

SB 517

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CLARENCE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
*Regular Session, 2004*

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**ENROLLED**

SENATE BILL NO. 517

(By Senator Minard )

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PASSED March 12, 2004

In Effect ninety days from Passage

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**ENROLLED**  
**Senate Bill No. 517**

(BY SENATOR MINARD)

[Passed March 12, 2004; in effect ninety days from passage.]

AN ACT to amend and reenact §33-7-9 of the code of West Virginia, 1931, as amended; and to amend and reenact §33-13-30a of said code, all relating to the valuation of annuities; establishing minimum standards for the valuation of life insurance policies; and modifying the standard nonforfeiture law for individual deferred annuities.

*Be it enacted by the Legislature of West Virginia:*

That §33-7-9 of the code of West Virginia, 1931, as amended, be amended and reenacted; and §33-13-30a of said code be amended and reenacted, all to read as follows:

**ARTICLE 7. ASSETS AND LIABILITIES.**

**§33-7-9. Standard valuation law.**

1 (a) *Title.* — This section shall be known as the standard  
2 valuation law.

3 (b) *Reserve valuation.* — The commissioner shall annu-  
4 ally value, or cause to be valued, the reserve liabilities  
5 (hereinafter called reserves) for all outstanding life

6 insurance policies and annuity and pure endowment  
7 contracts of every life insurance company doing business  
8 in this state and may certify the amount of the reserves  
9 specifying the mortality table or tables, rate or rates of  
10 interest and methods (net level premium method or other)  
11 used in the calculation of the reserves. In calculating the  
12 reserves, he or she may use group methods and approxi-  
13 mate averages for fractions of a year or otherwise. In lieu  
14 of the valuation of the reserves herein required of any  
15 foreign or alien company, he or she may accept any  
16 valuation made, or caused to be made, by the insurance  
17 supervisory official of any state or other jurisdiction when  
18 the valuation complies with the minimum standard herein  
19 provided and if the official of the state or jurisdiction  
20 accepts as sufficient and for all valid legal purposes the  
21 certificate of valuation of the commissioner when the  
22 certificate states the valuation to have been made in a  
23 specified manner according to which the aggregate  
24 reserves would be at least as large as if they had been  
25 computed in the manner prescribed by the law of that  
26 state or jurisdiction.

27 (c) *Actuarial opinion of reserves.* — This subsection shall  
28 become operative on the first day of January, one thousand  
29 nine hundred ninety-six.

30 (1) *General.* — Every life insurance company doing  
31 business in this state shall annually submit the opinion of  
32 a qualified actuary as to whether the reserves and related  
33 actuarial items held in support of the policies and con-  
34 tracts specified by the commissioner by regulation are  
35 computed appropriately, are based on assumptions which  
36 satisfy contractual provisions, are consistent with prior  
37 reported amounts and comply with applicable laws of this  
38 state. The commissioner, by regulation, shall define the  
39 specifics of this opinion and add any other item considered  
40 to be necessary to its scope.

41 (2) *Actuarial analysis of reserves and assets supporting*  
42 *the reserves.* —

43 (A) Every life insurance company, except as exempted by  
44 or pursuant to regulation, shall also annually include in  
45 the opinion required by subdivision (1) of this subsection  
46 an opinion of the same qualified actuary as to whether the  
47 reserves and related actuarial items held in support of the  
48 policies and contracts specified by the commissioner by  
49 regulation, when considered in light of the assets held by  
50 the company with respect to the reserves and related  
51 actuarial items, including, but not limited to, the invest-  
52 ment earnings on the assets and the considerations antici-  
53 pated to be received and retained under the policies and  
54 contracts, make adequate provision for the company's  
55 obligations under the policies and contracts, including, but  
56 not limited to, the benefits under and expenses associated  
57 with the policies and contracts.

58 (B) The commissioner may provide, by regulation, for a  
59 transition period for establishing any higher reserves  
60 which the qualified actuary may consider necessary in  
61 order to render the opinion required by this subsection.

62 (3) *Requirement for opinion under subdivision (2).* —  
63 Each opinion required by subdivision (2) of this subsection  
64 shall be governed by the following provisions:

65 (A) A memorandum in form and substance acceptable to  
66 the commissioner as specified by regulation shall be  
67 prepared to support each actuarial opinion.

68 (B) If the insurance company fails to provide a support-  
69 ing memorandum at the request of the commissioner  
70 within a period specified by regulation or the commis-  
71 sioner determines that the supporting memorandum  
72 provided by the insurance company fails to meet the  
73 standards prescribed by the regulations or is otherwise  
74 unacceptable to the commissioner, the commissioner may  
75 engage a qualified actuary at the expense of the company  
76 to review the opinion and the basis for the opinion and  
77 prepare such supporting memorandum as is required by  
78 the commissioner.

79     (4) *Requirement for all opinions.* — Every opinion shall  
80 be governed by the following provisions:

81     (A) The opinion shall be submitted with the annual  
82 statement reflecting the valuation of such reserve liabili-  
83 ties for each year ending on or after the thirty-first day of  
84 December, one thousand nine hundred ninety-five.

85     (B) The opinion shall apply to all business in force,  
86 including individual and group health insurance plans, in  
87 form and substance acceptable to the commissioner as  
88 specified by regulation.

89     (C) The opinion shall be based on standards adopted,  
90 from time to time, by the actuarial standards board and on  
91 such additional standards as the commissioner may by  
92 regulation prescribe.

93     (D) In the case of an opinion required to be submitted by  
94 a foreign or alien company, the commissioner may accept  
95 the opinion filed by that company with the insurance  
96 supervisory official of another state if the commissioner  
97 determines that the opinion reasonably meets the require-  
98 ments applicable to a company domiciled in this state.

99     (E) For the purposes of this section, “qualified actuary”  
100 means a member in good standing of the American acad-  
101 emy of actuaries who meets the requirements set forth in  
102 such regulations.

103     (F) Except in cases of fraud or willful misconduct, the  
104 qualified actuary is not liable for damages to any person  
105 (other than the insurance company and the commissioner)  
106 for any act, error, omission, decision or conduct with  
107 respect to the actuary’s opinion.

108     (G) Disciplinary action by the commissioner against the  
109 company or the qualified actuary shall be defined in  
110 regulations by the commissioner.

111     (H) Any memorandum in support of the opinion and any  
112 other material provided by the company to the commis-

113 sioner in connection therewith shall be kept confidential  
114 by the commissioner and shall not be made public and  
115 shall not be subject to subpoena, other than for the  
116 purpose of defending an action seeking damages from any  
117 person by reason of any action required by this section or  
118 by regulations promulgated hereunder: *Provided*, That the  
119 memorandum or other material may otherwise be released  
120 by the commissioner: (i) With the written consent of the  
121 company; (ii) to the American academy of actuaries upon  
122 request stating that the memorandum or other material is  
123 required for the purpose of professional disciplinary  
124 proceedings and setting forth procedures satisfactory to  
125 the commissioner for preserving the confidentiality of the  
126 memorandum or other material; or (iii) in accordance with  
127 section nineteen, article two of this chapter. Once any  
128 portion of the confidential memorandum is cited by the  
129 company in its marketing or is cited by the company  
130 before any governmental agency other than a state insur-  
131 ance department or is released by the company to the news  
132 media, all portions of the confidential memorandum shall  
133 be no longer confidential.

