1) An insurer’s capital and surplus or surplus only if a mutual insurer;
15 and

16 (2) such other items, if any, as the RBC instructions may provide.

17 (o) “Commissioner” means the commissioner of insurance.

18 Sec. ~~2~~ **4.** K.S.A. **40-428a** and K.S.A. 2001 Supp. 40-2c01 ~~is~~ and
19 **40-4909** are hereby repealed.

20 Sec. ~~3~~ **5.** This act shall take effect and be in force from and after
21 its publication in the statute book.

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