

# WEST VIRGINIA CODE: §33-13-30A

## **§33-13-30a. Standard nonforfeiture law for individual deferred annuities.**

(a) This section shall be known as the "Standard Nonforfeiture Law for Individual Deferred Annuities."

(b) This section may 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 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 Internal Revenue Code, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced or reversionary annuity, nor to any contract which shall be delivered outside this state through an agent or other representative of the company issuing the contract.

(c) In the case of contracts issued on or after the operative date of this section, no contract of annuity, except as stated in subsection (b) of this section, shall 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 contract holder, upon cessation of payment of considerations under the contract:

(1) That upon cessation of payment of considerations under a contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of the value as is specified in subsections (e), (f), (g), (h) and (j) of this section;

(2) If a contract provides for a lump sum settlement at maturity or at any other time that, 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 the amount as is specified in subsections (e), (f), (h) and (j) of this section. The company shall reserve the right to defer the payment of the cash surrender benefit for a period of six months after demand therefor 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 contract, together with sufficient information to determine the amounts of the benefits; and

(4) A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered 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.

Notwithstanding the requirements of this subsection, 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 the period would be less than \$20 monthly, the company may at its option terminate the contract by payment in cash of the then present value of the 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 the payment shall be relieved of any further obligation under the contract.

(d)(1) The minimum values as specified in subsections (e), (f), (g), (h) and (j) of this section of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this subdivision:

(A) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to the time at a rate of interest of three percent per annum of percentages of the net considerations (as hereinafter defined) paid prior to the time, decreased by the sum of:

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

(ii) 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 shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less than an annual contract charge of \$30 and less a collection charge of \$1.25 per consideration credited to the contract during that contract year. The percentages of net considerations shall 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 provisions of the preceding sentence, the percentage shall 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;

Notwithstanding any other provision of this section, any contract issued on or after July 1, 2003, and before July 1, 2006, the interest rate at which net considerations, prior withdrawals and partial surrenders shall be accumulated for the purpose of determining nonforfeiture amounts may not be less than one and one-half percent per annum;

(B) With respect to contracts providing for fixed scheduled considerations, minimum

nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:

(i) The portion of the net consideration for the first contract year to be accumulated shall be 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;

(ii) The annual contract charge shall be the lesser of: (1) \$30; or (2) ten percent of the gross annual consideration;

(C) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to ninety percent and the net consideration shall be the gross consideration less a contract charge of \$75;

(D) This subdivision applies to contracts issued before July 1, 2004, and may be applied by a company on a contract-by-contract basis to contracts issued on or after July 1, 2004, and before July 1, 2006;

(2) The minimum values as specified in subsections (e), (f), (g), (h) and (j) of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this subdivision;

(A)(i) The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at rates of interest as indicated in paragraph (B) of this subdivision of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of subparagraphs (I) through (IV) below:

(I) Any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as indicated in paragraph (B) of this subdivision;

(II) An annual contract charge of \$50, accumulated at rates of interest as indicated in paragraph (B) of this subdivision;

(III) Any premium tax paid by the company for the contract, accumulated at rates of interest as indicated in subparagraph (ii), paragraph (B) of this subdivision; and

(IV) The amount of any indebtedness to the company on the contract, including interest due and accrued;

(ii) The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount equal to eighty-seven and one-half percent of the

gross considerations credited to the contract during that contract year;

(B) 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:

(i) The five-year constant maturity treasury 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 months prior to the contract issue date or redetermination date under subparagraph (iv) of this paragraph;

(ii) Reduced by one hundred twenty-five basis points;

(iii) Where the resulting interest rate is not less than one percent; and

(iv) 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;

(C) During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in subparagraph (ii), paragraph (B) of this subdivision 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, of the additional reduction may not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. Lacking a determination that is acceptable to the commissioner, the commissioner may disallow or limit the additional reduction;

(D) The commissioner may adopt rules to implement the provisions of this subsection 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 their adjustments are justified;

(E) This subdivision shall apply to contracts outstanding on July 1, 2004, and may be applied by a company on a contract-by-contract basis to any contract issued after July 1, 2004, and before July 1, 2006.

(e) Any paid-up annuity benefit available under a contract shall 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 shall 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.

(f) For contracts which 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 consideration 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 being 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. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under the contracts shall be at least equal to the cash surrender benefit.

(g) For contracts which 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 that 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 being 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 which do not provide any death benefits prior to the commencement of any annuity payments, the present values shall be calculated on a basis of the interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

(h) For the purpose of determining the benefits calculated under subsections (f) and (g) of this section, 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 considered to be the latest date for which election is permitted by the contract, but is not considered 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.

(i) Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that the benefits are not provided.

(j) Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall 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.

(k) For any contract which 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 shall be equal to 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 the provisions of subsections (e), (f), (g), (h) and (j) of this section, additional benefits payable: (1) In the event of total and permanent disability; (2) as reversionary annuity or deferred reversionary annuity benefits; or (3) as other policy benefits additional to life insurance, endowment and annuity benefits and considerations for all the additional benefits shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section. The inclusion of the additional benefits may not be required in any paid-up benefits unless the additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

(l) After the effective date of this section, any company may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before the second anniversary of the effective date of this section. After the filing of the notice, then upon the specified date which shall be the operative date of this section for the company, this section shall become operative with respect to annuity contracts thereafter issued by the company. If a company makes no election, the operative date of this section for the company is the second anniversary of the effective date of this section.

(m) (1) During the period from July 1, 2004, through July 1, 2006, an insurer may elect on a contract-by-contract basis to apply the provisions of either subdivision (1) or (2), subsection (d) of this section to any annuity contract issued during that period of time;

(2) The provisions of subdivision (1), subsection (d) of this section expires July 1, 2006.