134 (d) *Computation of minimum standards.* — Except as  
135 otherwise provided in subsections (e), (f) and (m) of this  
136 section, the minimum standard for the valuation of all  
137 policies and contracts issued prior to the effective date of  
138 this section shall be that provided by the laws in effect  
139 immediately prior to the effective date. Except as other-  
140 wise provided in subsections (e), (f) and (m) of this section,  
141 the minimum standard for the valuation of all policies and  
142 contracts issued on or after the effective date of this  
143 section shall be the commissioners reserve valuation  
144 methods defined in subsections (g), (h), (k) and (m) of this  
145 section, three and one-half percent interest or in the case  
146 of life insurance policies and contracts, other than annuity  
147 and pure endowment contracts, issued on or after the first  
148 day of June, one thousand nine hundred seventy-four, four  
149 percent interest for policies issued prior to the sixth day of  
150 April, one thousand nine hundred seventy-seven, five and

151 one-half percent interest for single premium life insurance  
152 policies and four and one-half percent interest for all other  
153 policies issued on and after the sixth day of April, one  
154 thousand nine hundred seventy-seven, and the following  
155 tables:

156 (1) For all ordinary policies of life insurance issued on  
157 the standard basis, excluding any disability and accidental  
158 death benefits in such policies:

159 (A) The commissioner's 1941 standard ordinary mortal-  
160 ity table for policies issued prior to the operative date of  
161 subsection (4a), section thirty, article thirteen of this  
162 chapter;

163 (B) The commissioner's 1958 standard ordinary mortality  
164 table for policies issued on or after the operative date of  
165 subsection (4a), section thirty, article thirteen of this  
166 chapter and prior to the operative date of subsection (4c)  
167 of said section: *Provided*, That for any category of policies  
168 issued on female risks, all modified net premiums and  
169 present values referred to in this section may be calculated  
170 according to an age not more than six years younger than  
171 the actual age of the insured; and

172 (C) For policies issued on or after the operative date of  
173 subsection (4c), section thirty, article thirteen of this  
174 chapter:

175 (i) The commissioner's 1980 standard ordinary mortality  
176 table; or

177 (ii) at the election of the company for any one or more  
178 specified plans of life insurance, the commissioner's 1980  
179 standard ordinary mortality table with ten-year select  
180 mortality factors; or

181 (iii) any ordinary mortality table adopted after the year  
182 one thousand nine hundred eighty by the national associa-  
183 tion of insurance commissioners that is approved by rule

184 promulgated by the commissioner for use in determining  
185 the minimum standard of valuation for the policies.

186 (2) For all industrial life insurance policies issued on the  
187 standard basis, excluding any disability and accidental  
188 death benefits in the policies: The 1941 standard industrial  
189 mortality table for policies issued prior to the operative  
190 date of subdivision (4), subsection (b), section thirty,  
191 article thirteen of this chapter and for policies issued on or  
192 after the operative date, the commissioner's 1961 standard  
193 industrial mortality table or any industrial mortality table  
194 adopted after the year one thousand nine hundred eighty  
195 by the national association of insurance commissioners  
196 that is approved by rule promulgated by the commissioner  
197 for use in determining the minimum standard of valuation  
198 for the policies.

199 (3) For individual annuity and pure endowment con-  
200 tracts, excluding any disability and accidental death  
201 benefits in policies: The 1937 standard annuity mortality  
202 table or, at the option of the company, the annuity mortal-  
203 ity table for 1949, ultimate, or any modification of either  
204 of these tables approved by the commissioner.

205 (4) For group annuity and pure endowment contracts,  
206 excluding any disability and accidental death benefits in  
207 the policies: The group annuity mortality table for 1951,  
208 any modification of the table approved by the commis-  
209 sioner, or at the option of the company, any of the tables  
210 or modifications of tables specified for individual annuity  
211 and pure endowment contracts.

212 (5) For total and permanent disability benefits in or  
213 supplementary to ordinary policies or contracts: For  
214 policies or contracts issued on or after the first day of  
215 January, one thousand nine hundred sixty-six, the tables  
216 of period two disablement rates and the 1930 to 1950  
217 termination rates of the 1952 disability study of the society  
218 of actuaries, with due regard to the type of benefit or any  
219 tables of disablement rates and termination rates adopted



220 after the year one thousand nine hundred eighty by the  
221 national association of insurance commissioners that are  
222 approved by rule promulgated by the commissioner for use  
223 in determining the minimum standard of valuation for the  
224 policies; for policies or contracts issued on or after the first  
225 day of January, one thousand nine hundred sixty-one, and  
226 prior to the first day of January, one thousand nine  
227 hundred sixty-six, either such tables or, at the option of  
228 the company, the Class (3) disability table (1926); and for  
229 policies issued prior to the first day of January, one  
230 thousand nine hundred sixty-one, the Class (3) disability  
231 table (1926).

232 Any table shall, for active lives, be combined with a  
233 mortality table permitted for calculating the reserves for  
234 life insurance policies.

235 (6) For accidental death benefits in or supplementary to  
236 policies issued on or after the first day of January, one  
237 thousand nine hundred sixty-six, the 1959 accidental  
238 death benefits table or any accidental death benefits table  
239 adopted after the year one thousand nine hundred eighty  
240 by the national association of insurance commissioners,  
241 that is approved by rules promulgated by the commis-  
242 sioner for use in determining the minimum standard of  
243 valuation for such policies, for policies issued on or after  
244 the first day of January, one thousand nine hundred sixty-  
245 one, and prior to the first day of January, one thousand  
246 nine hundred sixty-six, either such table or, at the option  
247 of the company, the intercompany double indemnity  
248 mortality table; and for policies issued prior to the first  
249 day of January, one thousand nine hundred sixty-one, the  
250 intercompany double indemnity mortality table. Either  
251 table shall be combined with a mortality table for calcu-  
252 lating the reserves for life insurance policies.

253 (7) For group life insurance, life insurance issued on the  
254 substandard basis and other special benefits: Tables as  
255 may be approved by the commissioner.

256 (e) *Computation of minimum standard for annuities.* –  
257 Except as provided in subsection (f) of this section, the  
258 minimum standard for the valuation of all individual  
259 annuity and pure endowment contracts issued on or after  
260 the operative date of this subsection, as defined herein,  
261 and for all annuities and pure endowments purchased  
262 on or after the operative date under group annuity  
263 and pure endowment contracts shall be the commis-  
264 sioner's reserve valuation methods defined in subsections  
265 (g) and (h) of this section and the following tables and  
266 interest rates:

267 (1) For individual annuity and pure endowment con-  
268 tracts issued prior to the sixth day of April, one thousand  
269 nine hundred seventy-seven, excluding any disability and  
270 accidental death benefits in the contracts: The 1971  
271 individual annuity mortality table or any modification of  
272 this table approved by the commissioner and six percent  
273 interest for single premium immediate annuity contracts  
274 and four percent interest for all other individual annuity  
275 and pure endowment contracts;

276 (2) For individual single premium immediate annuity  
277 contracts issued on or after the sixth day of April, one  
278 thousand nine hundred seventy-seven, excluding any  
279 disability and accidental death benefits in such contracts:  
280 The 1971 individual annuity mortality table or any  
281 individual annuity mortality table adopted after the year  
282 one thousand nine hundred eighty by the national associa-  
283 tion of insurance commissioners that is approved by rule  
284 promulgated by the commissioner for use in determining  
285 the minimum standard of valuation for the contracts or  
286 any modification of these tables approved by the commis-  
287 sioner and seven and one-half percent interest;

