

28 **31A-22-409. Standard Nonforfeiture Law for Individual Deferred Annuities.**

29 (1) This section is known as the "Standard Nonforfeiture Law for Individual Deferred
30 Annuities."

31 (2) This section does not apply to:

32 (a) any reinsurance;

33 (b) a group annuity purchased under a retirement plan or plan of deferred
34 compensation;

35 (i) established or maintained by;

36 (A) an employer, including a partnership or sole proprietorship[~~;~~ or ~~by~~];

37 (B) an employee organization[~~;~~]; or [by]

38 (C) both[~~;~~] an employer and an employee organization; and

39 (ii) other than a plan providing individual retirement accounts or individual retirement
40 annuities under Section 408, Internal Revenue Code;

41 ~~[(b)]~~ (c) a premium deposit fund;

42 ~~[(c)]~~ (d) a variable annuity;

43 ~~[(d)]~~ (e) an investment annuity;

44 ~~[(e)]~~ (f) an immediate annuity;

45 ~~[(f)]~~ (g) a deferred annuity contract after annuity payments have commenced; [or]

46 ~~[(g)]~~ (h) a reversionary annuity; or

47 ~~[(h)]~~ (i) any contract that shall be delivered outside this state through an agent or other
48 representative of the company issuing the contract.

49 (3) (a) If a policy is issued after this section takes effect as set forth in Subsection [~~(12)]~~
50 (15), a contract of annuity, except as stated in Subsection (2), may not be delivered or issued
51 for delivery in this state unless the contract of annuity contains in substance:

52 (i) the provisions described in Subsection (3)(b); or

53 (ii) provisions corresponding to the provisions described in Subsection (3)(b) that in
54 the opinion of the commissioner are at least as favorable to the contractholder, governing
55 cessation of payment of consideration under the contract.

56 (b) Subsection (3)(a)(i) requires the following provisions:

57 (i) ~~[upon cessation of payment of consideration under a contract,]~~ the company [~~will~~]
58 shall grant a paid-up annuity benefit on a plan stipulated in the contract of such a value as

59 specified in Subsections [~~(5), (6),~~] (7), (8), (9), (10), and [~~(10)~~] (12):

60 (A) upon cessation of payment of consideration under a contract; or

61 (B) upon a written request of the contract owner;

62 (ii) if a contract provides for a lump-sum settlement at maturity, or at any other time,
63 upon surrender of the contract at or before the commencement of any annuity payments, the
64 company [~~will~~] shall pay in lieu of any paid-up annuity benefit a cash surrender benefit of such
65 amount as is specified in Subsections [~~(5), (6), (8)~~] (7), (8), (10), and [~~(10)~~] (12);

66 [~~(iii) the company shall reserve the right to defer the payment of the cash surrender~~
67 ~~benefit under Subsection (3)(b)(ii) for a period of six months after demand for the payment of~~
68 ~~the cash surrender benefit with surrender of the contract;~~]

69 [~~(iv)~~] (iii) a statement of the mortality table, if any, and interest rates used in
70 calculating any of the following that are guaranteed under the contract:

71 (A) minimum paid-up annuity benefits;

72 (B) cash surrender benefits; or

73 (C) death benefits;

74 [~~(v)~~] (iv) sufficient information to determine the amounts of the benefits described in
75 Subsection (3)(b)[~~(iv)~~](iii);

76 [~~(vi)~~] (v) a statement that any paid-up annuity, cash surrender, or death benefits that
77 may be available under the contract are not less than the minimum benefits required by any
78 statute of the state in which the contract is delivered; and

79 [~~(vii)~~] (vi) an explanation of the manner in which the benefits described in Subsection
80 (3)(b)[~~(vi)~~](v) are altered by the existence of any:

81 (A) additional amounts credited by the company to the contract;

82 (B) indebtedness to the company on the contract; or

83 (C) prior withdrawals from or partial surrender of the contract.

84 (c) Notwithstanding the requirements of this Subsection (3), any deferred annuity
85 contract may provide that if no consideration has been received under a contract for a period of
86 two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated
87 in the contract arising from consideration paid before the period would be less than \$20
88 monthly:

89 (i) the company may at the company's option terminate the contract by payment in cash

90 of the then present value of such portion of the paid-up annuity benefit, calculated on the basis
91 of the mortality table specified in the contract, if any, and the interest rate specified in the
92 contract for determining the paid-up annuity benefit; and

93 (ii) the payment described in Subsection (3)(c)(i), relieves the company of any further
94 obligation under the contract.

