

# VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION

## CHAPTER 176

*An Act to amend and reenact § 38.2-3221 of the Code of Virginia, relating to standard nonforfeiture provisions for life insurance; minimum nonforfeiture amounts; interest rates.*

[H 44]

Approved April 7, 2022

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

**1. That § 38.2-3221 of the Code of Virginia is amended and reenacted as follows:**

**§ 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.

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 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 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.

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.

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.

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 may be accumulated, for the purposes of determining minimum nonforfeiture amounts, 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~~ *15 basis points (0.15 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.