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DESCRIPTION

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Date

2003 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2235

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Deanna O'Neil
Operator's Signature

10/21/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2235

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 01-28-03

Tape Number	Side A	Side B	Meter #
1	xxxx		1000
Committee Clerk Signature <i>Lisa Van Berkum</i>			

Minutes: Chairman Mutch opened the hearing on SB 2235. All Senators present.

SB 2235 relates to minimum nonforfeiture amounts of annuity contracts.

Testimony in support of SB 2235

Senator Michael Every introduced the bill. He stated that he signed on because he supported the bill and then introduced Constance Hofland, an attorney with the law firm of Zuger Kirmis & Smith of Bismarck. She represents the American Council of Life Insurers in support of SB 2235.

See written testimony.

Senator Mutch: Will this alter the existing contracts?

Hofland: It is changing the minimum nonforfeiture.

Senator Espegard: What would happen to the annuity contract if this was left alone?

Hofland: The expense could be higher than the return on the annuity.

Senator Espegard: Would this make a difference for the consumer?

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Deanna D. Hall
Operator's Signature

10/21/03
Date

Page 2
Senate Industry, Business and Labor Committee
Bill/Resolution Number 2235
Hearing Date 1-28-03

Hofland: It would make a difference if the life insurance company decide not to offer the product.

Senator Espegard: My point is, this is not helping the consumer, it is just making the product look better to the consumer.

Hofland: They could still offer them with higher rates. It keeps the product more reasonable.

Senator Krebsbach: Does it sunset in 2 years?

Hofland: Yes.

No further questions from the committee

Testimony in opposition or neutral to SB 2235.

Michael Fix, Director of the Life and Health Division of the Insurance Dept., said the Insurance Dept. is neutral. This bill would only impact annuity policies issues between July 1, 2003 and July 1, 2005. At that point (2 years later) it does revert back to the 3% interest rate. The 3% is the minimum, however a company can determine them at what ever they want.

The commissioner was asked to introduce the bill, but he thought it was not the right time. His input to the committee is that it is a temporary solution.

No further question from the committee

Hearing closed.

Senator Espegard moved to amend. Senator Every seconded.

Roll Call Vote: 7 Yes. 0 No. 0 Absent.

Senator Every moved a DO PASS AS AMENDED. Senator Espegard seconded.

Roll Call Vote: 6 Yes. 0 No. 1 Absent.

Carrier: Senator Every

Date: 1-28-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 7330

Senate IBL 2255 Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By Every Seconded By Espagard

[illegible]

Total (Yes) 7 No 0

Absent 0

Floor Assignment Every

If the vote is on an amendment, briefly indicate intent:

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Operator's Signature

Date

30569.0101
Title.0200

Adopted by the Industry, Business and Labor
Committee

January 28, 2003

PROPOSED AMENDMENTS TO SENATE BILL NO. 2235

Page 1, line 7, replace "June 30" with "July 31" and replace "July 1" with "August 1"

Renumber accordingly

Page No. 1

30569.0101

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Deanna D. Hall
Operator's Signature

10/21/03
Date

Roll Call Vote #:

BILL/RESOLUTION NO.

Senate IBL



Legislative Council Amendment Number

Action Taken Move to Amend

Motion Made By Every Espeland Seconded By Every

Seconded By

7-
1-
6-
2-
3-

Total (Yes)

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

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Deanna Ballentine
Operator's Signature

10/21/03

Date: 1-28
Roll Call Vote #: 3

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2235

Senate _____ Committee _____

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

DO PASS AS Amended

Motion Made By _____

Seconded By _____

Senators	Yes	No	Senators	Yes	No
Sen. Duane Mutch, Chairman	X		Sen. Michael Every	X	
Sen. Jerry Klein, Vice Chairman	X		Sen. Joel Heitkamp	A	
Sen. Duaine Espegard	X				
Sen. Karen Krebsbach	X				
Sen. Dave Nething	X				

Total (Yes)

6

No

0

Absent

1

Floor Assignment

~~Michael Every~~ Every

If the vote is on an amendment, briefly indicate intent:

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Operator's Signature

Deanna D. Smith

12/21/03

Date

REPORT OF STANDING COMMITTEE (410)
January 28, 2003 3:00 p.m.

