WEST VIRGINIA CODE CHAPTER 33 ARTICLE 13

WV Legislature

§33-13-1. Scope of article.

This article applies to life insurance (including annuities), other than reinsurance and group life insurance (including group annuities); except that sections sixteen (contestability as to excluded or restricted coverage), twenty-five (limitation of liability), twenty-six (incontestability after reinstatement), twenty-nine (dual pay policies), thirty (standard nonforfeiture law) and sections thirty-one to forty-six, inclusive (which specifically relate only to industrial life insurance), shall be the only sections of this article which apply to industrial life insurance.

WV Legislature

§33-13-2. Standard provisions required.

(a) No policy of life insurance other than industrial, group, and pure endowments with or without return of premiums or of premiums and interest, shall be delivered or issued for delivery in West Virginia unless it contains in substance all of the provisions required by sections three to fifteen, inclusive, of this article. This section shall not apply to annuity contracts nor to any provision of a life insurance policy or contract supplemental thereto relating to disability benefits or to additional benefits in the event of death by accident or accidental means.

(b) Any of such provisions or portions thereof not applicable to single premium or term policies shall to that extent not be incorporated therein.

WV Legislature

§33-13-3. Grace period.

There shall be a provision that a grace period of thirty-one days shall be allowed within which the payment of any premium after the first may be made, during which period of grace the policy shall continue in full force; but if a claim arises under the policy during such period of grace before the overdue premium is paid the amount of such premium may be deducted from the policy proceeds.

WV Legislature

§33-13-4. Incontestability.

There shall be a provision that the policy (exclusive of provisions relating to disability benefits or to additional benefits in the event of death by accident or accidental means) shall be incontestable, except for nonpayment of premiums, after it has been in force during the lifetime of the insured for a period of two years from its date of issue.

WV Legislature

§33-13-5. Entire contract.

There shall be a provision that the policy, or the policy and the application therefor if a copy of such application is endorsed upon or attached to the policy when issued, shall constitute the entire contract between the parties, and that all statements contained in the application shall, in the absence of fraud, be deemed representations and not warranties.

WV Legislature

§33-13-6. Misstatement of age.

There shall be a provision that if the age of the insured or of any other person whose age is considered in determining the premium has been misstated, any amount payable or benefit accruing under the policy shall be such as the premium would have purchased at the correct age or ages.

WV Legislature

§33-13-7. Dividends.

There shall be a provision in participating policies that, beginning not later than the end of the third policy year, the insurer shall annually ascertain and apportion the divisible surplus, if any, that will accrue on the policy anniversary or other dividend date specified in the policy provided the policy is in force and all premiums to that date are paid. Except as hereinafter provided, any dividend so apportioned shall at the option of the party entitled to elect such option be either (a) payable in cash or (b) applied to any one of such other dividend options as may be provided by the policy. If any such other dividend options are provided, the policy shall further state which option shall be automatically effective if such party shall not have elected some other option. If the policy specifies a period within which such other dividend option may be elected, such period shall be not less than thirty days following the date on which such dividend is due and payable. The annually apportioned dividend shall be deemed to be payable in cash within the meaning of (a) above even though the policy provides that payment of such dividend is to be deferred for a specified period, provided such period does not exceed six years from the date of apportionment and that interest will be added to such dividend at a specified rate. If a participating policy provides that the benefit under any paid-up nonforfeiture provision is to be participating, it may provide that any divisible surplus apportioned while the insurance is in force under such nonforfeiture provision shall be applied in the manner set forth in the policy.

WV Legislature

§33-13-8. Loans on policies.

(a) There shall be a provision that after the policy has a cash surrender value and while no premium is in default beyond the grace period for payment, the insurer will advance, on proper assignment of pledge of the policy and on the sole security thereof, at a specified rate of interest not exceeding eight percent per annum, or seven and four-tenths percent per annum if payable annually in advance, an amount equal to or, at the option of the party entitled thereto, less than the loan value of the policy. The loan value of the policy shall be at least equal to the cash surrender value at the end of the then current policy year: Provided, That the insurer may deduct, either from such loan value or from the proceeds of the loan, any existing indebtedness not already deducted in determining such cash surrender value including any interest then accrued but not due, any unpaid balance of premium for the current policy year, and interest on the loan to the end of the current policy year. The policy may also provide that if interest on any indebtedness is not paid when due it shall then be added to the existing indebtedness and shall bear interest at the same rate, and that if and when the total indebtedness on the policy, including interest due or accrued, equals or exceeds the amount of the loan value thereof, then the policy shall terminate and become void. The policy shall reserve to the insurer the right to defer the granting of a loan, other than for the payment of any premium to the insurer, for six months after application therefor. The policy, at the insurer's option, may provide for automatic premium loan, subject to an election of the party entitled to elect. In any policy issued by conversion of a term insurance policy in force prior to the effective date of this act, the policyholder shall be entitled to a loan at an interest rate in effect on the date of original purchase.

(b) This section shall not apply to term policies nor to term insurance benefits provided by rider or supplemented policy provision.

(c) This section shall not impair the terms and conditions of any policy of life insurance in force prior to the effective date thereof.

(d) As a condition for approval of a policy loan interest rate in excess of six percent per annum, but not in excess of the rate provided in this section, the Insurance Commissioner shall require the insurer to furnish such assurances as he deems necessary that the holders of such policies will benefit through higher dividends or lower premiums or both.

WV Legislature

§33-13-8a. Maximum rate of interest on policy loans.

