CHAPTER 69

Individual Annuities

ARTICLE 1

General Provisions

**SECTION 38‑69‑10.** Circulation of false or misleading information by insurers.

 No insurer doing business in this State and no officer, director, or agent of it may issue or circulate or cause or permit to be issued or circulated any estimate, illustration, circular, or statement of any sort misrepresenting the terms of any annuity issued by it, the benefits or advantages promised thereby, or the dividends or shares of surplus to be received thereon or may use any name or title of any annuity or class of annuities misrepresenting the true nature thereof. Violation of this section by an agent or officer of an insurer is a misdemeanor. If an insurer violates or participates in the violation of this section, the insurer is subject to the penalty provisions of Section 38‑2‑10.

HISTORY: Former 1976 Code Section 38‑9‑40 [1947 (45) 322; 1952 Code Section 37‑144; 1962 Code Section 37‑144] recodified as Section 38‑69‑10 by 1987 Act No. 155, Section 1; 1988 Act No. 374, Section 36.

**SECTION 38‑69‑20.** Misrepresentations to induce termination or conversion of annuities.

 No insurer, or its employee or agent, may make any misleading representations or incomplete or fraudulent comparisons of any annuity contracts or insurers for the purpose of inducing, or which may tend to induce, any person to lapse, forfeit, surrender, terminate, return, or convert any annuity.

HISTORY: Former 1976 Code Section 38‑9‑50 [1956 (49) 1814; 1962 Code Section 37‑144.1] recodified as Section 38‑69‑20 by 1987 Act No. 155, Section 1; 1988 Act No. 374, Section 37.

**SECTION 38‑69‑30.** Nontransferability of annuity death benefits left with insurance company under a trust or other agreement.

 When the proceeds of an annuity becoming a claim by the death of the insured are left with an insurance company under a trust or other agreement, the benefits accruing under the agreement after the death of the insured are not transferable nor subject to computation or incumbrance nor to legal process, except in an action to recover for necessaries if the parties to the trust or other agreement so agree.

HISTORY: 1988 Act No. 342, Section 2.

ARTICLE 3

Policy Forms

**SECTION 38‑69‑110.** No defenses allowed if application not attached to annuity contract; oral applications.

 If the insurer does not deliver with an annuity contract issued by it a copy of the application made by the insured, no defense is allowed to that annuity on account of anything contained in or omitted from the application. If the annuity is issued upon an oral application, no defense is allowed to the contract on account of anything contained in, or omitted from, the oral application.

HISTORY: Former 1976 Code Section 38‑9‑70 [1947 (45) 322; 1949 (46) 600; 1952 Code Section 37‑146; 1962 Code Section 37‑146; 1980 Act No. 305, Section 1] recodified as Section 38‑69‑110 by 1987 Act No. 155, Section 1.

**SECTION 38‑69‑120.** Requirements for certain annuities and pure endowment contracts.

 All fixed dollar annuities, variable annuities, pure endowment contracts, or reversionary annuities other than group annuities delivered or issued for delivery in this State must contain in substance the following:

 (1) a brief and correct description of its benefits on the lower portion of its first page and an identifying form number on the lower left‑hand corner of its face;

 (2) a provision stating clearly, understandably, and conspicuously on the first page that the contract holder is permitted to return the contract within ten days of its delivery to the contract holder. If replacement of an annuity contract is involved, the contract holder is permitted to return the contract within twenty days of its delivery to the contract holder. If the contract was solicited by a direct response insurer rather than through a licensed insurance agent, the provision must state that the contract holder is permitted to return the contract within thirty‑one days. The entire premium paid by the contract holder must be returned immediately to the contract holder;

 (3) a provision stating who is authorized by the insurer to waive, alter, or change any of the terms or conditions of the contract. It may state also that no agent has the power or authority to waive, change, or alter any of the terms or conditions of the policy;

 (4) a provision that the contract and any rider or supplemental benefits attached to the contract are incontestable as to the truth of the application for insurance and to the representations of the insured individual after they have been in force for two years from their date of issue. Any rider or supplemental benefits attached subsequently to the contract are incontestable as to the truth of the application for the rider or supplemental benefits and to the representations of the insured individual after they have been in force for two years from their date of issue. If an insurer institutes proceedings to vacate a contract on the ground of the falsity of the representations contained in the application for the contract, the proceedings must commence within the time permitted in this subsection;

 (5) a provision that if it is found that the age or sex of the insured, or of any individual considered in determining the premium, has been misstated, any amount payable or benefit accruing under the contract is that as the premium would have purchased according to the correct age or sex;

 (6) a provision stating how the beneficiary is designated and how the beneficiary may be changed;

 (7) there must be a provision stating the amount of premium and the time and manner payable;