Module No: SR-16-1222
Carrier: Every
Insert LC: 30569.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2235: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends
AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS**
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2235 was placed on the Sixth
order on the calendar.

Page 1, line 7, replace "June 30" with "July 31" and replace "July" with "August"

Renumber accordingly

Date: 3-26-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate 2235 Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Concur

Motion Made By _____ Seconded By _____

Senators	Yes	No	Senators	Yes	No
Mutch	S				
Klein					
Krebsbach					
Nething					
Heitkamp					
Evans	A				
Espgaard					

Total (Yes) Voice vote carry No

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

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Operator's Signature Deanna Wallis

10/21/03
Date

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2235

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Deanna D. Smith
Operator's Signature

12/21/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2235

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date March 5, 2003

Tape Number	Side A	Side B	Meter #
2		x	14.8-36.4
Committee Clerk Signature <i>Judith Hammer</i>			

Minutes: **Chairman Kelser** opened the hearing on SB 2235.

Senator Every introduced and testified in support of SB 2235 which reduces the 3% fixed rate for annuity contracts and lowers it to a rate of 1.5%.

Pat Ward, of Zuger, Kirmis & Smith Law Firm, representing the American Council of Life Insurers, testified in support of SB 2235 and presented an amendment. (See attached). The purpose of the amendment is to tie the rate to an index which provides a more durable solution.

Rep. Klein: What is the annual contract charge of \$50 for, item B?

Mike Fix, Director for Life and Health Division of the North Dakota Insurance

Department, took the podium to answer questions from the committee. He stated that in the current statute, the charge is \$75 for a single premium contract and \$25 for a periodic payment contract. That is for calculating the amount of minimum cash values, it is not a direct charge.

Chairman Kelser: What would be a new adjustable rate, using the new formula?

Fix: The rate is the lesser of 3% or the formula. It would be between 2 & 3 %.

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Deanna Waller
Operator's Signature

10/21/03
Date

Page 2
House Industry, Business and Labor Committee
Bill/Resolution Number SB 2235
Hearing Date March 5, 2003

Rep. Ruby: What rate of interest growth will insurance companies realize from this? They'll pay 3%, what rate of return will they get?

Fix: That depends on the pricing structure and the competition. A 1% margin is necessary to be competitive in the market.

Rep. Kasper: We're talking here about the minimum interest rate that can be credited, this has nothing to do with what is called, in the insurance industry, the current interest rate which is credited. The current interest rate is sort of what the market will bear and what the competition dictates. This just says you must pay something but the minimum will be tied to the index, correct?

Fix: This defines the rate used to determine minimum cash values. There's also a guaranteed rate that is in the policy.

Rep. Ekstrom: Page 3 of the amendment, section 2, must each of the A,B,C and D factors be met, or a combination?

Fix: All of them have to be met. The five year treasury rate, take off 125 days at point, theoretically to cover expenses, but it can't be less than 1%.

Rep. Klein: I'm looking at #D on page 2, explain that to us, please.

Fix: Those are reductions from net considerations, the premiums come in, you can take off withdrawals, annual fees, etc.

Rep. Ekstrom: What if interest rates go up?

Fix: It's the lesser of 3% in this formula, if rates go up, you can still base the minimum nonforfeiture value on 3%. Companies would lose competitively, they would have to charge higher rates. That's the consumer protection aspect.

Page 3
House Industry, Business and Labor Committee
Bill/Resolution Number SB 2235
Hearing Date March 5, 2003

Chairman Keiser: How easy would it be for someone to transfer funds from one annuity to another? From one to another with a higher rate of interest return?

Fix: That's easy but you'd have to mention that you are replacing an existing annuity product. A disadvantage is that you'd be paying surrender charges and paying acquisition charges. The Insurance Department took a neutral position on this when it was over in the Senate because we knew it was a temporary stopgap. We wanted to see a durable solution. We now support this with the amendment that has been prepared.

As there was no one else to testify either in support of or in opposition to SB 2235, the hearing was closed.

