

# VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

## CHAPTER 313

*An Act to amend and reenact §§ 38.2-3220, 38.2-3221, 38.2-3222, and 38.2-3229 of the Code of Virginia, relating to annuity nonforfeiture provisions.*

[H 1181]

Approved March 31, 2004

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 38.2-3220, 38.2-3221, 38.2-3222, and 38.2-3229 of the Code of Virginia are amended and reenacted as follows:**

§ 38.2-3220. Nonforfeiture requirements.

A. For contracts issued on or after the operative date as defined in § 38.2-3229, no contract of annuity, except as stated in § 38.2-3219, shall be delivered or issued for delivery in this Commonwealth unless it contains in substance the following provisions and statements, or corresponding provisions and statements that in the opinion of the Commission are at least as favorable to the contract holder, upon cessation of payment of consideration under the contract:

1. That upon cessation of payment of considerations under a contract, *or upon the written request of the contract holder*, the insurer ~~will~~ *shall* grant a paid-up annuity benefit on a plan stipulated in the contract of the value specified in §§ 38.2-3222 through 38.2-3225 and 38.2-3227.

2. If a contract provides for a lump sum settlement at maturity or at any other time, a provision that upon surrender of the contract at or before the beginning of any annuity payments, the insurer ~~will~~ *shall* pay instead of any paid-up annuity benefits a cash surrender benefit of the amount specified in §§ 38.2-3222, 38.2-3223, 38.2-3225 and 38.2-3227. The insurer ~~shall~~ *may* reserve the right to defer the payment of the cash surrender benefit for up to six months after demand for payment with surrender of the contract *after making written request and receiving the written approval of the Commission. The request shall address the necessity and equitability to all contract holders of the deferral.*

3. A statement of the mortality table 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 those benefits.

4. 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 how the existence of any additional amounts credited by the insurer to the contract, any indebtedness to the insurer on the contract or any prior withdrawals from or partial surrenders of the contract affects the benefits.

B. Notwithstanding the requirements of this subsection, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to that period would be less than ~~twenty dollars~~ \$20 monthly, the insurer 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. This payment shall relieve the insurer of any further obligation under the contract.

§ 38.2-3221. Minimum values.

A. The minimum values specified in §§ 38.2-3222 through 38.2-3225 and 38.2-3227 of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon the minimum nonforfeiture amounts defined in this section *and applied as follows:*

1. *For contracts issued before April 1, 2003, the amounts shall be determined in accordance with subsections B, C, and D.*

2. *For contracts issued on or after April 1, 2003, and before July 1, 2004, the amounts shall be determined in accordance with the applicable provisions of subsections B, C, D, and E of this section.*

3. *For contracts issued on or after July 1, 2004, and before July 1, 2005, the amounts shall be determined in accordance with the applicable provisions of subsections B, C, D, and E of this section unless the insurer makes the election authorized by subsection F of this section in which case the amounts shall be determined in accordance with subdivisions F 1 through F 4.*

4. *For contracts issued on or after July 1, 2005, the amounts shall be determined in accordance with subdivisions F 1 through F 4.*

A B. 1. For contracts providing for flexible considerations, the minimum nonforfeiture amount at or any time before the beginning of any annuity payments shall equal ~~an~~ *any* accumulation up to that time at an annual rate of interest of three percent of percentages of the net considerations as defined in this ~~section~~ *subsection*, paid prior to that time, increased by an existing additional amount credited by the

insurer to the contract and decreased by the sum of:

a. Any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three percent per year; and

b. The amount of any indebtedness to the insurer on the contract, including interest due and accrued.

2. The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be not less than zero and shall equal the corresponding gross considerations credited to the contract during that contract year less 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 65 percent of the net consideration for the first contract year and 87 1/2 percent of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be 65 percent 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 percent.

**B C.** For 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 the same as for contracts with flexible considerations that are paid annually with two exceptions:

1. The portion of the net consideration for the first contract year to be accumulated shall be the sum of 65 percent of the net consideration for the first contract year plus 22 1/2 percent of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.

2. The annual contract charge shall be the lesser of (i) \$30 or (ii) 10 percent of the gross annual consideration.

**C D.** For contracts providing for a single consideration, minimum nonforfeiture amounts shall be the same as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall equal 90 percent, and the net consideration shall be the gross consideration less a contract charge of \$75.

**D E.** Notwithstanding any other provision of this section, for any contract issued on or after April 1, 2003, and before July 1, 2005, the interest rate at which net considerations, partial withdrawals, and partial surrenders ~~shall~~ may be accumulated, for the purposes of determining minimum nonforfeiture amounts, ~~shall~~ may be one and one-half percent per year.

*F. The following provisions shall apply for contracts issued on or after July 1, 2005, and at the election of the insurer may apply also to specified contracts issued on or after July 1, 2004. An insurer may make this election on a contract-form-by-contract-form basis by filing written notice with the Commission and specifying a date for the provisions to apply prior to July 1, 2005.*

*1. The minimum nonforfeiture amount at or any time before the beginning of any annuity payments shall equal an accumulation up to that time at rates of interest, as indicated in subdivision 3 of this subsection, of the net considerations as defined in this subsection, paid prior to that time, and decreased by the sum of:*

*a. Any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as indicated in subdivision 3 of this subsection;*

*b. An annual contract charge of \$50, accumulated at rates of interest as indicated in subdivision 3 of this subsection;*

*c. Any premium tax paid by the insurer for the contract, accumulated at rates of interest as indicated in subdivision 3 of this subsection, adjusted for any tax that is not actually paid or which has been credited back to the insurer, such as upon early termination of the contract; and*

*d. The amount of any indebtedness to the insurer on the contract, including interest due and accrued.*

*2. The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be equal to 87.5 percent of the gross considerations credited to the contract during that contract year.*

*3. 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:*

*a. 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 one-twentieth of one percent, specified in the contract no longer than 15 months prior to the contract issue date or redetermination date under this subdivision;*

*b. Reduced by 125 basis points;*

*c. Where the resulting interest rate is not less than one percent; and*

*d. 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.*

*4. During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in subdivision 3 b of this subsection by up to an additional 100 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 shall not exceed the market value of the benefit. The Commission may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. Where administration is lacking or unacceptable, the Commission may, at its discretion, disallow or limit the additional reduction.*

*G. The Commission may adopt rules and regulations to implement the provisions of subdivision F 4 of this section 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 for which the Commission determines adjustments are justified.*

§ 38.2-3222. Computation of present value.

Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence at least equals the minimum nonforfeiture amount on that date. The present value shall be computed using the mortality table, if any, and the interest rate *or rates* specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

§ 38.2-3229. Effective date.

After July 1, 1979, ~~any~~ *for contracts subject to subsection B, C, or D of § 38.2-3221, the operative date for application of § 38.2-3219 shall be the earlier of July 1, 1981, or the date on which the insurer may file* filed with the Commission a written notice of its election to comply with the provisions of §§ 38.2-3219 through 38.2-3229 after a specified date before July 1, 1981. ~~The date specified in the notice shall be the operative date for that insurer in complying with the requirements of §§ 38.2-3219 through 38.2-3229 which shall apply to annuity contracts thereafter issued by that insurer.~~ *For contracts subject to subsection F of § 38.2-3221, the operative date for insurers making no election shall be July 1, 1981 2005, unless the insurer specifies an earlier date by filing with the Commission written notice of its election to apply subdivisions F 1 through F 4 of § 38.2-3221 on a contract-form-by-contract-form basis after a specified date, which shall be on or after July 1, 2004, and before July 1, 2005.*