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## WISCONSIN LEGISLATIVE COUNCIL

### ACT MEMO

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<b>2003 Wisconsin Act 261</b> [2003 Senate Bill 320]	<b>Various Changes in the Insurance Code</b>
2003 Acts: <a href="http://www.legis.state.wi.us/2003/data/acts/">www.legis.state.wi.us/2003/data/acts/</a>	Act Memos: <a href="http://www.legis.state.wi.us/lc/act_memo/act_memo.htm">www.legis.state.wi.us/lc/act_memo/act_memo.htm</a>

2003 Wisconsin Act 261 makes various changes in the Insurance Code, including the following:

**Suitability of Annuity Sales to Senior Consumers.** In general terms, subject to certain exemptions, the Act prohibits an insurance intermediary (or insurer if an intermediary is not involved) from making a recommendation to a senior consumer (person 65 years of age or older) about purchasing or exchanging an annuity **unless** the intermediary has made reasonable efforts to obtain certain financial information about the senior consumer and has reasonable grounds to believe the recommendation is suitable for the senior consumer based on the information disclosed by the senior consumer.

The Act imposes duties on an insurer, general agent, or independent agency relating to supervising compliance with these suitability provisions, including maintaining written policies and conducting periodic reviews of its records to detect and prevent violations. If a senior consumer is harmed by a violation of any of the Act's suitability provisions, the Commissioner of Insurance (Commissioner) may order that reasonably appropriate corrective action be taken, which may include remedial measures or restitution. Various penalties also may apply. Under certain circumstances, a penalty (including a forfeiture) may be reduced or eliminated by the Commissioner, to the extent provided in any rule promulgated by the Commissioner, if corrective action is taken for the senior consumer promptly after the violation is discovered.

**Minimum Nonforfeiture Amount for Individual Deferred Annuities.** The statutes establish a minimum nonforfeiture amount for a paid-up annuity, cash surrender, or death benefit under an individual deferred annuity contract. Under prior law, the method of calculating the minimum nonforfeiture amount varied depending on whether the contract provided for flexible considerations, fixed scheduled considerations, or a single consideration. In very general terms, prior law established a percentage of net considerations (that is, amounts paid for the annuity after subtracting statutory contract charges and collection charges) to be paid as the minimum nonforfeiture amount, less certain amounts.

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This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents.

Under prior law, for flexible and fixed schedule considerations contracts, the percentage of net considerations used was 65% for the first contract year and 87.5% for subsequent contract years, and for single consideration contracts, the percentage of net considerations used was 90%. These percentages of net considerations had to be included in the minimum nonforfeiture amount calculation at a *rate of interest of 3% per year*.

The Act repeals these provisions and creates new provisions regarding minimum nonforfeiture amounts for individual deferred annuities, including eliminating the distinction between contracts that provide for flexible considerations, fixed scheduled considerations, or a single consideration. The Act defines “net considerations” for any contract year as 87.5% of gross considerations credited to the contract during that contract year. The minimum nonforfeiture amount is then the accumulation of net considerations, at one or more of the interest rates specified in the Act, minus certain specified amounts.

Under the Act, the *initial annual interest rate for a contract is based on the five-year constant maturity treasury rate* as published by the Federal Reserve Board as of a date, or average over a period, specified in the contract, less 125 basis points. (If the contract provides substantive participation in an equity indexed benefit, additional reductions may apply.) However, the annual interest rate *may not exceed 3% or be lower than 1%*. The initial interest rate may be redetermined for additional periods if the date, basis, and period are stated in the contract. The Commissioner is authorized to promulgate administrative rules to provide for further adjustments to the calculation of minimum nonforfeiture amounts. The Act also changes provisions relating to deferral of payment of an individual deferred annuity contract under certain circumstances.

**Town Mutuals.** A town mutual is an insurer that has been organized to provide certain types of property insurance and limited categories of nonproperty coverage as a supplement to property insurance in a limited territory. The Act includes provisions relating to membership of employees and representatives of a town mutual on a town mutual’s board of directors.