Rep. Froseth moved to adopt the amendments. **Rep. Ekstrom** seconded the motion. A voice vote carried the motion to adopt the amendments.

It was decided to defer voting on SB 2235 until the proposed amendment language is folded into the bill for clearer understanding and comprehension by the committee.

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12/21/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2235

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date March 19, 2003

Tape Number	Side A	Side B	Meter #
1		x	9.5-18.7
Committee Clerk Signature <i>Judith Hammer</i>			

Minutes: Chairman Keiser called for committee work on SB 2235.

Jennifer Clark, IBL liaison at Legislative Council, appeared to walk the committee through the amendments she drafted for SB 2235. Any changes she made to the version of the amendments as they were proposed in committee are not substantive in nature. She consulted Mike Fix, Actuary for the ND Department of Insurance, for information. She did three things: adhered to form and style consistent with Legislative Council guidelines, clarified language so that lay persons could understand the bill and addressed problems as to the way the language was laid out, specifically the provision dealing with to whom these changes apply and when the contracts are issued etc. The way the amendment originally read would not appear appropriately in the Century Code. As far as substance is concerned, the intent remains the same. There is now a subsection 1 which is the body of existing law, it applies for an annuity contract issued before the effective date of this act, August 1, 2003. Subsection 2 is the new legislation and this language applies for all contracts issued after July 31, 2005. So essentially that's the effective

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Deanna Walcott
Operator's Signature

10/21/03
Date

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number SB 2235

Hearing Date March 19, 2003

date of this session's bills, August 1. The provision that ties it all together and affects policies issued after August 1, 2003 is the provision in Subsection 3. That essentially states that there are three time periods here: policies prior to effective date of this act, policies issued after the effective date of next session's act, and the policies issued during the interim. This language says this: policies already issued go under subsection 1, policies issued 2005 go under subsection 2, policies issued during interim, that company has a choice between offering the policy under the old provision or the new provision, as long as they are consistent on a contract form by contract form basis. I'd be happy to answer any questions.

Rep. Kasper: Please clarify subsection 3 for us.

Clark: It's pretty straightforward, that's the gut of the bill, as to whom it applies and when. For an annuity contract issued before August 1, 2003, those are covered by existing laws. A policy issued between August 1, 2003 and July 31, 2005, the interim, those policies can meet either one of the calculation provisions. As long as they are consistent, you have a form, they can pick and choose for different people. Finally, as of August 1, 2005, choices will be closed, at that point in time, all policies issued henceforth will have to be written under the new provisions. The companies will have had sufficient time to revise and approve their forms and obtain authorization from the Commissioner at the Department of Insurance.

Chairman Keiser: So, is the primary reason for going through all these steps to give the insurance companies the opportunity to transition into the new minimum rate?

Mike Fix, Actuary for North Dakota Department of Insurance: That's correct. Section 5 of the original amendment references the dates August 1, 2003 and August 1, 2005. Ms. Clark

Deanna Waller
Operator's Signature

10/21/03
Date

Page 3

House Industry, Business and Labor Committee

Bill/Resolution Number SB 2235

Hearing Date March 19, 2003

clarified that language. Section 1 is the current statute. It would be unrealistic to expect insurance companies to have all their policies revised and printed by August 1, 2003.

Chairman Keiser: And instead of using 1.5%, we'll index it to the minimum, as the Department of Insurance requested?

Fix: That's correct.

Rep. Froseth moved to adopt the amendments. .0202.

Rep. Ekstrom seconded the motion.

A voice vote carried adoption of this amendments.

Rep. Severson moved a Do Pass As Amended.

Rep. Ekstrom seconded the motion.

Results of the roll call votes were: 9-0-5.

Rep. Kasper will carry this on the floor.