288 (3) For individual annuity and pure endowment con-  
289 tracts issued on or after the sixth day of April, one thou-  
290 sand nine hundred seventy-seven, other than single  
291 premium immediate annuity contracts, excluding any

292 disability and accidental death benefits in the contracts:  
293 The 1971 individual annuity mortality table or any  
294 individual annuity mortality table adopted after the year  
295 one thousand nine hundred eighty by the national associa-  
296 tion of insurance commissioners that is approved by  
297 regulation promulgated by the commissioner for use in  
298 determining the minimum standard of valuation for the  
299 contracts or any modification of these tables approved by  
300 the commissioner and five and one-half percent interest  
301 for single premium deferred annuity and pure endowment  
302 contracts and four and one-half percent interest for all  
303 other individual annuity and pure endowment contracts;

304 (4) For all annuities and pure endowments purchased  
305 prior to the sixth day of April, one thousand nine hundred  
306 seventy-seven, under group annuity and pure endowment  
307 contracts, excluding any disability and accidental death  
308 benefits purchased under the contracts: The 1971 group  
309 annuity mortality table or any modification of this table  
310 approved by the commissioner and six percent interest;

311 (5) For all annuities and pure endowments purchased on  
312 or after the sixth day of April, one thousand nine hundred  
313 seventy-seven, under group annuity and pure endowment  
314 contracts, excluding any disability and accidental death  
315 benefits purchased under the contracts: The 1971 group  
316 annuity mortality table or any group annuity mortality  
317 table adopted after the year one thousand nine hundred  
318 eighty by the national association of insurance commis-  
319 sioners that is approved by regulation promulgated by the  
320 commissioner for use in determining the minimum stan-  
321 dard of valuation for annuities and pure endowments or  
322 any modification of these tables approved by the commis-  
323 sioner and seven and one-half percent interest.

324 After the third day of June, one thousand nine hundred  
325 seventy-four, any company may file with the commissioner  
326 a written notice of its election to comply with the provi-  
327 sions of this subsection after a specified date before the  
328 first day of January, one thousand nine hundred seventy-

329 nine, which shall be the operative date of this subsection  
330 for the company provided, if a company makes no election,  
331 the operative date of this section for the company shall be  
332 the first day of January, one thousand nine hundred  
333 seventy-nine.

334 (f) *Computation of minimum standard by calendar year*  
335 *of issue.* —

336 (1) *Applicability of this section.* — The interest rates used  
337 in determining the minimum standard for the valuation  
338 of:

339 (A) All life insurance policies issued in a particular  
340 calendar year, on or after the operative date of subdivision  
341 (4), subsection (c), section thirty, article thirteen of this  
342 chapter, as amended;

343 (B) All individual annuity and pure endowment con-  
344 tracts issued in a particular calendar year on or after the  
345 first day of January, one thousand nine hundred eighty-  
346 two;

347 (C) All annuities and pure endowments purchased in a  
348 particular calendar year on or after the first day of  
349 January, one thousand nine hundred eighty-two, under  
350 group annuity and pure endowment contracts; and

351 (D) The net increase, if any, in a particular calendar year  
352 after the first day of January, one thousand nine hundred  
353 eighty-two, in amounts held under guaranteed interest  
354 contracts shall be the calendar year statutory valuation  
355 interest rates as defined in this subsection.

356 (2) *Calendar year statutory valuation interest rates.* —

357 (A) The calendar year statutory valuation interest rates,  
358 I, shall be determined as follows and the results rounded  
359 to the nearer one quarter of one percent:

360 (i) For life insurance,  $I = .03 + W(R1 -.03) + W/2(R2 -.09)$ ;

361 (ii) For single premium immediate annuities and for  
362 annuity benefits involving life contingencies arising from  
363 other annuities with cash settlement options and from  
364 guaranteed interest contracts with cash settlement options,  
365  $I = .03 + W \cdot R$  where  $R_1$  is the lesser of  $R$  and  $.09$ ,  $R_2$  is  
366 the greater of  $R$  and  $.09$ ,  $R$  is the reference interest rate  
367 defined in this subsection and  $W$  is the weighting factor  
368 defined in this section;

369 (iii) For other annuities with cash settlement options and  
370 guaranteed interest contracts with cash settlement options,  
371 valued on an issue-year basis, except as stated in subpara-  
372 graph (ii) of this paragraph, the formula for life insurance  
373 stated in subparagraph (i) of this paragraph shall apply to  
374 annuities and guaranteed interest contracts with guaran-  
375 tee durations in excess of ten years and the formula for  
376 single premium immediate annuities stated in subpara-  
377 graph (ii) of this paragraph shall apply to annuities and  
378 guaranteed interest contracts with guarantee duration of  
379 ten years or less;

380 (iv) For other annuities with no cash settlement options  
381 and for guaranteed interest contracts with no cash settle-  
382 ment options, the formula for single premium immediate  
383 annuities stated in subparagraph (ii) of this paragraph  
384 shall apply;

385 (v) For other annuities with cash settlement options and  
386 guaranteed interest contracts with cash settlement options,  
387 valued on a change in fund basis, the formula for single  
388 premium immediate annuities stated in subparagraph (ii)  
389 of this paragraph shall apply.

390 (B) However, if the calendar year statutory valuation  
391 interest rate for any life insurance policies issued in any  
392 calendar year determined without reference to this sen-  
393 tence differs from the corresponding actual rate for similar  
394 policies issued in the immediately preceding calendar year  
395 by less than one half of one percent, the calendar year  
396 statutory valuation interest rate for such life insurance

397 policies shall be equal to the corresponding actual rate for  
 398 the immediately preceding calendar year. For purposes of  
 399 applying the immediately preceding sentence, the calendar  
 400 year statutory valuation interest rate for life insurance  
 401 policies issued in a calendar year shall be determined for  
 402 the year one thousand nine hundred eighty (using the  
 403 reference interest rate defined for the year one thousand  
 404 nine hundred seventy-nine) and shall be determined for  
 405 each subsequent calendar year regardless of when subdivi-  
 406 sion (4), subsection (c), section thirty, article thirteen of  
 407 this chapter, as amended, becomes operative.