Under prior law, if a town mutual merged with a domestic mutual insurer under ch. 611, Stats., the surviving corporation could only be a ch. 611 domestic mutual insurer. The Act maintains prior law if the domestic mutual insurer is nonassessable. However, if the domestic mutual insurer is assessable, then the Act permits the surviving corporation to be either a ch. 611 domestic mutual insurer or a ch. 612 town mutual.

**Insurance Security Fund.** In general, the Insurance Security Fund (the Fund), which is administered by a board of directors, pays claims against insolvent insurers. In addition to other miscellaneous changes, the Act includes the following provisions relating to the Fund:

- It adds the following to those *insurers not covered by the Fund*: (1) the state Health Insurance Risk-Sharing Plan; (2) mandatory risk-sharing plans under ch. 619, Stats.; and (3) the Patients Compensation Fund. The Act also adds to the *types of insurance not covered by the Fund*.
- It specifies that the Fund is an organization, and it transfers some of the functions of the Fund’s board of directors to the Fund, including special duties and powers relating to loss claims.
- It adds to the amounts of which the Fund consists, and it clarifies and adds to the powers of the Fund.

- It amends the law relating to claims, including: adding to the list of claims that are *not* payable by the Fund; amending provisions relating to residency; changing the order of payment when a claim is recoverable from more than one security fund; eliminating the deductible of up to \$200 on claims; requiring exhaustion of collateral sources before pursuing payment from the Fund under certain circumstances; amending the law with respect to temporary moratoriums that the Fund may impose, with court approval, to holders of life insurance and annuity contracts; and specifying that a claimant may not pursue a reduced or ineligible claim in court, other than to seek judicial review of the board's decision.
- It expands the Fund's subrogation rights and rights to recover from a person amounts paid on behalf of the person to a third party under certain circumstances.
- It makes various changes regarding assessments (which apply after a liquidation order has been issued), including: basing the assessment on premium written in the state in the year before the year the assessment is authorized (rather than the year before the year the liquidation was ordered); amending the total of all assessments authorized for an insurer in a calendar year to 2% of the insurer's average annual premiums received in Wisconsin on the types of policies covered by the account during the three calendar years preceding the year the liquidation order was entered (rather than 2% of premiums for the year preceding the year the liquidation order was entered); amending a deferral of assessment provision; and repealing the exemption from assessment for a nondomestic insurer subject to another security fund that provides substantially the same protection.
- It makes many changes with respect to the Fund's continuation of coverage provisions relating to annuities, life insurance, and disability insurance.
- It extends provisions relating to applying for court injunctions and orders that prior law applied only to *nondomestic* insurers in liquidation to *all* insurers in liquidation.

**Miscellaneous Provisions.** Miscellaneous provisions of the Act include:

- Amending the definition of a "form" to include a group certificate, thus requiring a group certificate to be approved by the Commissioner.
- Repealing ch. 641, Stats., relating to employee welfare funds and plans. (The chapter is largely preempted by the federal Employee Retirement Income Security Act.)
- Creating a \$500 fee for each annual listing by the Commissioner of a surplus lines insurer.
- Providing that a committee appointed by the board of directors of a domestic stock or mutual insurance corporation may include one or more nonvoting members who are *not* directors.
- Specifying that an order of the Commissioner requiring remedial measures may include certain provisions.
- Adding to the list of items that the Commissioner may refuse to disclose under certain circumstances.
- Limiting investment in certain subsidiaries.

- Restricting extraordinary dividends paid to a domestic insurer or paid by a domestic insurer that is a wholly owned subsidiary of a domestic mutual insurer.

***Effective Date and Initial Applicability Provisions:*** The general effective date is April 30, 2004. However, provisions relating to suitability of annuity sales to senior consumers apply to recommendations about purchasing or exchanging an annuity that are made on or after November 1, 2004. Changes relating to minimum nonforfeiture amounts apply to annuity contracts issued on or after April 30, 2006; however, an insurer may elect to apply the Act's minimum nonforfeiture provisions to annuity contracts newly issued on any date after April 30, 2004. Provisions relating to membership on a town mutual board of directors apply beginning April 30, 2006; however, the Commissioner may grant an extension of up to one year to come into compliance.

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