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10/21/03
Date

March 10, 2003

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2235

Page 1, line 1, replace "create" with "amend"

Page 1, line 4, replace "A new subsection to section" with "Section"

Page 1, line 5, replace "created" with "amended"

Page 1, remove lines 6 through 10

Page 1, after line 5, replace the remainder of the bill with:

26.1-34-02. Minimum nonforfeiture amount defined. The minimum values as specified in sections 26.1-34-03 through 26.1-34-06 and section 26.1-34-08 of any paid-up annuity, cash surrender, or death benefits available under an annuity contract must be based upon minimum nonforfeiture amounts as defined in this section:

1. ~~With respect to annuity contracts providing for flexible considerations, the~~ The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments must be equal to an accumulation up to such time at a rates of interest, ~~of three percent per year of percentages as indicated in Subsection 2,~~ of the net considerations, as hereinafter defined, paid prior to such time, decreased by the sum of paragraphs (a) through (d) below: any
 - a. Any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest of three percent per year as indicated in Subsection 2; and
 - b. An annual contract charge of fifty dollars, accumulated at rates of interest as indicated in Subsection 2; and
 - c. Any premium tax paid by the company for the contract, accumulated at rates of interest as indicated in Subsection 2; and
 - d. The amount of any indebtedness to the company on the contract, including interest due and accrued; and increased by any existing additional amounts credited by the company to the contract.

The net considerations for a given contract year used to define the minimum nonforfeiture amount must be an amount ~~not less than zero and must equal the corresponding gross considerations to eighty-seven and one half percent of the gross considerations~~ credited to the contract during that contract year, ~~less an annual contract charge of thirty dollars and less a collection charge of one dollar and twenty five cents for each consideration credited to the contract during that contract year. The percentages of net considerations must be sixty five percent of the net consideration for the first contract year and eighty seven and one half percent of the net considerations for the second and later contract years. Notwithstanding the preceding sentence, the percentage must be sixty five percent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty five percent.~~

2. ~~With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts must be calculated on the assumption that considerations are paid annually in advance and must be defined as for contracts with flexible considerations which are paid annually, with two exceptions:~~
- a. ~~The portion of the net consideration for the first contract year to be accumulated is the sum of sixty five percent of the net consideration for the first contract year plus twenty two and one half percent of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.~~
 - b. ~~The annual contract charge is the lesser of thirty dollars or ten percent of the gross annual considerations.~~
3. ~~With respect to contracts providing for a single consideration, minimum nonforfeiture amounts must be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount must equal ninety percent and the net consideration must be the gross consideration less a contract charge of seventy five dollars.~~
2. The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three percent per annum and the following, which shall be specified in the contract if the interest rate will be reset:
- a. The five-year constant maturity rate reported by the federal reserve as the date or average over a period, rounded to the nearest one twentyth of one percent or as specified in the contract, no longer than fifteen months prior to the contract issue date or redetermination date under Subsection 2 (d);
 - b. Reduced by one hundred twenty five basis points; and
 - c. Where the resulting interest guarantee is not less than one percent; and
 - d. The interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date basis and period, if any, shall be stated in the contract. The basis means the date or average over a specified period that produces the value of the five-year constant maturity treasury rate to be used at each redetermination date.
3. Notwithstanding the provisions of Subsection 1 and 2 of this section, during the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in Subsection 2(b) of this section by up to an additional one hundred basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date thereafter, or the additional reduction shall not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the reduction does not exceed the market value of the benefit. Lacking such a demonstration acceptable to the commissioner, the commissioner may disallow or limit the additional reduction.
4. The commissioner may adopt rules to implement the provisions of Subsection 3 and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts that the commissioner determines are justified.
5. After August 1, 2003, a company may elect to apply the provisions of this Act to annuity contracts on a contract form-by-contract form basis before August 1, 2005. In all other instances, this Act shall become effective, with respect to annuity contracts issued by the company, after August 1, 2005.

Renumber accordingly

Page No. 3

30569.0201

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Deanna Wall
Operator's Signature

10/21/03
Date

Date: 3/19/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2235

House INDUSTRY BUSINESS & LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30569.0202 Title

Action Taken Do Pass As Amended

Motion Made By Severson Seconded By Ekstrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Boe	✓	
Vice-Chair Severson	✓		Ekstrom	✓	
Dosch			Thorpe		
Froseth	✓		Zaiser	✓	
Johnson	✓				
Kasper	✓				
Klein					
Nottestad					
Ruby					
Tieman	✓				

Total (Yes) 9 No 0

Absent 5

Floor Assignment Kasper

If the vote is on an amendment, briefly indicate intent:

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Operator's Signature Deanna Waller

Date 10/21/03

REPORT OF STANDING COMMITTEE (410)
March 20, 2003 9:26 a.m.

