

Superseded 5/5/2021

31A-22-409 Standard Nonforfeiture Law for Individual Deferred Annuities.

- (1) This section is known as the "Standard Nonforfeiture Law for Individual Deferred Annuities."
- (2) This section does not apply to:
 - (a) reinsurance;
 - (b) a group annuity purchased under a retirement plan or plan of deferred compensation:
 - (i) established or maintained by:
 - (A) an employer, including a partnership or sole proprietorship;
 - (B) an employee organization; or
 - (C) both an employer and an employee organization; and
 - (ii) other than a plan providing individual retirement accounts or individual retirement annuities under Section 408, Internal Revenue Code;
 - (c) a premium deposit fund;
 - (d) a variable annuity;
 - (e) an investment annuity;
 - (f) an immediate annuity;
 - (g) a deferred annuity contract after annuity payments have commenced;
 - (h) a reversionary annuity; or
 - (i) a contract that is delivered outside this state through an agent or other representative of the company issuing the contract.
- (3)
 - (a) If a policy is issued after this section takes effect as set forth in Subsection (15), a contract of annuity, except as stated in Subsection (2), may not be delivered or issued for delivery in this state unless the contract of annuity contains in substance:
 - (i) the provisions described in Subsection (3)(b); or
 - (ii) provisions corresponding to the provisions described in Subsection (3)(b) that in the opinion of the commissioner are at least as favorable to the contractholder, governing cessation of payment of consideration under the contract.
 - (b) Subsection (3)(a)(i) requires the following provisions:
 - (i) the company shall grant a paid-up annuity benefit on a plan stipulated in the contract of such a value as specified in Subsections (7), (8), (9), (10), and (12):
 - (A) upon cessation of payment of consideration under a contract; or
 - (B) upon a written request of the contract owner;
 - (ii) if a contract provides for a lump-sum settlement at maturity, or at any other time, upon surrender of the contract at or before the commencement of any annuity payments, the company shall pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in Subsections (7), (8), (10), and (12);
 - (iii) a statement of the mortality table, if any, and interest rates used in calculating any of the following that are guaranteed under the contract:
 - (A) minimum paid-up annuity benefit;
 - (B) cash surrender benefit; or
 - (C) death benefit;
 - (iv) sufficient information to determine the amounts of the benefits described in Subsection (3)(b)(iii);
 - (v) 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 a statute of the state in which the contract is delivered; and

- (vi) an explanation of the manner in which a benefit described in Subsection (3)(b)(v) is altered by the existence of any:
 - (A) additional amounts credited by the company to the contract;
 - (B) indebtedness to the company on the contract; or
 - (C) prior withdrawals from or partial surrender of the contract.
 - (c) Notwithstanding the requirements of this Subsection (3), a deferred annuity contract may provide that if no consideration is received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from consideration paid before the period would be less than \$20 monthly:
 - (i) the company may at the company's option terminate the contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table specified in the contract, if any, and the interest rate specified in the contract for determining the paid-up annuity benefit; and
 - (ii) the payment described in Subsection (3)(c)(i), relieves the company of any further obligation under the contract.
 - (d) A company may reserve the right to defer the payment of cash surrender benefit for a period not to exceed six months after demand for the payment of the cash surrender benefit with surrender of the contract.
- (4) For a policy issued before June 1, 2006, the minimum values as specified in Subsections (7), (8), (9), (10), and (12) of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as established in this Subsection (4).
- (a)
- (i) With respect to a contract providing for flexible considerations, the minimum nonforfeiture amount at any time at or before the commencement of any annuity payments shall be equal to an accumulation up to such time, at a rate of interest of 3% per annum of percentages of the net considerations paid prior to such time:
 - (A) decreased by the sum of:
 - (I) any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of 3% per annum; and
 - (II) the amount of any indebtedness to the company on the contract, including interest due and accrued; and
 - (B) increased by any existing additional amounts credited by the company to the contract.
 - (ii) For purposes of this Subsection (4)(a), the net consideration for a given contract year used to define the minimum nonforfeiture amount shall be:
 - (A) an amount not less than zero; and
 - (B) equal to the corresponding gross considerations credited to the contract during that contract year less:
 - (I) an annual contract charge of \$30; and
 - (II) a collection charge of \$1.25 per consideration credited to the contract during that contract year.
 - (iii) The percentages of net considerations shall be:
 - (A) 65% of the net consideration for the first contract year; and
 - (B) 87-1/2% of the net considerations for the second and later contract years.
 - (iv) Notwithstanding Subsection (4)(a)(iii), the percentage shall be 65% of the portion of the total net consideration for any renewal contract year that 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 65%.