408 (3) *Weighting factors.* —

409 (A) The weighting factors referred to in the formulas  
 410 stated above are given in the following tables:

411 (i) Weighting Factors for Life Insurance:

412 Guarantee

413 Duration	Weighting
414 (Years)	Factors
415 10 or less	.50
416 More than 10, but not more than 20	.45
417 More than 20	.35

418 For life insurance, the guarantee duration is the maxi-  
 419 mum number of years the life insurance can remain in  
 420 force on a basis guaranteed in the policy or under options  
 421 to convert to plans of life insurance with premium rates or  
 422 nonforfeiture values or both which are guaranteed in the  
 423 original policy;

424 (ii) Weighting factor for single premium immediate  
 425 annuities and for annuity benefits involving life contin-  
 426 gencies arising from other annuities with cash settlement  
 427 options and guaranteed interest contracts with cash  
 428 settlement options: .80;

429 (iii) Weighting factors for other annuities and for guaran-  
 430 teed interest contracts, except as stated in subparagraph

431 (ii) of this paragraph, shall be as specified in clauses (I),  
 432 (II) and (III) of this subparagraph, according to the rules  
 433 and definitions in clauses (IV), (V) and (VI) of this subpara-  
 434 graph:

435 (I) For annuities and guaranteed interest contracts  
 436 valued on an issue year basis:

437	Guarantee	Weighting Factor		
438	Duration	for Plan Type		
439	(Years)	A	B	C
440	5 or less:	.80	.60	.50
441	More than 5, but not more than 10:	.75	.60	.50
442	More than 10, but not more than 20:	.65	.50	.45
443	More than 20:	.45	.35	.35

444 (II) For annuities and guaranteed interest contracts  
 445 valued on a change in fund basis, the factors shown in  
 446 subparagraph (i) of this paragraph increased by:

447	Weighting Factor		
448	for Plan Type		
449	A	B	C1
450	.15	.25	.05

451 (III) For annuities and guaranteed interest contracts  
 452 valued on an issue year basis (other than those with no  
 453 cash settlement options) which do not guarantee interest  
 454 on considerations received more than one year after issue  
 455 or purchase and for annuities and guaranteed interest  
 456 contracts valued on a change in fund basis which do not  
 457 guarantee interest rates on considerations received more  
 458 than twelve months beyond the valuation date, the factors  
 459 shown in clause (I) of this subparagraph or derived in  
 460 clause (II) of this subparagraph increased by:

461	Weighting Factor		
462	for Plan Type		
463	A	B	C1
464	.05	.05	.05

465 (IV) For other annuities with cash settlement options and  
466 guaranteed interest contracts with cash settlement options,  
467 the guarantee duration is the number of years for which  
468 the contract guarantees interest rates in excess of the  
469 calendar year statutory valuation interest rate for life  
470 insurance policies with guarantee duration in excess of  
471 twenty years. For other annuities with no cash settlement  
472 options and for guaranteed interest contracts with no cash  
473 settlement options, the guaranteed duration is the number  
474 of years from the date of issue or date of purchase to the  
475 date annuity benefits are scheduled to commence.

476 (V) Plan type as used in the above tables is defined as  
477 follows:

478 Plan Type A:

479 At any time policyholder may withdraw funds only: (1)  
480 With an adjustment to reflect changes in interest rates or  
481 asset values since receipt of the funds by the insurance  
482 company; or (2) without such adjustment but in install-  
483 ments over five years or more; or (3) as an immediate life  
484 annuity; or (4) no withdrawal permitted;

485 Plan Type B:

486 Before expiration of the interest rate guarantee, policy-  
487 holder may withdraw funds only: (1) With an adjustment  
488 to reflect changes in interest rates or asset values since  
489 receipt of the funds by the insurance company; or (2)  
490 without such adjustment but in installments over five  
491 years or more; or (3) no withdrawal permitted. At the end  
492 of interest rate guarantee, funds may be withdrawn  
493 without such adjustment in a single sum or installments  
494 over less than five years;

495 Plan Type C:

496 Policyholder may withdraw funds before expiration of  
497 interest rate guarantee in a single sum or installments over  
498 less than five years either: (1) Without adjustment to



499 reflect changes in interest rates or asset values since  
500 receipt of the funds by the insurance company; or (2)  
501 subject only to a fixed surrender charge stipulated in the  
502 contract as a percentage of the fund.

503 (VI) A company may elect to value guaranteed interest  
504 contracts with cash settlement options and annuities with  
505 cash settlement options on either an issue-year basis or on  
506 a change in fund basis. Guaranteed interest contracts with  
507 no cash settlement options and other annuities with no  
508 cash settlement options must be valued on an issue-year  
509 basis. As used in this section, an issue year basis of  
510 valuation refers to a valuation basis under which the  
511 interest rate used to determine the minimum valuation  
512 standard for the entire duration of the annuity or guaran-  
513 teed interest contract is the calendar year valuation  
514 interest rate for the year of issue or year of purchase of the  
515 annuity or guaranteed interest contract and the change in  
516 fund basis of valuation refers to a valuation basis under  
517 which the interest rate used to determine the minimum  
518 valuation standard applicable to each change in the fund  
519 held under the annuity or guaranteed interest contract is  
520 the calendar year valuation interest rate for the year of the  
521 change in the fund.

522 (4) *Reference interest rate.* –

523 (A) Reference interest rate referred to in subparagraph  
524 (ii), paragraph (A), subdivision (2) of this subsection shall  
525 be defined as follows:

526 (i) For all life insurance, the lesser of the average over a  
527 period of thirty-six months and the average over a period  
528 of twelve months, ending on the thirtieth day of June of  
529 the calendar year next preceding the year of issue, of the  
530 monthly average of the composite yield on seasoned  
531 corporate bonds as published by Moody's investors service,  
532 inc.

533 (ii) For single premium immediate annuities and for  
534 annuity benefits involving life contingencies arising from

535 other annuities with cash settlement options and guaran-  
536 teed interest contracts with cash settlement options, the  
537 average over a period of twelve months, ending on the  
538 thirtieth day of June of the calendar year of issue or year  
539 of purchase, of the monthly average of the composite yield  
540 on seasoned corporate bonds as published by Moody's  
541 investors service, inc.

542 (iii) For other annuities with cash settlement options and  
543 guaranteed interest contracts with cash settlement options,  
544 valued on a year of issue basis, except as stated in sub-  
545 paragraph (ii) of this paragraph, with guarantee duration  
546 in excess of ten years, the lesser of the average over a  
547 period of thirty-six months and the average over a period  
548 of twelve months, ending on the thirtieth day of June of  
549 the calendar year of issue or purchase, of the monthly  
550 average of the composite yield on seasoned corporate  
551 bonds as published by Moody's investors service, inc.

552 (iv) For other annuities with cash settlement options and  
553 guaranteed interest contracts with cash settlement options,  
554 valued on a year of issue basis, except as stated in sub-  
555 paragraph (ii) of this paragraph, with guarantee duration  
556 of ten years or less, the average over a period of twelve  
557 months, ending on the thirtieth day of June of the calendar  
558 year of issue or purchase, of the monthly average of the  
559 composite yield on seasoned corporate bonds as published  
560 by Moody's investors service, inc.

561 (v) For other annuities with no cash settlement options  
562 and for guaranteed interest contracts with no cash settle-  
563 ment options, the average over a period of twelve months,  
564 ending on the thirtieth day of June of the calendar year of  
565 issue or purchase, of the monthly average of the composite  
566 yield on seasoned corporate bonds as published by  
567 Moody's investors service, inc.

568 (vi) For other annuities with cash settlement options and  
569 guaranteed interest contracts with cash settlement options,  
570 valued on a change in fund basis, except as stated in

571 subparagraph (ii) of this paragraph, the average over a  
572 period of twelve months, ending on the thirtieth day of  
573 June of the calendar year of the change in the fund, of the  
574 monthly average of the composite yield on seasoned  
575 corporate bonds as published by Moody's investors service,  
576 inc.

577 (5) *Alternative method for determining reference interest*  
578 *rates. —*

579 In the event that the monthly average of the composite  
580 yield on seasoned corporate bonds is no longer published  
581 by Moody's investors service, inc., or in the event that the  
582 national association of insurance commissioners deter-  
583 mines that the monthly average of the composite yield on  
584 seasoned corporate bonds as published by Moody's inves-  
585 tors service, inc., is no longer appropriate for the determi-  
586 nation of the reference interest rate, then an alternative  
587 method for determination of the reference interest rate,  
588 which is adopted by the national association of insurance  
589 commissioners and approved by regulation promulgated  
590 by the commissioner, may be substituted.