Module No: HR-50-5289
Carrier: Kasper
Insert LC: 30569.0202 Title: .0300

REPORT OF STANDING COMMITTEE

SB 2235, as engrossed: Industry, Business and Labor Committee (Rep. Kelsner, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 0 NAYS, 5 ABSENT AND NOT VOTING). Engrossed SB 2235 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "create" with "amend" and replace "enact a new subsection to" with "reenact"

Page 1, line 4, replace "A new subsection to section" with "**AMENDMENT. Section**"

Page 1, line 5, replace "created" with "amended" and replace "enacted" with "reenacted"

Page 1, replace lines 6 through 10 with:

"26.1-34-02. Minimum nonforfeiture amount defined. The minimum values as specified in sections 26.1-34-03 through 26.1-34-06 and section 26.1-34-08 of any paid-up annuity, cash surrender, or death benefits available under an annuity contract must be based upon minimum nonforfeiture amounts as defined in this section +.

1. For an annuity contract issued before August 1, 2003:

a. With respect to annuity contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments must be equal to an accumulation up to such time at a rate of interest of three percent per year of percentages of the net considerations, as hereinafter defined, paid prior to such time, decreased by the sum of any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three percent per year and the amount of any indebtedness to the company on the contract, including interest due and accrued; and increased by any existing additional amounts credited by the company to the contract. The net considerations for a given contract year used to define the minimum nonforfeiture amount must be an amount not less than zero and must equal the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars and less a collection charge of one dollar and twenty-five cents for each consideration credited to the contract during that contract year. The percentages of net considerations must be sixty-five percent of the net consideration for the first contract year and eighty-seven and one-half percent of the net considerations for the second and later contract years. Notwithstanding the preceding sentence, the percentage must be sixty-five percent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five percent.

2. b. With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts must be calculated on the assumption that considerations are paid annually in advance and must be defined as for contracts with flexible considerations which are paid annually, with two exceptions:

4. (1) The portion of the net consideration for the first contract year to be accumulated is the sum of sixty-five percent of the net

(2) DESK, (3) COMM

Page No. 1

HR-50-5289

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Operator's Signature

Date

consideration for the first contract year plus twenty-two and one-half percent of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.

- b. (2) The annual contract charge is the lesser of thirty dollars or ten percent of the gross annual considerations.
- 3. c. With respect to contracts providing for a single consideration, minimum nonforfeiture amounts must be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount must equal ninety percent and the net consideration must be the gross consideration less a contract charge of seventy-five dollars.

2. For an annuity contract issued after July 31, 2005:

- a. The minimum nonforfeiture amount at any time at or before the commencement of any annuity payments must be equal to an accumulation up to such time at rates of interest, as provided under subdivision c, of the net considerations, as defined under subdivision b, paid before such time, decreased by the sum of:
 - (1) Any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as provided under subdivision c;
 - (2) An annual contract charge of fifty dollars, accumulated at rates of interest as provided under subdivision c;
 - (3) Any premium tax paid by the company for the contract, accumulated at rates of interest as provided under subdivision c; and
 - (4) The amount of any indebtedness to the company on the contract, including interest due and accrued.
- b. The net considerations for a given contract year used to define the minimum nonforfeiture amount under subdivision a must be an amount equal to eighty-seven and one-half percent of the gross considerations credited to the contract during that contract year.
- c. The interest rate used in determining minimum nonforfeiture amounts must be determined as the lesser of:
 - (1) Three percent per annum; or
 - (2) The five-year constant maturity rate reported by the federal reserve as of a date or average over a period, reduced by one hundred twenty-five basis points. The rate calculated under this paragraph may not be less than one percent, must be specified in the contract, and must be determined no more than fifteen months before the contract issue date or redemption date.
- d. The interest rate used in determining minimum nonforfeiture amounts applies for an initial period and may be redetermined for additional