95 (d) A company may reserve the right to defer the payment of cash surrender benefit for
96 a period not to exceed six months after demand for the payment of the cash surrender benefit
97 with surrender of the contract.

98 (4) ~~[The]~~ For a policy issued before June 1, 2006, the minimum values as specified in
99 Subsections ~~[(5), (6),]~~ (7), (8), (9), (10), and ~~[(10)]~~ (12) of any paid-up annuity, cash surrender,
100 or death benefits available under an annuity contract shall be based upon minimum
101 nonforfeiture amounts as established in this ~~[section]~~ Subsection (4).

102 (a) (i) With respect to contracts providing for flexible considerations, the minimum
103 nonforfeiture amount at any time at or before the commencement of any annuity payments shall
104 be equal to an accumulation up to such time, at a rate of interest of 3% per annum of
105 percentages of the net considerations paid prior to such time:

106 (A) decreased by the sum of:

107 (I) any prior withdrawals from or partial surrenders of the contract accumulated at a
108 rate of interest of 3% per annum; and

109 (II) the amount of any indebtedness to the company on the contract, including interest
110 due and accrued; and

111 (B) increased by any existing additional amounts credited by the company to the
112 contract.

113 (ii) For purposes of this Subsection (4)(a), the net consideration for a given contract
114 year used to define the minimum nonforfeiture amount shall be:

115 (A) an amount not less than zero; and

116 (B) equal to the corresponding gross considerations credited to the contract during that
117 contract year less:

118 (I) an annual contract charge of \$30; and

119 (II) a collection charge of \$1.25 per consideration credited to the contract during that
120 contract year.

- 121 (iii) The percentages of net considerations shall be:
- 122 (A) 65% of the net consideration for the first contract year; and
- 123 (B) 87-1/2% of the net considerations for the second and later contract years.
- 124 (iv) Notwithstanding Subsection (4)(a)(iii), the percentage shall be 65% of the portion
- 125 of the total net consideration for any renewal contract year that exceeds by not more than two
- 126 times the sum of those portions of the net considerations in all prior contract years for which
- 127 the percentage was 65%.
- 128 (b) (i) Except as provided in Subsections (4)(b)(ii) and (iii), with respect to contracts
- 129 providing for fixed scheduled consideration, minimum nonforfeiture amounts shall be:
- 130 (A) calculated on the assumption that considerations are paid annually in advance; and
- 131 (B) defined as for contracts with flexible considerations that are paid annually.
- 132 (ii) The portion of the net consideration for the first contract year to be accumulated
- 133 shall be equal to an amount that is the sum of:
- 134 (A) 65% of the net consideration for the first contract year; and
- 135 (B) 22-1/2% of the excess of the net consideration for the first contract year over the
- 136 lesser of the net considerations for:
- 137 (I) the second contract year; and
- 138 (II) the third contract year.
- 139 (iii) The annual contract charge shall be the lesser of \$30 or 10% of the gross annual
- 140 consideration.
- 141 (c) With respect to contracts providing for a single consideration payment, minimum
- 142 nonforfeiture amounts shall be defined as for contracts with flexible considerations except that:
- 143 (i) the percentage of net consideration used to determine the minimum nonforfeiture
- 144 amount shall be equal to 90%; and
- 145 (ii) the net consideration shall be the gross consideration less a contract charge of \$75.
- 146 (5) For a policy issued on or after June 1, 2006, the minimum values as specified in
- 147 Subsections (7), (8), (9), (10), and (12) of any paid-up annuity, cash surrender, or death benefits
- 148 available under an annuity contract shall be based upon minimum nonforfeiture amounts as
- 149 established in this Subsection (5).
- 150 (a) The minimum nonforfeiture amount at any time at or before the commencement of
- 151 any annuity payments shall be equal to an accumulation up to such time, at rates of interest as

152 indicated in Subsection (5)(b), of 87-1/2% of the gross considerations paid before such time
153 decreased by the sum of:

154 (i) any prior withdrawals from or partial surrenders of the contract accumulated at rates
155 of interest as indicated in Subsection (5)(b):

156 (ii) an annual contract charge of \$50, accumulated at rates of interest as indicated in
157 Subsection (5)(b);

158 (iii) any premium tax paid by the company for the contract, accumulated at rates of
159 interest as indicated in Subsection (5)(b); and

160 (iv) the amount of any indebtedness to the company on the contract, including interest
161 due and accrued.