591 (g) *Reserve valuation method. —* Life insurance and  
592 endowment benefits.

593 Except as otherwise provided in subsections (h), (k) and  
594 (m) of this section, reserves according to the commissioners  
595 reserve valuation method for the life insurance and  
596 endowment benefits of policies providing for a uniform  
597 amount of insurance and requiring the payment of uniform  
598 premiums shall be the excess, if any, of the present value,  
599 at the date of valuation, of the future guaranteed benefits  
600 provided for by the policies, over the then present value of  
601 any future modified net premiums therefor. The modified  
602 net premiums for any such policy shall be the uniform  
603 percentage of the respective contract premiums for the  
604 benefits that the present value, at the date of issue of the  
605 policy, of all the modified net premiums shall be equal to  
606 the sum of the then present value of the benefits provided

607 for by the policy and the excess of subdivision (1) of this  
608 subsection over subdivision (2) of this subsection, as  
609 follows:

610 (1) A net level annual premium equal to the present  
611 value, at the date of issue, of such benefits provided for  
612 after the first policy year, divided by the present value, at  
613 the date of issue, of an annuity of one per annum payable  
614 on the first and each subsequent anniversary of such  
615 policy on which a premium falls due: *Provided*, That such  
616 net level annual premium shall not exceed the net level  
617 annual premium on the nineteen-year premium whole life  
618 plan for insurance of the same amount at an age one year  
619 higher than the age at issue of such policy.

620 (2) A net one-year term premium for such benefits  
621 provided for in the first policy year: *Provided*, That for any  
622 life insurance policy issued on or after the first day of  
623 January, one thousand nine hundred eighty-five, for which  
624 the contract premium in the first policy year exceeds that  
625 of the second year and for which no comparable additional  
626 benefit is provided in the first year for such excess and  
627 which provides an endowment benefit or a cash surrender  
628 value or a combination thereof in an amount greater than  
629 such excess premium, the reserve according to the commis-  
630 sioners' reserve valuation method as of any policy anniver-  
631 sary occurring on or before the assumed ending date  
632 defined herein as the first policy anniversary on which the  
633 sum of any endowment benefit and any cash surrender  
634 value then available is greater than such excess premium  
635 shall, except as otherwise provided in subsection (k) of this  
636 section, be the greater of the reserve as of such policy  
637 anniversary calculated as described in the preceding  
638 paragraph and the reserve as of the policy anniversary  
639 calculated as described in that paragraph, but with: (i) The  
640 value defined in subdivision (1) of that paragraph being  
641 reduced by fifteen percent of the amount of such excess  
642 first-year premium; (ii) all present values of benefits and  
643 premiums being determined without reference to premi-

644 ums or benefits provided for by the policy after the  
645 assumed ending date; (iii) the policy being assumed to  
646 mature on the date as an endowment; and (iv) the cash  
647 surrender value provided on such date being considered as  
648 an endowment benefit. In making the above comparison,  
649 the mortality and interest bases stated in subsections (d)  
650 and (f) of this section shall be used.

651 Reserves according to the commissioners' reserve valua-  
652 tion method for: (i) Life insurance policies providing for a  
653 varying amount of insurance or requiring the payment of  
654 varying premiums; (ii) group annuity and pure endowment  
655 contracts purchased under a retirement plan or plan of  
656 deferred compensation, established or maintained by an  
657 employer (including a partnership or sole proprietorship)  
658 or by an employee organization, or by both, other than a  
659 plan providing individual retirement accounts or individ-  
660 ual retirement annuities under section 408 of the Internal  
661 Revenue Code (26 U. S. C. §408) as now or hereafter  
662 amended; (iii) disability and accidental death benefits in  
663 all policies and contracts; and (iv) all other benefits, except  
664 life insurance and endowment benefits in life insurance  
665 policies and benefits provided by all other annuity and  
666 pure endowment contracts, shall be calculated by a  
667 method consistent with the principles of the preceding  
668 paragraphs of this section.

669 (h) *Reserve valuation method.* — Annuity and pure  
670 endowment benefits. This subsection shall apply to all  
671 annuity and pure endowment contracts other than group  
672 annuity and pure endowment contracts purchased under  
673 a retirement plan or plan of deferred compensation  
674 established or maintained by an employer (including a  
675 partnership or sole proprietorship) or by an employee  
676 organization, or by both, other than a plan providing  
677 individual retirement accounts or individual retirement  
678 annuities under section 408 of the Internal Revenue Code  
679 (26 U. S. C. §408) as now or hereafter amended.

680 Reserves according to the commissioners' annuity reserve  
681 method for benefits under annuity or pure endowment  
682 contracts, excluding any disability and accidental death  
683 benefits in such contracts, shall be the greatest of the  
684 respective excesses of the present values, at the date of  
685 valuation, of the future guaranteed benefits, including  
686 guaranteed nonforfeiture benefits, provided for by such  
687 contracts at the end of each respective contract year over  
688 the present value, at the date of valuation, of any future  
689 valuation considerations derived from future gross consid-  
690 erations, required by the terms of such contract, that  
691 become payable prior to the end of such respective con-  
692 tract year.

693 The future guaranteed benefits shall be determined by  
694 using the mortality table, if any, and the interest rate, or  
695 rates, specified in the contracts for determining guaran-  
696 teed benefits. The valuation considerations are the  
697 portions of the respective gross considerations applied  
698 under the terms of such contracts to determine  
699 nonforfeiture values.

700 (i) *Minimum reserves.* –

701 (1) In no event shall a company's aggregate reserves for  
702 all life insurance policies, excluding disability and acci-  
703 dental death benefits, issued on or after the effective date  
704 of this section be less than the aggregate reserves calcu-  
705 lated in accordance with the methods set forth in subsec-  
706 tions (g), (h), (k) and (l) of this section and the mortality  
707 table or tables and rate or rates of interest used in calcu-  
708 lating nonforfeiture benefits for such policies.

709 (2) In no event shall the aggregate reserves for all poli-  
710 cies, contracts and benefits be less than the aggregate  
711 reserves determined by the qualified actuary to be neces-  
712 sary to render the opinion required by subsection (c) of this  
713 section.

714 (j) *Optional reserve calculation.* –

715 Reserves for all policies and contracts issued prior to the  
716 effective date of this section may be calculated, at the  
717 option of the company, according to any standards which  
718 produce greater aggregate reserves for all policies and  
719 contracts than the minimum reserves required by the laws  
720 in effect immediately prior to such date.

721 Reserves for any category of policies, contracts or  
722 benefits as established by the commissioner issued on or  
723 after the effective date of this section may be calculated,  
724 at the option of the company, according to any standards  
725 which produce greater aggregate reserves for such cate-  
726 gory than those calculated according to the minimum  
727 standard herein provided, but the rate or rates of interest  
728 used for policies and contracts, other than annuity and  
729 pure endowment contracts, shall not be higher than the  
730 corresponding rate or rates of interest used in calculating  
731 any nonforfeiture benefits provided therein.

732 Any such company which at any time shall have adopted  
733 any standard of valuation producing greater aggregate  
734 reserves than those calculated according to the minimum  
735 standard herein provided may, with the approval of the  
736 commissioner, adopt any lower standard of valuation, but  
737 not lower than the minimum herein provided: *Provided*,  
738 That for the purposes of this section, the holding of  
739 additional reserves previously determined by a qualified  
740 actuary to be necessary to render the opinion required by  
741 subsection (c) of this section shall not be considered to be  
742 the adoption of a higher standard of valuation.

743 (k) *Reserve calculation.* — Valuation net premium  
744 exceeding the gross premium charged.

745 If in any contract year the gross premium charged by any  
746 life insurance company on any policy or contract is less  
747 than the valuation net premium for the policy or contract  
748 calculated by the method used in calculating the reserve  
749 thereon but using the minimum valuation standards of  
750 mortality and rate of interest, the minimum reserve

751 required for such policy or contract shall be the greater of  
752 either the reserve calculated according to the mortality  
753 table, rate of interest and method actually used for such  
754 policy or contract or the reserve calculated by the method  
755 actually used for such policy or contract but using the  
756 minimum valuation standards of mortality and rate of  
757 interest and replacing the valuation net premium by the  
758 actual gross premium in each contract year for which the  
759 valuation net premium exceeds the actual gross premium.  
760 The minimum valuation standards of mortality and rate of  
761 interest referred to in this section are those standards  
762 stated in subsections (d) and (f) of this section: *Provided,*  
763 That for any life insurance policy issued on or after the  
764 first day of January, one thousand nine hundred eighty-  
765 five, for which the gross premium in the first policy year  
766 exceeds that of the second year and for which no compara-  
767 ble additional benefit is provided in the first year for such  
768 excess and which provides an endowment benefit or a cash  
769 surrender value or a combination thereof in an amount  
770 greater than such excess premium, the foregoing provi-  
771 sions of this subsection shall be applied as if the method  
772 actually used in calculating the reserve for such policy  
773 were the method described in subsection (g) of this section,  
774 ignoring the second paragraph of said subsection.

775 The minimum reserve at each policy anniversary of such  
776 a policy shall be the greater of the minimum reserve  
777 calculated in accordance with subsection (g) of this  
778 section, including the second paragraph of said section,  
779 and the minimum reserve calculated in accordance with  
780 this subsection.

781 (l) *Reserve calculation.* – Indeterminate premium plans.

782 In the case of any plan of life insurance which provides  
783 for

784 future premium determination, the amounts of which are  
785 to be determined by the insurance company based on then  
786 estimates of future experience, or in the case of any plan



787 of life insurance or annuity which is of such a nature that  
788 the minimum reserves cannot be determined by the  
789 methods described in subsections (g), (h) and (k) of this  
790 section, the reserves which are held under any such plan  
791 must:

792 (1) Be appropriate in relation to the benefits and the  
793 pattern of premiums for that plan; and

794 (2) Be computed by a method which is consistent with the  
795 principles of this standard valuation law as determined by  
796 regulations promulgated by the commissioner.

797 (m) *Minimum standards for health (disability, accident*  
798 *and sickness) plans. —*

799 The commissioner shall promulgate a rule containing the  
800 minimum standards applicable to the valuation of health  
801 (disability, sickness and accident) plans.

802 (n) The commissioner shall promulgate a rule on or  
803 before the first day of November, one thousand nine  
804 hundred ninety-five, prescribing the guidelines and  
805 standards for statements of actuarial opinion which are to  
806 be submitted in accordance with subsection (c) of this  
807 section and for memoranda in support thereof; guidelines  
808 and standards for statements of actuarial opinion which  
809 are to be submitted when a company is exempt from  
810 subdivision (2) of said subsection of the standard valuation  
811 law; and rules applicable to the appointment of an ap-  
812 pointed actuary.

813 (o) *Effective date. —* All acts and parts of acts inconsis-  
814 tent with the provision of this section are hereby repealed  
815 as of the effective date of this section. This section shall  
816 take effect the first day of January, one thousand nine  
817 hundred ninety-six.

818 (p) *Modification of the standard valuation law for certain*  
819 *types of contracts. —*

820 (1) The commissioner may, by rule, establish alternative  
821 methods of calculating reserve liabilities, which methods  
822 shall be used to calculate reserve liabilities for the types of  
823 policies, annuities or other contracts identified in the rule:  
824 *Provided*, That the method specified in the rule shall be  
825 one which, in the opinion of the commissioner and in light  
826 of the methods applied to the contracts by the insurance  
827 regulators of other states, is appropriate to the contracts.  
828 This power shall be in addition to, and in no way diminish,  
829 rule-making power granted to the commissioner elsewhere  
830 in this code.

831 (2) The legislative rule filed in the state register on the  
832 twentieth day of August, one thousand nine hundred  
833 ninety-six, (valuation of life insurance policies, 114 CSR  
834 49) is hereby disapproved and is not authorized for  
835 promulgation: *Provided*, That for purposes of determining  
836 the legal effects of the aforementioned rule, this provision  
837 shall be considered to have taken effect on the thirty-first  
838 day of December, one thousand nine hundred  
839 ninety-seven. This disapproval shall in no way limit the  
840 commissioner's power to promulgate in the future a rule  
841 similar or identical to the rule here disapproved.

**ARTICLE 13. LIFE INSURANCE.**

**§33-13-30a. Standard nonforfeiture law for individual deferred annuities.**

1 (a) This section shall be known as the "Standard  
2 Nonforfeiture Law for Individual Deferred Annuities".

3 (b) This section may not apply to any reinsurance, group  
4 annuity purchased under a retirement plan or plan of  
5 deferred compensation established or maintained by an  
6 employer (including a partnership or sole proprietorship)  
7 or by an employee organization, or by both, other than a  
8 plan providing individual retirement accounts or individ-  
9 ual retirement annuities under Section 408 of the Internal  
10 Revenue Code, as now or hereafter amended, premium  
11 deposit fund, variable annuity, investment annuity,

12 immediate annuity, any deferred annuity contract after  
13 annuity payments have commenced or reversionary  
14 annuity, nor to any contract which shall be delivered  
15 outside this state through an agent or other representative  
16 of the company issuing the contract.

17 (c) In the case of contracts issued on or after the opera-  
18 tive date of this section, no contract of annuity, except as  
19 stated in subsection (b) of this section, shall be delivered or  
20 issued for delivery in this state unless it contains in  
21 substance the following provisions or corresponding  
22 provisions which, in the opinion of the commissioner,  
23 are at least as favorable to the contract holder,  
24 upon cessation of payment of considerations under the  
25 contract:

26 (1) That upon cessation of payment of considerations  
27 under a contract, the company will grant a paid-up  
28 annuity benefit on a plan stipulated in the contract of the  
29 value as is specified in subsections (e), (f), (g), (h) and (j) of  
30 this section;

31 (2) If a contract provides for a lump sum settlement at  
32 maturity or at any other time that, upon surrender of the  
33 contract at or prior to the commencement of any annuity  
34 payments, the company will pay in lieu of any paid-up  
35 annuity benefit a cash surrender benefit of the amount as  
36 is specified in subsections (e), (f), (h) and (j) of this section.  
37 The company shall reserve the right to defer the payment  
38 of the cash surrender benefit for a period of six months  
39 after demand therefor with surrender of the contract;

40 (3) A statement of the mortality table, if any, and  
41 interest rates used in calculating any minimum paid-up  
42 annuity, cash surrender or death benefits that are guaran-  
43 teed under the contract, together with sufficient informa-  
44 tion to determine the amounts of the benefits; and

45 (4) A statement that any paid-up annuity, cash surrender  
46 or death benefits that may be available under the contract

47 are not less than the minimum benefits required by any  
48 statute of the state in which the contract is delivered and  
49 an explanation of the manner in which the benefits are  
50 altered by the existence of any additional amounts cred-  
51 ited by the company to the contract, any indebtedness to  
52 the company on the contract or any prior withdrawals  
53 from or partial surrenders of the contract.

54 Notwithstanding the requirements of this subsection,  
55 any deferred annuity contract may provide that if no  
56 considerations have been received under a contract for a  
57 period of two full years and the portion of the paid-up  
58 annuity benefit at maturity on the plan stipulated in the  
59 contract arising from considerations paid prior to  
60 the period would be less than twenty dollars monthly, the  
61 company may at its option terminate the contract by  
62 payment in cash of the then present value of the portion of  
63 the paid-up annuity benefit, calculated on the basis of the  
64 mortality table, if any, and interest rate specified in the  
65 contract for determining the paid-up annuity benefit and  
66 by the payment shall be relieved of any further obligation  
67 under the contract.

68 (d) (1) The minimum values as specified in subsections  
69 (e), (f), (g), (h) and (j) of this section of any paid-up annu-  
70 ity, cash surrender or death benefits available under an  
71 annuity contract shall be based upon minimum  
72 nonforfeiture amounts as defined in this subdivision:

73 (A) With respect to contracts providing for flexible  
74 considerations, the minimum nonforfeiture amount at any  
75 time at or prior to the commencement of any annuity  
76 payments shall be equal to an accumulation up to the time  
77 at a rate of interest of three percent per annum of percent-  
78 ages of the net considerations (as hereinafter defined) paid  
79 prior to the time, decreased by the sum of:

80 (i) Any prior withdrawals from or partial surrenders of  
81 the contract accumulated at a rate of interest of three  
82 percent per annum; and

83 (ii) The amount of any indebtedness to the company on  
84 the contract, including interest due and accrued; and  
85 increased by any existing additional amounts credited by  
86 the company to the contract;

87 The net considerations for a given contract year used to  
88 define the minimum nonforfeiture amount shall be an  
89 amount not less than zero and shall be equal to the corre-  
90 sponding gross considerations credited to the contract  
91 during that contract year less than an annual contract  
92 charge of thirty dollars and less a collection charge of one  
93 dollar and twenty-five cents per consideration credited to  
94 the contract during that contract year. The percentages of  
95 net considerations shall be sixty-five percent of the net  
96 consideration for the first contract year and eighty-seven  
97 and one-half percent of the net considerations for the  
98 second and later contract years. Notwithstanding the  
99 provisions of the preceding sentence, the percentage shall  
100 be sixty-five percent of the portion of the total net consid-  
101 eration for any renewal contract year which exceeds by  
102 not more than two times the sum of those portions of the  
103 net considerations in all prior contract years for which the  
104 percentage was sixty-five percent;

105 Notwithstanding any other provision of this section, any  
106 contract issued on or after the first day of July, two  
107 thousand three, and before the first day of July, two  
108 thousand six, the interest rate at which net considerations,  
109 prior withdrawals and partial surrenders shall be accumu-  
110 lated for the purpose of determining nonforfeiture  
111 amounts may not be less than one and one-half percent per  
112 annum;

113 (B) With respect to contracts providing for fixed sched-  
114 uled considerations, minimum nonforfeiture amounts shall  
115 be calculated on the assumption that considerations are  
116 paid annually in advance and shall be defined as for  
117 contracts with flexible considerations which are paid  
118 annually with two exceptions:

119 (i) The portion of the net consideration for the first  
120 contract year to be accumulated shall be the sum of sixty-  
121 five percent of the net consideration for the first contract  
122 year plus twenty-two and one-half percent of the excess of  
123 the net consideration for the first contract year over the  
124 lesser of the net considerations for the second and third  
125 contract years;

126 (ii) The annual contract charge shall be the lesser of: (1)  
127 Thirty dollars; or (2) ten percent of the gross annual  
128 consideration;

129 (C) With respect to contracts providing for a single  
130 consideration, minimum nonforfeiture amounts shall be  
131 defined as for contracts with flexible considerations  
132 except that the percentage of net consideration used to  
133 determine the minimum nonforfeiture amount shall be  
134 equal to ninety percent and the net consideration shall be  
135 the gross consideration less a contract charge of seventy-  
136 five dollars;

137 (D) This subdivision applies to contracts issued before  
138 the first day of July, two thousand four, and may be  
139 applied by a company on a contract-by-contract basis to  
140 contracts issued on or after the first day of July, two  
141 thousand four, and before the first day of July, two  
142 thousand six;

143 (2) The minimum values as specified in subsections (e),  
144 (f), (g), (h) and (j) of any paid-up annuity, cash surrender  
145 or death benefits available under an annuity contract shall  
146 be based upon minimum nonforfeiture amounts as defined  
147 in this subdivision;

148 (A) (i) The minimum nonforfeiture amount at any time at  
149 or prior to the commencement of any annuity payments  
150 shall be equal to an accumulation up to such time at rates  
151 of interest as indicated in paragraph (B) of this subdivision  
152 of the net considerations (as hereinafter defined) paid  
153 prior to such time, decreased by the sum of subparagraphs  
154 (I) through (IV) below:

155 (I) Any prior withdrawals from or partial surrenders of  
156 the contract accumulated at rates of interest as indicated  
157 in paragraph (B) of this subdivision;

158 (II) An annual contract charge of fifty dollars, accumu-  
159 lated at rates of interest as indicated in paragraph (B) of  
160 this subdivision;

161 (III) Any premium tax paid by the company for the  
162 contract, accumulated at rates of interest as indicated in  
163 subparagraph (ii), paragraph (B) of this subdivision; and

164 (IV) The amount of any indebtedness to the company on  
165 the contract, including interest due and accrued;

166 (ii) The net considerations for a given contract year used  
167 to define the minimum nonforfeiture amount shall be an  
168 amount equal to eighty-seven and one-half percent of the  
169 gross considerations credited to the contract during that  
170 contract year;

171 (B) The interest rate used in determining minimum  
172 nonforfeiture amounts shall be an annual rate of interest  
173 determined as the lesser of three percent per annum and  
174 the following, which shall be specified in the contract if  
175 the interest rate will be reset:

176 (i) The five-year constant maturity treasury rate re-  
177 ported by the federal reserve as of a date, or average over  
178 a period, rounded to the nearest 1/20th of one percent,  
179 specified in the contract no longer than fifteen months  
180 prior to the contract issue date or redetermination date  
181 under subparagraph (iv) of this paragraph;

182 (ii) Reduced by one hundred twenty-five basis points;

183 (iii) Where the resulting interest rate is not less than one  
184 percent; and

185 (iv) The interest rate shall apply for an initial period and  
186 may be redetermined for additional periods. The  
187 redetermination date, basis and period, if any, shall be

188 stated in the contract. The basis is the date or average  
189 over a specified period that produces the value of the five-  
190 year constant maturity treasury rate to be used at each  
191 redetermination date;

192 (C) During the period or term that a contract provides  
193 substantive participation in an equity indexed benefit, it  
194 may increase the reduction described in subparagraph (ii),  
195 paragraph (B) of this subdivision by up to an additional  
196 one hundred basis points to reflect the value of the equity  
197 index benefit. The present value at the contract issue date,  
198 and at each redetermination date thereafter, of the addi-  
199 tional reduction may not exceed the market value of the  
200 benefit. The commissioner may require a demonstration  
201 that the present value of the additional reduction does not  
202 exceed the market value of the benefit. Lacking a deter-  
203 mination that is acceptable to the commissioner, the  
204 commissioner may disallow or limit the additional reduc-  
205 tion;

206 (D) The commissioner may adopt rules to implement the  
207 provisions of this subsection and to provide for further  
208 adjustments to the calculation of minimum nonforfeiture  
209 amounts for contracts that provide substantive participa-  
210 tion in an equity index benefit and for other contracts that  
211 the commissioner determines their adjustments are  
212 justified;

213 (E) This subdivision shall apply to contracts outstanding  
214 on the first day of July, two thousand four, and may be  
215 applied by a company on a contract-by-contract basis to  
216 any contract issued after the first day of July, two thou-  
217 sand four, and before the first day of July, two thousand  
218 six.

219 (e) Any paid-up annuity benefit available under a  
220 contract shall be such that its present value on the date  
221 annuity payments are to commence is at least equal to the  
222 minimum nonforfeiture amount on that date. The present  
223 value shall be computed using the mortality table, if any,



224 and the interest rate specified in the contract for determin-  
225 ing the minimum paid-up annuity benefits guaranteed in  
226 the contract.

227 (f) For contracts which provide cash surrender benefits,  
228 the cash surrender benefits available prior to maturity  
229 may not be less than the present value as of the date of  
230 surrender of that portion of the maturity value of the paid-  
231 up annuity benefit which would be provided under the  
232 contract at maturity arising from consideration paid prior  
233 to the time of cash surrender reduced by the amount  
234 appropriate to reflect any prior withdrawals from or  
235 partial surrenders of the contract, the present value being  
236 calculated on the basis of an interest rate not more than  
237 one percent higher than the interest rate specified in the  
238 contract for accumulating the net considerations to  
239 determine the maturity value, decreased by the amount of  
240 any indebtedness to the company on the contract, includ-  
241 ing interest due and accrued, and increased by any existing  
242 additional amounts credited by the company to the  
243 contract. In no event shall any cash surrender benefit be  
244 less than the minimum nonforfeiture amount at that time.  
245 The death benefit under the contracts shall be at least  
246 equal to the cash surrender benefit.

247 (g) For contracts which do not provide cash surrender  
248 benefits, the present value of any paid-up annuity benefit  
249 available as a nonforfeiture option at any time prior to  
250 maturity may not be less than the present value of that  
251 portion of the maturity value of the paid-up annuity  
252 benefit provided under the contract arising from consider-  
253 ations paid prior to the time the contract is surrendered in  
254 exchange for, or changed to, a deferred paid-up annuity,  
255 the present value being calculated for the period prior to  
256 the maturity date on the basis of the interest rate specified  
257 in the contract for accumulating the net considerations to  
258 determine the maturity value and increased by any  
259 existing additional amounts credited by the company to  
260 the contract. For contracts which do not provide any

261 death benefits prior to the commencement of any annuity  
262 payments, the present values shall be calculated on a basis  
263 of the interest rate and the mortality table specified in the  
264 contract for determining the maturity value of the paid-up  
265 annuity benefit. However, in no event shall the present  
266 value of a paid-up annuity benefit be less than the mini-  
267 mum nonforfeiture amount at that time.

268 (h) For the purpose of determining the benefits calcu-  
269 lated under subsections (f) and (g) of this section, in the  
270 case of annuity contracts under which an election may be  
271 made to have annuity payments commence at optional  
272 maturity dates, the maturity date is considered to be the  
273 latest date for which election is permitted by the contract,  
274 but is not considered to be later than the anniversary of  
275 the contract next following the annuitant's seventieth  
276 birthday or the tenth anniversary of the contract, which-  
277 ever is later.

278 (i) Any contract which does not provide cash surrender  
279 benefits or does not provide death benefits at least equal  
280 to the minimum nonforfeiture amount prior to the com-  
281 mencement of any annuity payments shall include a  
282 statement in a prominent place in the contract that  
283 the benefits are not provided.

284 (j) Any paid-up annuity, cash surrender or death benefits  
285 available at any time, other than on the contract anniver-  
286 sary under any contract with fixed scheduled consider-  
287 ations, shall be calculated with allowance for the lapse of  
288 time and the payment of any scheduled considerations  
289 beyond the beginning of the contract year in which  
290 cessation of payment of considerations under the contract  
291 occurs.

292 (k) For any contract which provides, within the same  
293 contract by rider or supplemental contract provision, both  
294 annuity benefits and life insurance benefits that are in  
295 excess of the greater of cash surrender benefits or a return  
296 of the gross considerations with interest, the minimum

297 nonforfeiture benefits shall be equal to the sum of the  
298 minimum nonforfeiture benefits for the annuity portion  
299 and the minimum nonforfeiture benefits, if any, for the life  
300 insurance portion computed as if each portion were a  
301 separate contract. Notwithstanding the provisions of  
302 subsections (e), (f), (g), (h) and (j) of this section, additional  
303 benefits payable: (1) In the event of total and permanent  
304 disability; (2) as reversionary annuity or deferred rever-  
305 sionary annuity benefits; or (3) as other policy benefits  
306 additional to life insurance, endowment and annuity  
307 benefits and considerations for all the additional benefits  
308 shall be disregarded in ascertaining the minimum  
309 nonforfeiture amounts, paid-up annuity, cash surrender  
310 and death benefits that may be required by this section.  
311 The inclusion of the additional benefits may not be  
312 required in any paid-up benefits unless the additional  
313 benefits separately would require minimum nonforfeiture  
314 amounts, paid-up annuity, cash surrender and death  
315 benefits.

316 (l) After the effective date of this section, any company  
317 may file with the commissioner a written notice of its  
318 election to comply with the provisions of this section after  
319 a specified date before the second anniversary of the  
320 effective date of this section. After the filing of the notice,  
321 then upon the specified date which shall be the operative  
322 date of this section for the company, this section shall  
323 become operative with respect to annuity contracts  
324 thereafter issued by the company. If a company makes no  
325 election, the operative date of this section for the company  
326 is the second anniversary of the effective date of this  
327 section.

328 (m) (1) During the period from the first day of July, two  
329 thousand four, through the first day of July, two thousand  
330 six, an insurer may elect on a contract-by-contract basis  
331 to apply the provisions of either subdivision (1) or (2),  
332 subsection (d) of this section to any annuity contract  
333 issued during that period of time;

334 (2) The provisions of subdivision (1), subsection (d) of  
335 this section expires the first day of July, two thousand six.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*[Handwritten Signature]*  
.....  
Chairman Senate Committee

*[Handwritten Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Handwritten Signature]*  
.....  
Clerk of the Senate

*[Handwritten Signature]*  
.....  
Clerk of the House of Delegates

*[Handwritten Signature]*  
.....  
President of the Senate

*[Handwritten Signature]*  
.....  
Speaker House of Delegates

The within *is approved* ..... this the *5<sup>th</sup>* .....  
Day of *April* ....., 2004.

*[Handwritten Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR  
DATE 3/22/04  
TIME 4:05 pm