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

- e. Notwithstanding subdivisions a, b, c, and d, during the period or term that a contract provides substantive participation in an equity indexed benefit, the contract may increase the reduction of one hundred twenty-five basis points under paragraph 2 of subdivision c by an amount not to exceed one hundred basis points, in order to reflect the value of the equity index benefit. The present value at the contract issue date, the present value at each redetermination date, or the additional reduction may not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the reduction does not exceed the market value of the benefit. Lacking such a demonstration acceptable to the commissioner, the commissioner may disallow or limit the additional reduction.
- f. The commissioner may adopt rules to implement the provisions of subdivision e and to provide further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts if the commissioner determines that adjustments are justified.
3. For an annuity contract issued after July 31, 2003, and before August 1, 2005, on a contract form by contract form basis, a company may elect to apply the provisions of subsection 1 or subsection 2."

Renumber accordingly

2003 SENATE INDUSTRY, BUSINESS AND LABOR

CONFERENCE COMMITTEE

SB 223⁵

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Deanna D. Smith
Operator's Signature

10/21/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2235

Senate Industry, Business and Labor Committee

☒ Conference Committee

Hearing Date 04-07-03

Tape Number	Side A	Side B	Meter #
Committee Clerk Signature <i>Lisa Van Berkum</i>			

Minutes: Chairman J. Klein opened the conference committee on SB 2235. Senators Klein, Mutch and Every were present. Representatives Kasper, and Ekstrom were present. Rep. M. Klein was absent.

Michael Fix explained the amendments. He stated that the American Council of Life Insurers approached us months ago about changing the nonforfeiture law for annuity to put in a durable solution for interest rates. The ACLI suggested just putting in and changing the rate from 3% to 1.5%. That is being done in a number of states throughout the country. As a temporary solution, there is a standard definition of interest rates that will be used. That is the one page bill that was seen in the Senate IBL committee. That was amended to change the effective date. By the time it got to the House the ACLI had come up with a durable solution, which eliminated the need to go to 1.5%. The interest rates will be based on a five year term. When it was in legislative council, the dates were wrong, so we amended them. The main change here is the durable solution that the ACLI came up with after it was heard in the Senate and before it was heard in the House.

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10/21/03
Date

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number 2235

Hearing Date 04-07-03

Senator Every: So basically what we did here is eliminate the temporary solution and make a permanent solution?

Michael: Yes, that is exactly what we did.

Senator Klein: Did everyone agree on this?

Rep. Ekstrom: Yes, we questioned Mr. Fix on this at length. We had total concurrence.

Senator Mutch: So the minimum nonforfeiture amount is in the contract?

Michael: This defines it.

Senator Mutch: The minimum is based on the 5 year average?

Michael: Yes, but it can't go below 1%.

Senator Every moved that the Senate Accede to the House amendments. **Rep. Ekstrom** seconded.

Roll Call Vote: 5 yes. 0 no. 1 absent.

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Deanna Balluff
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10/21/03
Date

Date: 4-07-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate Industry, Business, and Labor

SB 2235

Committee

☐ Check here for Conference Committee**Legislative Council Amendment Number**

Senate Ascede to Amendments

Action Taken

Motion Made By

Every

Seconded By EKstrom

[illegible]

Total (Yes)

5

No 0

Absent

1

Floor Assignment

Every

If the vote is on an amendment, briefly indicate intent:

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10/21/03
DATE

REPORT OF CONFERENCE COMMITTEE (420)
April 7, 2003 10:56 a.m.

Module No: SR-62-6936

Insert LC: .

REPORT OF CONFERENCE COMMITTEE
SB 2235, as engrossed: Your conference committee (Sens. Klein, Mutch, Every and Reps. Kasper, M. Klein, Ekstrom) recommends that the **SENATE ACCEDE** to the House amendments on SJ pages 906-908 and place SB 2235 on the Seventh order.

Engrossed SB 2235 was placed on the Seventh order of business on the calendar.