(a) For purposes of this section the "published monthly average" means:

(1) Moody's corporate bond yield average - monthly average corporates as published by Moody's Investors Service, Inc., or any successor thereto; or

(2) In the event that Moody's corporate bond yield average - monthly average corporates is no longer published, a substantially similar average, established by regulation issued by the commissioner.

(b) Policies issued on or after June 1, 1983, shall provide for maximum policy loan interest rates as follows:

(1) A provision permitting a maximum interest rate of not more than eight percent per annum; or

(2) A provision permitting an adjustable maximum interest rate established from time to time by the life insurer as permitted by law.

(c) The rate of interest charged on a policy loan made under subdivision (2), subsection (b) of this section shall not exceed the higher of the following:

(1) The published monthly average for the calendar month ending two months before the date on which the rate is determined; or

(2) The rate used to compute the cash surrender values under the policy during the applicable period plus one percent per annum.

(d) If the maximum rate of interest is determined pursuant to subdivision (2), subsection (b) of this section, the policy shall contain a provision setting forth the frequency at which the rate is to be determined for that policy.

(e) The maximum rate for each policy shall be determined at regular intervals at least once every twelve months, but not more frequently than once in any three-month period. At the intervals specified in the policy:

(1) The rate being charged may be increased whenever such increase as determined under subsection (c) of this section would increase that rate by one-half percent or more per annum; and

(2) The rate being charged shall be reduced whenever such reduction as determined under subsection (c) of this section would decrease that rate by one-half percent or more per annum.

(f) The life insurer shall:

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(1) Notify the policyholder at the time a cash loan is made of the initial rate of interest on the loan;

(2) Notify the policyholder with respect to premium loans of the initial rate of interest on the loan within forty-five days after making the loan. Notice need not be given to the policyholder when a further premium loan is added, except as provided in subdivision (3) below;

(3) Send to policyholder with loans reasonable advance notice of any increase in the rate; and

(4) Include in the notices required above the substance of the pertinent provisions of subsections (b) and (d) of this section.

(g) No policy shall terminate in a policy year as the sole result of a change in the interest rate during that policy year, and the life insurer shall maintain coverage during that policy year until the time at which it would otherwise have terminated if there had been no change during that policy year.

(h) The substance of the pertinent provisions of subsections (b) and (d) shall be set forth in the policies to which they apply.

(i) For purposes of this section:

(1) The rate of interest on policy loans permitted under this section includes the interest rate charged on reinstatement of policy loans for the period during and after any lapse of a policy;

(2) The term "policy loan" includes any premium loan made under a policy to pay one or more premiums that were not paid to the life insurer as they fell due;

(3) The term "policyholder" includes the owner of the policy or the person designated to pay premiums as shown on the records of the life insurer; and

(4) The term "policy" includes certificates issued by a fraternal benefit society and annuity contracts which provide for policy loans.

(j) No other provision of law shall apply to policy loan interest rates unless made specifically applicable to such rates.

(k) The provisions of this section shall not apply to any insurance contract issued before June 1, 1983, unless the policyholder agrees in writing to the applicability of such provisions.

WV Legislature

§33-13-9. Nonforfeiture benefits.

There shall be provisions for nonforfeiture benefits and cash surrender values as required by section thirty of this article.

WV Legislature

§33-13-10. Table of loan values and options.

There shall be a table showing in figures the loan value and the options available under the policy each year upon default in premium payments, during the first twenty years or during the term of the policy, whichever is shorter.

WV Legislature

§33-13-11. Table of installments.

In cash the policy provides that the proceeds may be payable in installments which are determinable at issue of the policy, there shall be a table showing the amounts of the guaranteed installments.

WV Legislature

§33-13-12. Reinstatements.

There shall be a provision that unless the policy has been surrendered for its cash surrender value or unless the paid-up term insurance, if any, has expired, the policy will be reinstated at any time within three years from the date of premium default upon written application therefor, the production of evidence of insurability satisfactory to the insurer, the payment of all premiums in arrears, and the payment or reinstatement of any other indebtedness to the insurer upon the policy, all with interest at a rate not exceeding six percent per annum compounded annually. However, with respect to policies issued on or after June 1, 1983, the rate of interest on the payment or reinstatement of any other indebtedness to the insurer upon the policy shall be as provided in section eight-a of this article.

WV Legislature

§33-13-13. Payment of premiums.

There shall be a provision that all premiums after the first shall be payable in advance.

WV Legislature

§33-13-14. Payment of claims.

There shall be a provision that when a policy shall become a claim by the death of the insured settlement shall be made upon receipt of due proof of death and, at the insurer's option, surrender of the policy and/or proof of the interest of the claimant. If an insurer shall specify a particular period prior to the expiration of which settlement shall be made, such period shall not exceed two months from the receipt of such proofs.

WV Legislature

§33-13-14a. Payment of interest on death claims.

(a) On and after the effective date of this section, any life insurance company authorized to do business in this state shall pay interest, in accordance with subsection (b) of this section and subject to subsection (c) of this section, on any proceeds that become due upon the death of the insured pursuant to the terms of a life insurance policy other than a credit life insurance policy and that are not paid in accordance with the terms of the contract, upon the date the proceeds become due. For purposes of this section, the proceeds of a life insurance policy become due on the date of death of the insured.

(b) Interest payable pursuant to subsection (a) of this section shall be computed from the date of death at the current rate of interest on proceeds left on deposit with the insurer.

(c) Subsection (a) of this section does not require, and shall not be construed as requiring, the payment of interest unless the insured was a resident of this state on the date of his or her death.