162 (b) (i) The interest rate used in determining minimum nonforfeiture amounts shall be
163 an annual rate of interest determined as the lesser of:

164 (A) 3% per annum; and

165 (B) the five-year Constant Maturity Treasury Rate reported by the Federal Reserve,
166 rounded to the nearest 1/20th of 1%, as of a date or average over a period no longer than 15
167 months prior to the contract issue date or redetermination date under Subsection (5)(b)(iii):

168 (I) reduced by 125 basis points; and

169 (II) where the resulting interest rate is not less than 1%.

170 (ii) The interest rate shall apply for an initial period and may be redetermined for
171 additional periods.

172 (iii) (A) If the interest rate will be reset, the contract shall state:

173 (I) the initial period;

174 (II) the redetermination date;

175 (III) the redetermination basis; and

176 (IV) the redetermination period.

177 (B) The basis is the date or average over a specified period that produces the value of
178 the five-year Constant Maturity Treasury Rate to be used at each redetermination date.

179 (c) (i) During the period or term that a contract provides substantive participation in an
180 equity indexed benefit, the reduction described in Subsection (5)(b)(i)(B)(I) may be increased
181 by up to an additional 100 basis points to reflect the value of the equity index benefit.

182 (ii) The present value of the additional reduction at the contract issue date and at each

183 redetermination date may not exceed the market value of the benefit.

184 (iii) (A) The commissioner may require a demonstration that the present value of the
185 additional reduction does not exceed the market value of the benefit.

186 (B) If the demonstration required under Subsection (5)(c)(iii)(A) is not made to the
187 satisfaction of the commissioner, the commissioner may disallow or limit the additional
188 reduction.

189 (6) Notwithstanding Subsection (4), for a policy issued on or after June 1, 2004 and
190 before June 1, 2006, at the election of a company, on a contract form-by-contract form basis,
191 the minimum values as specified in Subsections (7), (8), (9), (10), and (12) of any paid-up
192 annuity, cash surrender, or death benefits available under an annuity contract may be based
193 upon minimum nonforfeiture amounts as established in Subsection (5).

194 [~~5~~] (7) (a) Any paid-up annuity benefit available under a contract shall be such that
195 the contract's present value on the date annuity payments are to commence is at least equal to
196 the minimum nonforfeiture amount on that date.

197 (b) The present value described in Subsection [~~5~~] (7)(a) shall be computed using the
198 mortality table, if any, and the interest rate specified in the contract for determining the
199 minimum paid-up annuity benefits guaranteed in the contract.

200 [~~6~~] (8) (a) For contracts that provide cash surrender benefits, the cash surrender
201 benefits available before maturity may not be less than the present value as of the date of
202 surrender of that portion of the cash surrender value that would be provided under the contract
203 at maturity arising from considerations paid before the time of cash surrender [~~reduced~~];

204 (i) decreased by the amount appropriate to reflect any prior withdrawals from or partial
205 surrender of the contract[;];

206 (ii) decreased by the amount of any indebtedness to the company on the contract,
207 including interest due and accrued; and

208 (iii) increased by any existing additional amounts credited by the company to the
209 contract.

210 (b) For purposes of this Subsection (8), the present value being calculated on the basis
211 of an interest rate not more than 1% higher than the interest rate specified in the contract for
212 accumulating the net considerations to determine the maturity value[~~, decreased by the amount~~
213 of any indebtedness to the company on the contract, including interest due and accrued, and

214 ~~increased by any existing additional amounts credited by the company to the contract].~~

215 ~~[(b)]~~ (c) In no event shall any cash surrender benefit be less than the minimum
216 nonforfeiture amount at that time.

217 ~~[(c)]~~ (d) The death benefit under ~~[these contracts]~~ a contract described in Subsection
218 (8)(a) shall be at least equal to the cash surrender benefit.

219 ~~[(7)]~~ (9) (a) For contracts that do not provide cash surrender benefits, the present value
220 of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity
221 may not be less than the present value of that portion of the maturity value of the paid-up
222 annuity benefit provided under the contract arising from considerations paid before the time the
223 contract is surrendered in exchange for, or changed to, a deferred paid-up annuity~~[-, this]~~
224 increased by any existing additional amounts credited by the company to the contract.