(2) DESK, (2) COMM

Page No. 1

SR-62-6936

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Deanna D. Smith

10/21/03
Date

2003 TESTIMONY

SB 2235

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Deanna Waller
Operator's Signature

10/21/03
Date

1-28-03

Testimony of Patrick Ward in Support of SB 2235 in the Industry, Business and
Labor Committee

My name is Constance Hofland, I work with Patrick Ward. I am an attorney with the law firm of Zuger Kirmis & Smith of Bismarck. We represent the American Council of Life Insurers in support of SB 2235. The American Council of Life Insurers is the nation's largest life insurance trade association. The 305 ACLI member companies licensed to do business in North Dakota account for 80% of premiums in our state.

Senate Bill 2235 is a temporary measure to provide a more reasonable interest rate for minimum nonforfeiture amounts of annuity contracts, a rate that better reflects current interest rates. The change is needed to enable insurers to continue to offer products with short-term guarantees in this market, without incurring excessive costs.

Current law in North Dakota and many other states mandates a 3% minimum interest rate guarantee for purposes of determining the cash value of individual fixed annuity products. At the time of its establishment with high interest rates, the 3% minimum was thought to be the ultimate low rate.

Today the situation is much different, and the 3% rate is no longer a reasonable "minimum." In the current low interest rate environment, the 3% rate forces

Insurers to choose between offering a contractual minimum rate in excess of actual market rates, which creates severe financial pressures, or else withdraw products with short-term guarantees from the market. Putting a 1.5% minimum interest rate in place will help guarantee the range of annuity products currently offered in North Dakota will not be lost.

This proposed measure is temporary to provide a stop-gap percentage rate during the time NAIC is developing a durable solution. In early 2002 the NAIC Executive Committee supported a temporary change to the 1.5% minimum interest rate, until a more durable solution is developed by the Life and Health Actuarial Task Force (LAHATF). Work on the durable solution is in progress and will likely take the form of a minimum nonforfeiture rate that is an index, tied to an actual market rate, such as the Constant Maturity Treasury rates. Therefore, the minimum nonforfeiture rate will move in relation to the actual market rate, providing a lasting solution that adjusts with changing interest rates. Also, the index rate is expected to have a similar minimum rate of 1%. However, in the interim, before a durable solution is agreed upon by the NAIC, we need a reasonable rate to avoid increase in costs and possible discontinuation of offering policies in North Dakota because of the associated costs.

We urge passage of SB 2235. The interest rate adjustment is important so fixed annuity products can remain competitive and responsive to consumer's financial security needs.

Testimony of Patrick Ward In Support of SB 2235 In the Industry, Business and Labor Committee

My name is Patrick Ward. I am an attorney with the law firm of Zuger Kirmis & Smith of Bismarck. We represent the American Council of Life Insurers in support of SB 2235. The American Council of Life Insurers is the nation's largest life insurance trade association. The 305 ACLI member companies licensed to do business in North Dakota account for 80% of premiums in our state.

Senate Bill 2235 was initially proposed as a temporary measure to provide a more reasonable interest rate for minimum nonforfeiture amounts of annuity contracts, a rate that better reflects current interest rates. However, now, because the NAIC has developed a durable interest rate solution, we offer a proposed amendment to incorporate the minimum nonforfeiture rate portion of the standard nonforfeiture law into SB 2235. The change is needed to enable insurers to continue to offer products with short-term guarantees in this market, without incurring excessive costs.

Current law in North Dakota and many other states mandates a 3% minimum interest rate guarantee for purposes of determining the cash value of individual fixed annuity products. At the time of its establishment with high interest rates, the 3% minimum was thought to be the ultimate low rate.

Today the situation is much different, and the 3% rate is no longer a reasonable "minimum." In the current low interest rate environment, the 3% rate forces insurers to choose between offering a contractual minimum rate in excess of actual market rates, which creates severe financial pressures, or else withdraw products with short-term guarantees from the market. Putting a more reasonable minimum interest rate in place will help guarantee the range of annuity products currently offered in North Dakota will not be lost.

In early 2002 the NAIC Executive Committee supported a temporary change to the 1.5% minimum interest rate, until a more durable solution is developed by the Life and Health Actuarial Task Force (LAHATF). Work on the durable solution is concluded and takes the form of a minimum nonforfeiture rate that is an index, tied to the Constant Maturity Treasury Rate. Therefore, the minimum nonforfeiture rate will move in relation to the actual market rate, providing a lasting solution that adjusts with changing interest rates.

We urge passage of SB 2235 with proposed amendments. The interest rate adjustment is important so fixed annuity products can remain competitive and responsive to consumer's financial security needs.

AMENDMENT TO SB 2235

Page 1, line 1, replace "create and enact a new subsection to" with "revise"

Page 1, replace lines 4 through 11 with:

26.1-34.02. Minimum nonforfeiture amount defined. The minimum values as specified in sections 26.1-34-03 through 26.1-34-06 and section 26.1-34-08 of any paid-up annuity, cash surrender, or death benefits available under an annuity contract must be based upon minimum nonforfeiture amounts as defined in this section:

1. ~~With respect to annuity contracts providing for flexible considerations, the~~ The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments must be equal to an accumulation up to such time at a rates of interest, of ~~three percent per year of percentages~~ as indicated in Subsection 2, of the net considerations, as hereinafter defined, paid prior to such time, decreased by the sum of paragraphs (a) through (d) below:
 - a. Any prior withdrawals from or partial surrenders of the contract accumulated at a rates of interest of ~~three percent per year~~ as indicated in Subsection 2; and
 - b. An annual contract charge of \$50, accumulated at rates of interest as indicated in Subsection 2;
 - c. Any premium tax paid by the company for the contract, accumulated at rates of interest as indicated in Subsection 2;
and

- d. The amount of any indebtedness to the company on the contract, including interest due and accrued; and ~~increased by any existing additional amounts credited by the company to the contract.~~

The net considerations for a given contract year used to define the minimum nonforfeiture amount must be an amount ~~not less than zero and must equal the corresponding gross considerations to~~ eighty-seven and one-half percent (87.5%) of the gross considerations credited to the contract during that contract year, ~~less an annual contract charge of thirty dollars and less a collection charge of one dollar and twenty-five cents for each consideration credited to the contract during that contract year. The percentages of net considerations must be sixty-five percent of the net consideration for the first contract year and eighty-seven and one-half percent of the net considerations for the second and later contract years. Notwithstanding the preceding sentence, the percentage must be sixty-five percent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net consideration in all prior contract years for which the percentage was sixty-five percent.~~

2. ~~With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts must be calculated~~

~~on the assumption that considerations are paid annually in advance and must be defined as for contracts with flexible considerations which are paid annually, with two exceptions:~~

~~a. The portion of the net consideration for the first contract year to be accumulated is the sum of sixty-five percent of the net consideration for the first contract year plus twenty-two and one-half percent of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.~~

~~b. The annual contract charge is the lesser of thirty dollars or ten percent of the gross annual considerations.~~

~~3. With respect to contracts providing for a single consideration, minimum nonforfeiture amounts must be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount must equal ninety percent and the net consideration must be the gross consideration less a contract charge of seventy-five dollars.~~

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

a. The five-year Constant Maturity Rate reported by the Federal Reserve as of a date, or average over a period, rounded to the

nearest 1/20th of one percent, specified in the contract no longer than fifteen (15) months prior to the contract issue date or redetermination date under Subsection 2(d);

b. Reduced by 125 basis points;

c. Where the resulting interest guarantee is not less than one percent (1%); and

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

3. Notwithstanding the provisions of Subsections 1 and 2 above, during the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in Subsection 2(b) above by up to an additional 100 basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date thereafter, or the additional reduction shall not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the reduction does not exceed the market value of the benefit. Lacking such a demonstration that is acceptable to the commissioner, the commissioner may disallow or limit the additional reduction.

4. The commissioner may adopt rules to implement the provisions of Subsection 3 and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts that the commissioner determines adjustments are justified.

5. Effective Date. After August 1, 2003, a company may elect to apply the provisions of this Act to annuity contracts on a contract form-by-contract form basis before August 1, 2005. In all other instances, this Act shall become operative with respect to annuity contracts issued by the company after August 1, 2005.