WV Legislature

§33-13-15. Title on policy.

There shall be a title on the face of the policy, briefly describing the same.

WV Legislature

§33-13-16. Excluded or restricted coverage.

A clause in any policy of life insurance providing that such policy shall be incontestable after a specified period shall preclude only a contest of the validity of the policy, and shall not preclude the assertion at any time of defenses based upon provisions in the policy which exclude or restrict coverage, whether or not such restrictions or exclusions are excepted in such clause.

WV Legislature

§33-13-17. Annuity contracts -- Standard provisions.

(a) No annuity or pure endowment contract, other than reversionary annuities, survivorship annuities or group annuities and except as stated herein, shall be delivered or issued for delivery in this state unless it contains in substance each of the provisions specified in sections eighteen to twenty-three, inclusive, of this article. Any of such provisions not applicable to single premium annuities or single premium pure endowment contracts shall not, to that extent, be incorporated therein.

(b) This section shall not apply to contracts for deferred annuities included in, or upon the lives of beneficiaries under, life insurance policies.

WV Legislature

§33-13-18. Same -- Grace period.

In an annuity or pure endowment contract, other than a reversionary, survivorship or group annuity, there shall be a provision that there shall be a period of grace of not less than thirty-one days, within which any stipulated payment to the insurer falling due after the first may be made, subject at the option of the insurer to an interest charge thereon at a rate to be specified in the contract but not exceeding six percent per annum for the number of days of grace elapsing before such payment, during which period of grace the contract shall continue in full force; but in case a claim arises under the contract on account of death prior to expiration of the period of grace before the overdue payment to the insurer or the deferred payments of the current contract year, if any, are made, the amount of such payments, with interest on any overdue payments, may be deducted from any amount payable under the contract in settlement.

WV Legislature

§33-13-19. Same -- Incontestability.

If any statements, other than those relating to age, sex and identity are required as a condition to issuing an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, and subject to section twenty-one of this article, there shall be a provision that the contract shall be incontestable after it has been in force during the lifetime of the person or of each of the persons as to whom such statements are required, for a period of two years from its date of issue, except for nonpayment of stipulated payments to the insurer; and at the option of the insurer such contract may also except any provisions relative to benefits in the event of disability and any provisions which grant insurance specifically against death by accident or accidental means.

WV Legislature

§33-13-20. Same -- Entire contract.

In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that the contract shall constitute the entire contract between the parties or, if a copy of the application is endorsed upon or attached to the contract when issued, a provision that the contract and the application therefor shall constitute the entire contract between the parties.

WV Legislature

§33-13-21. Same -- Misstatement of age or sex.

In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that if the age or sex of the person or persons upon whose life or lives the contract is made, or of any of them, has been misstated, the amount payable or benefits accruing under the contract shall be such as the stipulated payment or payments to the insurer would have purchased according to the correct age or sex; and that if the insurer shall make or has made any overpayment or overpayments on account of any such misstatement, the amount thereof with interest at the rate to be specified in the contract but not exceeding six percent per annum, may be charged against the current or next succeeding payment or payments to be made by the insurer under the contract.

WV Legislature

§33-13-22. Same -- Dividends.

If an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, is participating, there shall be a provision that the insurer shall annually ascertain and apportion any divisible surplus accruing on the contract.

WV Legislature

§33-13-23. Same -- Reinstatement.

In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that the contract may be reinstated at any time within one year from the default in making stipulated payments to the insurer, unless the cash surrender value has been paid, but all overdue stipulated payments and any indebtedness to the insurer on the contract shall be paid or reinstated with interest thereon at a rate to be specified in the contract but not exceeding six percent per annum payable annually, and in cases where applicable the insurer may also include a requirement of evidence of insurability satisfactory to the insurer.

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§33-13-24. Standard provisions of reversionary annuities.

(a) Except as stated herein, no contract for a reversionary annuity shall be delivered or issued for delivery in this state unless it contains in substance each of the following provisions:

(1) Any such reversionary annuity contract shall contain the provisions specified in sections eighteen, nineteen, twenty, twenty-one and twenty-two of this article, except that under said section eighteen the insurer may at its option provide for an equitable reduction of the amount of the annuity payments in settlement of an overdue or deferred payment in lieu of providing for deduction of such payments from an amount payable upon settlement under the contract.

(2) In such reversionary annuity contracts there shall be a provision that the contract may be reinstated at any time within three years from the date of default in making stipulated payments to the insurer, upon production of evidence of insurability satisfactory to the insurer, and upon condition that all overdue payments and any indebtedness to the insurer on account of the contract be paid, or, within the limits permitted by the then cash values of the contract, reinstated, with interest as to both payments and indebtedness at a rate to be specified in the contract but not exceeding six percent per annum compounded annually.

(b) This section shall not apply to group annuities or to annuities included in life insurance policies, and any of such provisions not applicable to single premium annuities shall not to that extent be incorporated therein.

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§33-13-25. Limitation of liability.

(a) No policy of life insurance shall be delivered or issued for delivery in this state if it contains a provision which excludes or restricts liability for death caused in a certain specified manner or occurring while the insured has a specified status, except that a policy may contain provisions excluding or restricting coverage as specified therein in the event of death under any one or more of the following circumstances:

(1) Death as a result, directly or indirectly, of war, declared or undeclared, or of action by military forces, or of any act or hazard of such war or action, or of service in the military, naval, or air forces or in civilian forces auxiliary thereto, or from any cause while a member of such military, naval, or air forces of any country at war, declared or undeclared, or of any country engaged in such military action;

(2) Death as a result of aviation;

(3) Death as a result of a specified hazardous occupation or occupations;

(4) Death while the insured is outside continental United States and Canada;

(5) Death within two years from the date of issue of the policy as a result of suicide, while sane or insane.