225 (b) For purposes of this Subsection (9), the present value being calculated for the
226 period prior to the maturity date on the basis of the interest rate specified in the contract for
227 accumulating the net considerations to determine maturity value~~[-, and increased by any existing~~
228 ~~additional amounts credited by the company to the contract].~~

229 ~~[(b)]~~ (c) For contracts that do not provide any death benefits before commencement of
230 any annuity payments, the present values shall be calculated on the basis of the interest rate and
231 the mortality table specified in the contract for determining the maturity value of the paid-up
232 annuity benefit.

233 ~~[(c)]~~ (d) In no event shall the present value of a paid-up annuity benefit be less than the
234 minimum nonforfeiture amount at that time.

235 ~~[(8)]~~ (10) (a) For the purpose of determining the benefits calculated under Subsections
236 ~~[(6)]~~ (8) and ~~[(7)]~~ (9), the maturity date shall be considered to be the latest date permitted by
237 the contract, except that it may not be considered to be later than the later of:

- 238 (i) the anniversary of the contract next following the annuitant's 70th birthday; or
239 (ii) the tenth anniversary of the contract.

240 (b) For a contract that provides cash surrender benefits on or past the maturity date, the
241 cash surrender value shall be equal to the amount used to determine the annuity benefit
242 payments.

243 (c) A surrender charge may not be imposed on or past maturity.

244 ~~[(9)]~~ (11) Any contract that does not provide cash surrender benefits or does not

245 provide death benefits at least equal to the minimum nonforfeiture amount before the
246 commencement of any annuity payments shall include a statement in a prominent place in the
247 contract that these benefits are not provided.

248 ~~[(10)]~~ (12) Any paid-up annuity, cash surrender, or death benefits available at any time,
249 other than on the contract anniversary under any contract with fixed scheduled considerations,
250 shall be calculated with allowance for the lapse of time and the payment of any scheduled
251 considerations beyond the beginning of the contract year in which cessation of payment of
252 considerations under the contract occurs.

253 ~~[(11)]~~ (13) (a) For any contract that provides, within the same contract by rider or
254 supplemental contract provisions, both annuity benefits and life insurance benefits that are in
255 excess of the greater of cash surrender benefits or a return of the gross considerations with
256 interest, the minimum nonforfeiture benefits shall:

257 (i) be equal to the sum of:

258 (A) the minimum nonforfeiture benefits for the annuity portion; and

259 (B) the minimum nonforfeiture benefits, if any, for the life insurance portion; and

260 (ii) computed as if each portion were a separate contract.

261 (b) (i) Notwithstanding Subsections ~~[(5), (6)]~~ (7), (8), (9), (10), and ~~[(10)]~~ (12),
262 additional benefits payable, as described in Subsection ~~[(11)]~~ (13)(b)(ii), and consideration for
263 the additional benefits payable, shall be disregarded in ascertaining, if required by this section:

264 (A) the minimum nonforfeiture amounts;

265 (B) paid-up annuity;

266 (C) cash surrender; and

267 (D) death benefits.

268 (ii) For purposes of this Subsection ~~[(11)]~~ (13), an additional benefit is a benefit
269 payable:

270 (A) in the event of total and permanent disability;

271 (B) as reversionary annuity or deferred reversionary annuity benefits; or

272 (C) as other policy benefits additional to life insurance, endowment, and annuity
273 benefits.

274 (iii) The inclusion of the additional benefits described in this Subsection ~~[(11)]~~ (13)
275 may not be required in any paid-up benefits, unless the additional benefits separately would

276 require:

277 (A) minimum nonforfeiture amounts;

278 (B) paid-up annuity;

279 (C) cash surrender; and

280 (D) death benefits.

281 (14) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
282 the commissioner may adopt rules necessary to implement this section, including:

283 (a) ensuring that any additional reduction under Subsection (5)(c) is consistent with the
284 requirements imposed by Subsection (5)(c); and

285 (b) providing for adjustments in addition to the adjustments allowed under Subsection
286 (5)(c) to the calculation of minimum nonforfeiture amounts for:

287 (i) contracts that provide substantive participation in an equity index benefit; and

288 (ii) other contracts for which the commissioner determines adjustments are justified.

289 [~~12~~] (15) (a) After this section takes effect, any company may file with the
290 commissioner a written notice of its election to comply with this section after a specified date
291 before July 1, 1988.

292 (b) This section applies to annuity contracts of a company issued on or after the date
293 the company specifies in the notice.

294 (c) If a company makes no election under Subsection [~~12~~] (15)(a), the operative date
295 of this section for such company is July 1, 1988.

Legislative Review Note
as of 12-5-03 9:07 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel