

## **CHAPTER 26.1-34 ANNUITIES**

**26.1-34-01. Required annuity contract provisions relating to cessation of payment of considerations by contractholder.** In the case of annuity contracts issued after June 30, 1979, unless the company, by written notice filed with the commissioner, opted for an earlier operative date, no annuity contract, except as stated in section 26.1-34-10, may be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the contractholder upon cessation of payment of considerations under the contract:

1. Upon cessation of payment of considerations under an annuity contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in sections 26.1-34-03 through 26.1-34-06 and section 26.1-34-08.
2. If an annuity contract provides for a lump sum settlement at maturity, or at any other time, then upon surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in sections 26.1-34-03, 26.1-34-04, 26.1-34-06, and 26.1-34-08. The company shall reserve the right to defer the payment of the cash surrender benefit for a period of six months after demand for the benefit with surrender of the contract.
3. A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender, or death benefits that are guaranteed under the annuity contract, together with sufficient information to determine the amounts of the benefits.
4. A statement that any paid-up annuity, cash surrender, or death benefits that may be available under the annuity contract are not less than the minimum benefits required by any law of this state and an explanation of the manner in which the benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract, or any prior withdrawals from or partial surrenders of the contract.
5. A statement that when an annuity contract becomes a claim by reason of death, settlement:
  - a. If payable in one sum, must be made upon due proof of death, or not later than two months after receipt of the proof, and must include reasonable interest accrued from the date of death; or
  - b. If made under a settlement option other than subdivision a, must include reasonable interest accrued from date of death until such option is made according to the provisions of the contract.

As used in this subsection, the term "reasonable interest" means the same rate of interest as paid on death proceeds left on deposit with the insurer.

Notwithstanding the requirements of this section, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than twenty dollars monthly, the company may at its option terminate the contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment is relieved of any further obligation under the contract.

**26.1-34-01.1. Annuity policies and certificates - Right to return.** A person who purchases an annuity policy or certificate issued or delivered in this state may return the policy within twenty days of delivery to the purchaser. If a policy or certificate is returned, the purchaser is entitled to a refund of the premium, except in the sale of variable annuities where the purchaser is entitled to the value of the annuity plus all expense charges. Every annuity, policy, or certificate issued or delivered in this state must have a notice prominently printed on or attached to the first page of the policy or certificate stating in substance that the purchaser may return the policy or certificate within twenty days of its delivery and have the premium, or such other amount as specified above, refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason.

**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.
  - 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:
    - (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 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.
    - (2) The annual contract charge is the lesser of thirty dollars or ten percent of the gross annual considerations.
  - 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 2.

**26.1-34-03. Value of paid-up annuity benefit to be at least equal to minimum nonforfeiture amount.** Any paid-up annuity benefit available under an annuity contract must be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. The present value must be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

**26.1-34-04. Cash surrender benefit to be at least equal to value of paid-up annuity benefit.** For annuity contracts that provide cash surrender benefits, the cash surrender benefits available prior to maturity may not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract. The present value must be calculated on the basis of an interest rate not more than one percent higher than the interest rate specified in the contract for accumulating the net considerations to determine the maturity value, decreased by 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. A cash surrender benefit may not be less than the minimum nonforfeiture amount at that time. The death benefit under the contracts must at least equal the cash surrender benefit.

**26.1-34-05. Minimum value of paid-up annuity on cessation of payment of considerations - Cash surrender benefits not provided.** For annuity contracts that do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity may not be less than the present value of the portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity. The present value must be calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine the maturity value, and increased by any existing additional amounts credited by the company to the contract. For contracts that do not provide any death benefits prior to the commencement of any annuity payments, the present values must be calculated on the basis of the interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. The present value of a paid-up annuity benefit may not be less than the minimum nonforfeiture amount at that time.

**26.1-34-06. Definition of maturity date.** For the purpose of determining the benefits calculated under sections 26.1-34-04 and 26.1-34-05, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date is deemed to be the latest date for which election is permitted by the contract, but may not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

**26.1-34-07. Disclosure if annuity contract does not provide cash surrender or death benefits.** Any annuity contract that does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amounts prior to the

commencement of any annuity payments must include a statement in a prominent place in the contract that such benefits are not provided.

**26.1-34-08. Benefits on cessation of payment of considerations off the anniversary.** Any paid-up annuity, cash surrender, or death benefits available at any time, other than on the contract anniversary, under any annuity contract with fixed scheduled considerations, must be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

**26.1-34-09. Minimum nonforfeiture benefits for annuity contract providing both annuity and life insurance benefits - Excepted benefits.** For any annuity contract that provides within the same contract, by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits must equal the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding sections 26.1-34-03 through 26.1-34-06 and section 26.1-34-08, additional benefits payable in the event of total and permanent disability, as reversionary annuity or deferred reversionary annuity benefits, or as other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits, must be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits that may be required by sections 26.1-34-01 through 26.1-34-09. The inclusion of such additional benefits may not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender, or death benefits.

**26.1-34-10. Exemptions from annuity nonforfeiture provisions.** Sections 26.1-34-01 through 26.1-34-09 do not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership, limited liability company, or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the federal Internal Revenue Code, as amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract delivered outside this state.

**26.1-34-11. Variable annuities authorized - Application of variable life policy sections - Rulemaking authority.** Any domestic life insurance company, including any domestic fraternal benefit society which operates on a legal reserve basis, may establish one or more separate accounts and may allocate thereto amounts, including proceeds applied under optional modes of settlement or under dividend options, to provide for annuities, and benefits incidental thereto, payable in fixed or variable amounts or both, subject to the requirements of subsections 1 through 7 of section 26.1-33-13. No company may deliver or issue for delivery in this state variable contracts unless it is licensed or organized to do an annuity business in this state. Except for the requirement that an individual variable life insurance contract contain certain provisions, sections 26.1-33-14, 26.1-33-15, and 26.1-33-16 apply to variable annuities authorized by this section. The commissioner may adopt reasonable rules to implement this section.