(b) A policy which contains any exclusion or restriction pursuant to subsection (a) of this section shall also provide that in the event of death under the circumstances to which any such exclusion or restriction is applicable, the insurer will pay an amount not less than a reserve determined according to the commissioners' reserve valuation method upon the basis of the mortality table and interest rate specified in the policy for the calculation of nonforfeiture benefits (or if the policy provides for no such benefits, computed according to a mortality table and interest rate determined by the insurer and specified in the policy) with adjustment for indebtedness or dividend credit.

(c) This section shall not apply to group life insurance, accident and sickness insurance, reinsurance, or annuities, or to any provision in a life insurance policy relating to disability benefits or to additional benefits in the event of death by accident or accidental means.

(d) Nothing contained in this section shall prohibit any provision which in the opinion of the commissioner is more favorable to the policyholder than a provision permitted by this section.

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§33-13-26. Contestability after reinstatement.

The reinstatement of any policy of life insurance or annuity contract hereafter delivered or issued for delivery in this state may be contested on account of fraud or misrepresentation of facts material to the reinstatement only for the same period following reinstatement and with the same conditions and exceptions as the policy provides with respect to contestability after original issuance.

WV Legislature

§33-13-27. Power of insurer to hold proceeds of policy under agreement.

Any life insurer shall have the power to hold under agreement the proceeds of any policy issued by it, upon such terms and restrictions as to revocation by the policyholder and control by beneficiaries, and with such exemptions from the claims of creditors of beneficiaries other than the policyholder as set forth in the policy or as agreed to in writing by the insurer and the policyholder. Upon maturity of a policy, in the event the policyholder has made no such agreement, the insurer shall have the power to hold the proceeds of the policy under an agreement with the beneficiaries. The insurer shall not be required to segregate the funds so held but may hold them as part of its general assets.

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§33-13-28. Indebtedness deducted from proceeds.

In determining the amount due under any life insurance policy heretofore or hereafter issued, deduction may be made of:

(a) Any unpaid premiums or installments thereof for the current policy year due under the terms of the policy, and of

(b) The amount of principal and accrued interest of any policy loan or other indebtedness against the policy then remaining unpaid.

WV Legislature

§33-13-29. Dual or multiple pay policies prohibited.

No life insurance policy shall be delivered or issued for delivery in this state if it provides that on the death of anyone not insured thereunder, the owner or beneficiary of the policy shall receive the payment or granting of anything of value.

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§33-13-30. Standard nonforfeiture law for life insurance.

(a) In the case of policies issued on or after the original operative date of this subsection as set forth in subsection (l) of this section, no policy of life insurance, except as stated in subsection (k) of this section, shall be delivered or issued for delivery in this state unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the defaulting or surrendering policyholder as are the minimum requirements hereinafter specified and are essentially in compliance with subsection subsection (j) of this section:

(1) That, in the event of default in any premium payment, the insurer will grant, upon proper request not later than sixty days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such amount as may be hereinafter specified. In lieu of such stipulated paid-up nonforfeiture benefit, the insurer may substitute, upon proper request not later than sixty days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits;

(2) That, upon surrender of the policy within sixty days after the due date of any premium payment in default after premiums have been paid for at least three full years in the case of ordinary insurance or five full years in the case of industrial insurance, the insurer will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be hereinafter specified;

(3) That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty days after the due date of the premium in default;

(4) That, if the policy shall have become paid up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance the insurer will pay, upon surrender of the policy within thirty days after any policy anniversary, a cash surrender value of such amount as may be hereinafter specified;

(5) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. In the case of all other policies, a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefits, if any, available under the policy on each policy anniversary either during the first twenty policy years or during the term of

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the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the insurer on the policy; and

(6) A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein a statement that such method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefits available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

Any of the foregoing provisions or portions thereof, not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

The insurer shall reserve the right to defer the payment of any cash surrender value for a period of six months after demand therefor with surrender of the policy.

(b) Computation of Cash Surrender Value. --

(1) Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required by subsection (a) of this section, shall be an amount not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits which would have been provided by the policy, including any existing paid-up additions, if there had been no default, over the sum of:

(A) The then present value of the adjusted premiums as defined in subsections (d), (e), (f) and (g) of this section, corresponding to premiums which would have fallen due on and after such anniversary; and

(B) The amount of any indebtedness to the insurer on the policy: Provided, That for any policy issued on or after the operative date of subsection (g) of this section as defined therein, which provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value referred to in subdivision (1) of this subsection shall be an amount not less than the sum of the cash surrender value for an otherwise similar policy issued at the same age without such rider or supplemental policy provision and the cash surrender value as defined in subdivision (1) of this subsection for a policy which provides only the benefits otherwise provided by such rider or supplemental policy provision: Provided,

however, That for any family policy issued on or after the operative date of subsection (g) of this section, which defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse's age seventy-one, the cash surrender value referred to in the first paragraph of this subsection shall be an amount not less than the sum of the cash surrender value as defined in such paragraph for an otherwise similar policy issued at the same age without such term insurance on the life of the spouse and the cash surrender value as defined in such paragraph for a policy which provides only the benefits otherwise provided by such term insurance on the life of the spouse.

(2) Any cash surrender value available within thirty days after any policy anniversary under any policy paid up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, whether or not required by subsection one, shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided by the policy, including any existing paid-up additions decreased by any indebtedness to the insurer on the policy.