- (b)
 - (i) Except as provided in Subsections (4)(b)(ii) and (iii), with respect to a contract providing for fixed scheduled consideration, minimum nonforfeiture amounts shall be:
 - (A) calculated on the assumption that considerations are paid annually in advance; and
 - (B) defined as for contracts with flexible considerations that are paid annually.
 - (ii) The portion of the net consideration for the first contract year to be accumulated shall be equal to an amount that is the sum of:
 - (A) 65% of the net consideration for the first contract year; and
 - (B) 22-1/2% of the excess of the net consideration for the first contract year over the lesser of the net considerations for:
 - (I) the second contract year; and
 - (II) the third contract year.
 - (iii) The annual contract charge shall be the lesser of \$30 or 10% of the gross annual consideration.
- (c) With respect to a contract providing for a single consideration payment, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that:
 - (i) the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to 90%; and
 - (ii) the net consideration shall be the gross consideration less a contract charge of \$75.
- (5) For a policy issued on or after June 1, 2006, the minimum values as specified in Subsections (7), (8), (9), (10), and (12) of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as established in this Subsection (5).
 - (a) The minimum nonforfeiture amount at any time at or before the commencement of any annuity payments shall be equal to an accumulation up to such time, at rates of interest as indicated in Subsection (5)(b), of 87-1/2% of the gross considerations paid before such time decreased by the sum of:
 - (i) any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as indicated in Subsection (5)(b);
 - (ii) an annual contract charge of \$50, accumulated at rates of interest as indicated in Subsection (5)(b);
 - (iii) any premium tax paid by the company for the contract, accumulated at rates of interest as indicated in Subsection (5)(b); and
 - (iv) the amount of any indebtedness to the company on the contract, including interest due and accrued.
 - (b)
 - (i) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of:
 - (A) 3% per annum; and
 - (B) the five-year Constant Maturity Treasury Rate reported by the Federal Reserve, rounded to the nearest 1/20th of 1%, as of a date or average over a period no longer than 15 months prior to the contract issue date or redetermination date under Subsection (5)(b)(iii):
 - (I) reduced by 125 basis points; and
 - (II) where the resulting interest rate is not less than 1%.
 - (ii) The interest rate shall apply for an initial period and may be redetermined for additional periods.
 - (iii)

- (A) If the interest rate will be reset, the contract shall state:
 - (I) the initial period;
 - (II) the redetermination date;
 - (III) the redetermination basis; and
 - (IV) the redetermination period.
 - (B) 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)
- (i) During the period or term that a contract provides substantive participation in an equity indexed benefit, the reduction described in Subsection (5)(b)(i)(B)(I) may be increased by up to an additional 100 basis points to reflect the value of the equity index benefit.
 - (ii) The present value of the additional reduction at the contract issue date and at each redetermination date may not exceed the market value of the benefit.
 - (iii)
 - (A) The commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit.
 - (B) If the demonstration required under Subsection (5)(c)(iii)(A) is not made to the satisfaction of the commissioner, the commissioner may disallow or limit the additional reduction.
- (6) Notwithstanding Subsection (4), for a policy issued on or after June 1, 2004 and before June 1, 2006, at the election of a company, on a contract form-by-contract form basis, the minimum values as specified in Subsections (7), (8), (9), (10), and (12) of any paid-up annuity, cash surrender, or death benefits available under an annuity contract may be based upon minimum nonforfeiture amounts as established in Subsection (5).
- (7)
- (a) A paid-up annuity benefit available under a contract shall be such that the contract's present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date.
 - (b) The present value described in Subsection (7)(a) 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.
- (8)
- (a) For a contract that provides cash surrender benefits, the cash surrender benefits available before maturity may not be less than the present value as of the date of surrender of that portion of the cash surrender value that would be provided under the contract at maturity arising from considerations paid before the time of cash surrender:
 - (i) decreased by the amount appropriate to reflect any prior withdrawals from or partial surrender of the contract;
 - (ii) decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued; and
 - (iii) increased by any existing additional amounts credited by the company to the contract.
 - (b) For purposes of this Subsection (8), the present value is to be calculated on the basis of an interest rate not more than 1% higher than the interest rate specified in the contract for accumulating the net considerations to determine the maturity value.
 - (c) In no event shall a cash surrender benefit be less than the minimum nonforfeiture amount at that time.
 - (d) The death benefit under a contract described in Subsection (8)(a) shall be at least equal to the cash surrender benefit.
- (9)

- (a) For a contract that does 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 before the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity increased by any existing additional amounts credited by the company to the contract.
 - (b) For purposes of Subsection (9)(a), the present value for the period prior to the maturity date is to be calculated on the basis of the interest rate specified in the contract for accumulating the net considerations to determine maturity value.
 - (c) For a contract that does not provide a death benefit before commencement of any annuity payments, the present values shall be calculated on the basis of the interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit.
 - (d) In no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.
- (10)
- (a) For the purpose of determining the benefits calculated under Subsections (8) and (9), the maturity date shall be considered to be:
 - (i) in the case of an annuity contract issued on or before May 5, 2002, under which an election may be made to have an annuity payment commence at an optional maturity date, the latest date for which an election is permitted by the contract, except that it may not be considered to be later than the later of:
 - (A) the anniversary of the contract next following the day on which the annuitant becomes 70 years of age; or
 - (B) the tenth anniversary of the contract; or
 - (ii) in the case of an annuity contract issued on or after May 6, 2002, the latest date permitted by the contract, except that it may not be considered to be later than the later of:
 - (A) the anniversary of the contract next following the day on which the annuitant becomes 70 years of age; or
 - (B) the tenth anniversary of the contract.
 - (b) In the case of an annuity contract issued on or after May 6, 2002:
 - (i) for a contract that provides cash surrender benefits, the cash surrender value on or past the maturity date shall be equal to the amount used to determine the annuity benefit payments; and
 - (ii) a surrender charge may not be imposed on or past maturity.
- (11) A contract that does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount before the commencement of any annuity payments shall include a statement in a prominent place in the contract that these benefits are not provided.
- (12) A paid-up annuity, cash surrender, or death benefit available at any time, other than on the contract anniversary under a 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.
- (13)
- (a) For a contract that provides, within the same contract by rider or supplemental contract provisions, 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:

- (i) be equal to the sum of:
 - (A) the minimum nonforfeiture benefits for the annuity portion; and
 - (B) the minimum nonforfeiture benefits, if any, for the life insurance portion; and
 - (ii) computed as if each portion were a separate contract.
- (b)
- (i) Notwithstanding Subsections (7), (8), (9), (10), and (12), additional benefits payable, as described in Subsection (13)(b)(ii), and consideration for the additional benefits payable, shall be disregarded in ascertaining, if required by this section:
 - (A) the minimum nonforfeiture amounts;
 - (B) paid-up annuity;
 - (C) cash surrender; and
 - (D) death benefits.
 - (ii) For purposes of this Subsection (13), an additional benefit is a benefit payable:
 - (A) in the event of total and permanent disability;
 - (B) as reversionary annuity or deferred reversionary annuity benefits; or
 - (C) as other policy benefits additional to life insurance, endowment, and annuity benefits.
 - (iii) The inclusion of the additional benefits described in this Subsection (13) may not be required in any paid-up benefits, unless the additional benefits separately would require:
 - (A) minimum nonforfeiture amounts;
 - (B) paid-up annuity;
 - (C) cash surrender; and
 - (D) death benefits.
- (14) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may adopt rules necessary to implement this section, including:
- (a) ensuring that any additional reduction under Subsection (5)(c) is consistent with the requirements imposed by Subsection (5)(c); and
 - (b) providing for adjustments in addition to the adjustments allowed under Subsection (5)(c) to the calculation of minimum nonforfeiture amounts for:
 - (i) a contract that provides substantive participation in an equity index benefit; and
 - (ii) a contract for which the commissioner determines adjustments are justified.
- (15)
- (a) After this section takes effect, a company may file with the commissioner a written notice of its election to comply with this section after a specified date before July 1, 1988.
 - (b) This section applies to annuity contracts of a company issued on or after the date the company specifies in the notice.
 - (c) If a company makes no election under Subsection (15)(a), the operative date of this section for such company is July 1, 1988.