(c) Any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by this section in the absence of the condition that premiums shall have been paid for at least a specific period.

(d) Calculation of Adjusted Premiums. --

(1) This subsection does not apply to policies issued on or after the operative date of subsection (g) of this section. Except as provided in subdivision (4) of this subsection, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts stated in the policy as extra premiums to cover impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of:

(A) The then present value of the future guaranteed benefits provided by the policy;

(B) Two percent of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy;

(C) Forty percent of the adjusted premium for the first policy year;

(D) Twenty-five percent of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less.

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(2) In applying the percentages specified in, no adjusted premium shall be deemed to exceed four percent of the amount of insurance or uniform amount equivalent thereto. The date of issue of a policy for the purpose of this subsection shall be the date as of which the rated age of the insured is determined.

(3) In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount for the purpose of this subsection shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy.

(4) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to:

(A) The adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by;

(B) The adjusted premiums for such term insurance; and

(C) Paragraphs (A) and (B) of this subdivision being calculated separately and as specified in subdivisions (1), (2) and (3) of this subsection except that, for the purposes of paragraphs (B), (C) and (D), subdivision (1) of this subsection, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in paragraph (B), subdivision (1) of this subsection shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in paragraph (A), subdivision (4) of this subsection.

(5) Except as otherwise provided in subsections (e) and (f) of this section, all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the Commissioners 1941 Standard Ordinary Mortality Table: Provided, That for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured, and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half percent per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits: Provided, however, That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than one hundred and thirty percent of the rates of mortality according to such applicable table: Provided further, That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

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(e) This subsection does not apply to ordinary policies issued on or after the operative date of subsection (g) of this section. In the case of ordinary policies issued on or after the operative date of this subsection, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that such rate of interest shall not exceed three and one-half percent per annum except that a rate of interest not exceeding four percent per annum may be used for policies issued on or after June 3, 1974 and prior to April 6, 1977, and a rate of interest not exceeding five and one-half percent per annum may be used for policies issued on or after April 6, 1977, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half percent per annum may be used: Provided, That for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured: Provided, however, That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1958 Extended Term Insurance Table: Provided further, That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

After June 3, 1959, any company may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before January 1, 1966. After the filing of such notice, then upon such specified date (which shall be the operative date of this subsection for such company), this subsection shall become operative with respect to the ordinary policies thereafter issued by such company. If a company makes no such election, the operative date of this subsection for such company shall be January 1, 1966.

(f) This subsection does not apply to industrial policies issued on or after the operative date of subsection (g) of this section. In the case of industrial policies issued on or after the operative date of this subsection, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that such rate of interest shall not exceed three and one-half percent per annum except that a rate of interest not exceeding four percent per annum may be used for policies issued on or after June 3, 1974 and prior to April 6, 1977, and a rate of interest not exceeding five and one-half percent per annum may be used for policies issued on or after April 6, 1977, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half percent per annum may be used: Provided, That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1961 Industrial Extended Term Insurance Table: Provided, however, That for insurance issued on

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a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

After May 31, 1965, any company may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before January 1, 1968. After the filing of such notice, then upon such specified date (which shall be the operative date of this subsection for such company), this subsection shall become operative with respect to the industrial policies thereafter issued by such company. If a company makes no such election, the operative date of this subsection for such company shall be January 1, 1968.

(g)(1) This subsection applies to all policies issued on or after the operative date of this subsection. Except as provided in subdivision (7) of this subsection, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums shall be equal to the sum of;

(A) The then present value of the future guaranteed benefits provided for by the policy;

(B) One percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years; and

(C) One hundred twenty-five percent of the nonforfeiture net level premium as hereinafter defined: Provided, That in applying this percentage no nonforfeiture net level premium shall be deemed to exceed four percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years. The date of issue of a policy for the purpose of this subsection shall be the date as of which the rated age of the insured is determined;

(2) The nonforfeiture net level premium shall be equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided by the policy divided by the present value, at the date of issue of the policy, of an annuity of one per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due;

(3) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any such change in the benefits or premiums the future adjusted premiums, nonforfeiture net level

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premiums and present values shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change;

(4) Except as otherwise provided in subdivision (7) of this subsection, the recalculated future adjusted premiums for any such policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall be equal to the excess of:

(A) The sum of:

(i) The then present value of the then future guaranteed benefits provided by the policy; and

(ii) The additional expense allowance, if any, over

(B) The then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy;

(5) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of:

(A) One percent of the excess, if positive, of the average amount of insurance at the beginning of each of the first ten policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first ten policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy; and

(B) One hundred twenty-five percent of the increase, if positive, in the nonforfeiture net level premium;

(6) The recalculated nonforfeiture net level premium shall be equal to the result obtained by dividing paragraph (A) of this subdivision by paragraph (B) of this subdivision where:

(A) Equals the sum of

(i) The nonforfeiture net level premium applicable prior to the change times the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred; and

(ii) The present value of the increase in future guaranteed benefits provided for by the policy;

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(B) Equals the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.

(7) Notwithstanding any other provisions of this subsection to the contrary, in the case of a policy issued on a substandard basis which provides reduced graded amounts of insurance so that, in each policy year, such policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for such substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis;

(8) All adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of (i) the Commissioners 1980 Standard Ordinary Mortality Table or (ii) at the election of the company for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with ten-year select mortality factors; shall for all policies of industrial insurance be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table; and shall for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this subsection for policies issued in that calendar year: Provided, That:

(A) At the option of the company, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this subsection, for policies issued in the immediately preceding calendar year;

(B) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by subsection (a) of this section, shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any;

(C) A company may calculate the amount of any guaranteed paid-up nonforfeiture benefit including any paid-up additions under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values;

(D) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1980 Extended Term Insurance Table for policies of ordinary insurance and not more than the Commissioners 1961 Industrial Extended Term Insurance Table for policies of industrial insurance;

(E) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the aforementioned tables;

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(F) For policies issued prior to the operative date of the valuation manual, any Commissioners Standard ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by rule promulgated by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1980 Standard Ordinary Mortality Table with or without ten-year select mortality factors or for the Commissioners 1980 Extended Term Insurance Table. For policies issued on or after the operative date of the valuation manual the valuation manual shall provide the Commissioner's Standard mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the Commissioner's 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioners 1980 Extended Term Insurance Table. If the commissioner approves by rule any Commissioners Standard ordinary mortality table adopted by the National Association of Insurance Commissioners for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual. For purposes of this paragraph, paragraph (G) of this subdivision and subdivision (9) of this subsection, the operative date of the valuation manual is that date determined in accordance with subsection (n), section nine, article seven of this chapter;

(G) For policies issued prior to the operative date of the valuation manual, any industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by rule promulgated by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1961 Standard Industrial Mortality Table or the Commissioners 1961 Industrial Extended Term Insurance Table. For policies issued on or after the operative date of the valuation manual, the valuation manual shall provide the Commissioners Standard Mortality Table for use in determining the minimum nonforfeiture standard that may be substituted for the Commissioners 1961 Standard Industrial Mortality Table or the Commissioners 1961 Industrial Extended Term Insurance Table: Provided, That if the Legislature approves a rule providing that a Commissioners Standard Industrial Mortality Table adopted by the National Association of Insurance Commissioners shall be used in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual, then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual;

(9) The nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred and twenty-five percent of the calendar year statutory valuation interest rate for such policy as defined in the Standard Valuation Law, rounded to the nearer one quarter of one percent: Provided, That, that the nonforfeiture interest rate may not be less than four percent. For policies issued on and after the operative date of the valuation manual the nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be provided by the valuation manual;

(10) Notwithstanding any other provision in this code to the contrary, any refiling of

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nonforfeiture values or their methods of computation for any previously approved policy form which involves only a change in the interest rate or mortality table used to compute nonforfeiture values shall not require refiling of any other provisions of that policy form; and

(11) After May 30, 1983, 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 January 1, 1989, which shall be the operative date of this subsection for such company. If a company makes no such election, the operative date of this section for such company shall be January 1, 1989.

(h) In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance which is of such a nature that minimum values cannot be determined by the methods described in subsection (a), (b), (c), (d),(e), (f) or (g) of this section, then:

(1) The commissioner must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by subsection (a), (b), (c), (d),(e), (f) or (g) of this section;

(2) The commissioner must be satisfied that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds; and

(3) The cash surrender values and paid-up nonforfeiture benefits provided by such plan must not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this Standard Nonforfeiture Law for Life Insurance, as determined by rules promulgated by the commissioner.

(i) Any cash surrender value and any paid-up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections (b), (c), (d),(e), (f) and (g) of this section may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the amounts used to provide such additions. Notwithstanding the provisions of subsection (2), additional benefits payable:

(1) In the event of death or dismemberment by accident or accidental means;

(2) In the event of total and permanent disability;

(3) As reversionary annuity or deferred reversionary annuity benefits;

(4) As term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this subsection would not apply;

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(5) As term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid up by reason of the death of a parent of the child; and

(6) As other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(j)(1) This subsection, in addition to all other applicable subsections of this law, shall apply to all policies issued on or after January 1, 1985. Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary shall be in an amount which does not differ by more than two tenths of one percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years, from the sum of;

(A) The greater of zero and the basic cash value hereinafter specified; and

(B) The present value of any existing paid-up additions less the amount of any indebtedness to the company under the policy.

(2) The basic cash value shall be equal to the present value, on such anniversary, of the future guaranteed benefits which would have been provided by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the company, if there had been no default, less the then present value of the nonforfeiture factors, as hereinafter defined, corresponding to premiums which would have fallen due on and after such anniversary: Provided, That the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in subsection (b) or (d) of this section, whichever is applicable, shall be the same as are the effect specified in subsection (b) or (d) of this section, whichever is applicable, on the cash surrender values defined in that subsection.

(3) The nonforfeiture factor for each policy year shall be an amount equal to a percentage of the adjusted premium for the policy year, as defined in subsection (d) or (g), whichever is applicable. Except as is required by the next succeeding sentence of this paragraph, such percentage:

(A) Must be the same percentage for each policy year between the second policy anniversary and the later of:

(i) The fifth policy anniversary; and

(ii) The first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any

indebtedness, of at least two tenths of one percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years; and

(B) Must be such that no percentage after the later of the two policy anniversaries specified in subparagraph (i), paragraph (A) of this subdivision may apply to fewer than five consecutive policy years: Provided, That no basic cash value may be less than the value which would be obtained if the adjusted premiums for the policy, as defined in subsection (g) of this section, were substituted for the nonforfeiture factors in the calculation of the basic cash value.

(4) All adjusted premiums and present values referred to in this subsection shall for a particular policy be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other sections of this law. The cash surrender values referred to in this subsection shall include any endowment benefits provided by the policy.

(5) Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment shall be determined in manners consistent with the manners specified for determining the analogous minimum amounts in subsections (a), (b),(c), (g) and (i) of this section. The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed as subdivisions (1) through (6), subsection (i) of this section shall conform with the principles of this subsection.

(k) This section does not apply to any of the following:

(1) Reinsurance;

(2) Group insurance;

(3) Pure endowment;

(4) Annuity or reversionary annuity contract;

(5) Term policy of uniform amount, which provides no guaranteed nonforfeiture or endowment benefits, or renewal thereof, of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy;

(6) Term policy of decreasing amount, which provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in subsections (d), (e), (f) and (g) of this section, is less than the adjusted premium so calculated on a policy of uniform amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance and for a term of twenty years or less expiring before age seventy-one, for which uniform

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premiums are payable during the entire term of the policy;

(7) Policy, which provides no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year, calculated as specified in subsections (b), (c), (d), (e) (f) and (g) of this section, exceeds two and one-half percent of the amount of insurance at the beginning of the same policy year; and

(8) Policy which shall be delivered outside this state through an agent or other representative of the insurer issuing the policy. For purposes of determining the applicability of this section, the age at expiry for a joint term life insurance policy shall be the age at expiry of the oldest life.

(l) After the effective date of the amendments made to this section during the 2014 regular session of the Legislature, 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 January 1, 1948. After the filing of such notice, then upon the specified date (which shall be the operative date for the company), this section shall become operative with respect to the policies thereafter issued by such company. If a company makes no such election, the operative date of this section for the company shall be January 1, 1948.

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§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

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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

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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;

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(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

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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

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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.

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§33-13-31. Industrial life insurance -- Required provisions.

No policy of industrial life insurance, which is that form of life insurance provided by an individual insurance contract under which premiums are payable monthly or oftener, and bearing the words "industrial policy" or "weekly premium policy" printed upon the policy as a part of the descriptive matter, shall be delivered or be issued for delivery in this state unless it complies with sections sixteen, twenty-five, twenty-six, twenty-nine, and thirty of this article, nor unless such policy contains in substance the applicable provisions set forth in sections thirty-two to forty- four, inclusive, of this article.

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§33-13-32. Same -- Grace period.

There shall be a provision in each industrial life insurance policy that the insured is entitled to a grace period of four weeks within which the payment of any premium after the first may be made, except that in policies the premiums for which are payable monthly, the period of grace shall be not less than thirty-one days, and that during the period of grace the policy shall continue in full force, but if during the grace period the policy becomes a claim, then any overdue and unpaid premiums may be deducted from any settlement under the policy.

WV Legislature

§33-13-33. Same -- Entire contract; statements in application; deemed representations.

There shall be a provision in each industrial life insurance policy that the policy shall constitute the entire contract between the parties, or, if a copy of the application is endorsed upon or attached to the policy when issued, a provision that the policy and the application therefor shall constitute the entire contract. If the application is so made a part of the contract, the policy shall also provide that all statements made by the applicant in such application shall, in the absence of fraud, be deemed to be representations and not warranties.

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§33-13-34. Same -- Incontestability.

There shall be a provision in each industrial life insurance policy that the policy (exclusive of provisions relating to disability benefits or to additional benefits in the event of death by accident or accidental means) shall be incontestable, except for nonpayment of premiums, after it has been in force during the lifetime of the insured for a period of two years from its date of issue.

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§33-13-35. Same -- Misstatement of age.

There shall be a provision in each industrial life insurance policy that if it is found that the age of the individual insured, or the age of any other individual considered in determining the premium, has been misstated, any amount payable or benefit accruing under the policy shall be such as the premium would have purchased at the correct age or ages.

WV Legislature

§33-13-36. Same -- Dividends.

If an industrial life insurance policy is a participating policy, there shall be a provision that the insurer shall annually ascertain and apportion any divisible surplus accruing on the policy, except that at the option of the insurer such participation may be deferred to the end of the fifth policy year. This provision shall not prohibit the payment of additional dividends on default of payment of premiums or termination of the policy.

WV Legislature

§33-13-37. Same -- Nonforfeiture benefits; cash surrender values.

There shall be in each policy of industrial life insurance provisions for nonforfeiture benefits and cash surrender values as required by section thirty of this article.

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§33-13-38. Same -- Reinstatement.

There shall be in each industrial life insurance policy a provision that unless the policy has been surrendered for its cash surrender value or unless the paid-up term insurance, if any, has expired, the policy will be reinstated at any time within two years from the date of premium default upon written application therefor, the production of evidence of insurability satisfactory to the insurer, the payment of all premiums in arrears, and the payment or reinstatement of any other indebtedness to the insurer upon the policy, all with interest at a rate not exceeding six percent per annum compounded annually.

WV Legislature

§33-13-39. Same -- Settlement.

There shall be a provision in each industrial life insurance policy that when the policy becomes a claim by the death of the insured, settlement shall be made upon surrender of the policy and receipt of due proof of death.

WV Legislature

§33-13-40. Same -- Beneficiary and facility of payment clause.

(a) Each such industrial life insurance policy shall have a space on the front or back page of the policy for the name of the beneficiary designated with a reservation of the right to designate or change the beneficiary after the issuance of the policy.

(b) The policy may also provide that no designation or change of beneficiary shall be binding on the insurer unless endorsed on the policy by the insurer, and that the insurer may refuse to endorse the name of any proposed beneficiary who does not appear to the insured to have an insurable interest in the life of the insured. Such a policy may also provide that if the beneficiary designated in the policy does not surrender the policy with due proof of death within the period stated in the policy, which shall be not less than thirty days after the death of the insured, or if the beneficiary is the estate of the insured or is a minor, or dies before the insured, or is not legally competent to give a valid release, then the insurer may make payment thereunder to the executor or administrator of the insured, or to any of the insured's relatives by blood or legal adoption or connection by marriage, or to any person appearing to the insurer to be equitably entitled thereto by reason of having been named beneficiary, or by reason of having incurred expense for the maintenance, medical attention or burial of the insured. Such policy may also include a similar provision applicable to any other payment due under the policy.

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§33-13-41. Same -- Direct payment of premiums.

In the case of weekly premium industrial life insurance policies, there may be a provision that upon proper notice to the insurer, while premiums on the policy are not in default beyond the grace period, of the intention to pay future premiums directly to the insurer at its home office or any office designated by the insurer for the purpose, the insurer will, at the end of each period of a year from the due date of the first premium so paid, for which period such premiums are so paid continuously without default beyond the grace period, refund a stated percentage of the premiums in an amount which fairly represents the savings in collection expense.

WV Legislature

§33-13-42. Same -- Conversion of weekly policies.

There shall be a provision in the case of weekly premium industrial life insurance policies granting to the insured, upon proper written request and upon presentation of evidence of insurability satisfactory to the insurer, the privilege of converting a weekly premium industrial insurance policy to any form of life insurance with less frequent premium payments regularly issued by the insurer, in accordance with terms and conditions agreed upon with the insurer. The privilege of making such conversion need be granted only if the insurer's weekly premium industrial policies on the life insured, in force as premium paying insurance and on which conversion is requested, grant benefits in event of death, exclusive of additional accidental death benefits and exclusive of any dividend additions, in an amount not less than the minimum amount of such insurance with less frequent premium payments issued by the insurer at the age of the insured on the plan of industrial or ordinary insurance desired.

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§33-13-43. Same -- Conversion of monthly policies.

There shall be a provision, in the case of monthly premium industrial life insurance policies, granting, upon proper written request and upon presentation of evidence of insurability satisfactory to the insurer, the privilege of converting a monthly premium industrial life insurance policy to any form of ordinary life insurance regularly issued by the insurer, in accordance with terms and conditions agreed upon with the insurer. The privilege of making such conversion need be granted only if the insurer's monthly premium industrial policies on the life insured, in force as premium paying insurance and on which conversion is requested, grant benefits in event of death, exclusive of additional accidental death benefits and exclusive of any dividend additions, in an amount not less than the minimum amount of ordinary insurance issued by the insurer at the age of the insured on the plan of ordinary insurance desired.

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§33-13-44. Same -- Title on policy.

There shall be a title on the face of each industrial life insurance policy briefly describing its form.

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§33-13-45. Same -- Provisions not required in single premium, term, etc., policies.

Any of the provisions required in industrial life insurance policies by sections thirty-two to forty-four, inclusive, of this article or any portion thereof which are not applicable to single premium or term policies or to policies issued or granted pursuant to nonforfeiture provisions shall to that extent not be incorporated therein.

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§33-13-46. Same -- Prohibited provisions.

No policy of industrial life insurance shall contain any of the following provisions:

(a) A provision by which the insurer may deny liability under the policy for the reason that the insured has previously obtained other insurance from the same insurer.

(b) A provision giving the insurer the right to declare the policy void because the insured has had any disease or ailment, whether specified or not, or because the insured has received institutional, hospital, medical or surgical treatment or attention, except a provision which gives the insurer the right to declare the policy void if the insured has, within two years prior to the issuance of the policy, received institutional, hospital, medical or surgical treatment or attention and if the insured or claimant under the policy fails to show that the condition occasioning such treatment or attention was not of a serious nature or was not material to the risk.

(c) A provision giving the insurer the right to declare the policy void because the insured has been rejected for insurance, unless such right be conditioned upon a showing by the insurer that knowledge of such rejection would have led to a refusal by the insurer to make such contract.

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§33-13-47. Burial insurance.

(a) Burial insurance is that type of insurance whereby an insurer agrees to pay for any or all of the incidents of the burial of the body of a named or designated person, whether such insurance is evidenced or effected by any kind of agreement, policy, contract, bond, assurance, guarantee, bylaw, regulation, or otherwise. No provision of this article except this section shall apply to burial insurance, and no provision of article fourteen of this chapter shall apply to burial insurance.

(b) Burial insurance shall be transacted only by insurers licensed in this state to transact life insurance.

(c) All burial insurance benefits shall be paid in cash to the beneficiary. No insurer issuing burial insurance shall contract to pay or pay such benefits or any part thereof to any official undertaker, designated undertaker or undertaking concern, or to any particular tradesman or businessman.

(d) This section shall not apply to fraternal benefit societies operating under article twenty-three of this chapter or to any organization of employees under a common employer.

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§33-13-48. Replacement of existing rule with model rule.

The Commissioner shall propose and file with the Secretary of State an emergency rule pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code that is based on the model regulation regarding the replacement of life insurance and annuities approved by the National Association of Insurance Commissioners in nineteen ninety-eight and amended in two thousand. This emergency rule will be effective upon approval by the Secretary of State and will replace the legislative rule previously filed by the Commissioner on May 16, nineteen ninety-seven as Title 114, Series 8 of the Code of State Rules: Provided, That the rule filed as an emergency rule pursuant to this section shall be refiled at the earliest opportunity as a legislative rule for review and promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code.

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