 (8) a provision that the insured is entitled to a grace period of not less than thirty‑one days within which the payment of any premium after the first may be made. During the grace period, the contract continues in full force. If a claim arises under the contract during the grace period, the amount of any premium due or overdue may be deducted from any amount payable under the contract in settlement;

 (9) a provision that the contract may be reinstated upon written application at any time within three years from the date of default in making stipulated payments to the insurer, unless the cash surrender value has been paid. However, all overdue stipulated payments and indebtedness to the insurer on the contract must be paid or reinstated with interest thereon at a rate to be specified in the contract, but not exceeding eight percent a year compounded annually and, when applicable, the insurer may include also a requirement of evidence of insurability satisfactory to the insurer;

 (10) a provision if the annuity contract is participating, that beginning not later than the end of the third contract year, the insurer shall ascertain annually and apportion any divisible surplus accruing on the contract;

 (11) a provision that is in accordance with Article 5, Chapter 69, Title 38, Standard Nonforfeiture Law for Individual Deferred Annuities.

 The director or his designee may approve contracts with provisions which vary from the provisions required in this section if the provisions are more favorable to the insured. Any of the provisions not applicable to single premium annuities, flexible premium annuities, or single premium pure endowment contracts need not be incorporated to that extent in the contract. This section does not apply to contracts for annuities included in or upon the lives of beneficiaries under life insurance contracts.

HISTORY: Former 1976 Code Section 38‑9‑250 [1947 (45) 322; 1950 (46) 2041; 1952 Code Section 37‑161; 1962 Code Section 37‑161] recodified as Section 38‑69‑120 by 1987 Act No. 155, Section 1; 1988 Act No. 341, Section 1; 1993 Act No. 181, Section 741.

ARTICLE 5

Standard Nonforfeiture Law for Individual Deferred Annuities

**SECTION 38‑69‑210.** Title.

 This article is known and may be cited as the "Standard Nonforfeiture Law for Individual Deferred Annuities".

HISTORY: Former 1976 Code Section 38‑8‑10 [1978 Act No. 517 Section 1] recodified as Section 38‑69‑210 by 1987 Act No. 155, Section 1.

**SECTION 38‑69‑220.** Exceptions from operation of article.

 This article does not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer including a partnership or sole proprietorship or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, or to any contract which is delivered outside this State through an agent or other representative of the company issuing the contract.

HISTORY: Former 1976 Code Section 38‑8‑20 [1978 Act No. 517 Section 2] recodified as Section 38‑69‑220 by 1987 Act No. 155, Section 1.

**SECTION 38‑69‑230.** Provisions required in contracts; provision for termination for nonpayment of consideration.

 In the case of contracts issued on or after the operative date of this article as defined in Section 38‑69‑320, no contract of annuity, except as stated in Section 38‑69‑220, may be delivered or issued for delivery in this State unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the director or his designee are at least as favorable to the contractholder, upon cessation of payment of considerations under the contract:

 (a) That upon cessation of payment of considerations under a contract, the insurer shall grant a paid‑up annuity benefit on a plan stipulated in the contract of such value as is specified in Sections 38‑69‑250, 38‑69‑260, 38‑69‑270, 38‑69‑280, and 38‑69‑300.

 (b) If a contract provides for a lump sum settlement at maturity, or at any other time, that, upon surrender of the contract at or prior to the commencement of any annuity payments, the insurer will pay in lieu of any paid‑up annuity benefit a cash surrender benefit of the amount as is specified in Sections 38‑69‑250, 38‑69‑260, 38‑69‑270, 38‑69‑280, and 38‑69‑300. The insurer shall reserve the right to defer the payment of the cash surrender benefit for a period of six months after demand therefor with surrender of the contract.

 (c) A statement of the mortality table, if any, 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 these benefits.

 (d) A statement that any paid‑up annuity, cash surrender, or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which the benefits are altered by 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.

 Notwithstanding the requirements of this section, 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 monthly, the insurer may at its option terminate the contract by payment in cash of the then present value of that 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 relieves the insurer of any further obligation under the contract.

HISTORY: Former 1976 Code Section 38‑8‑30 [1978 Act No. 517 Section 3] recodified as Section 38‑69‑230 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 742.

**SECTION 38‑69‑240.** Minimum forfeiture amounts for contracts issued before July 1, 2005.

 (A) This section applies to a contract issued before July 1, 2005, and may be applied by an insurer, on a contract‑form‑by‑contract‑form basis, to a contract issued after June 30, 2005, and before July 1, 2007. This section does not apply to a contract issued after June 30, 2007.

 (B) The minimum values as specified in Sections 38‑69‑250, 38‑69‑260, 38‑69‑270, 38‑69‑280, and 38‑69‑300 of any paid‑up annuity, cash surrender, or death benefits available under an annuity contract must be based upon minimum nonforfeiture amounts as defined in this section.

 (C) With respect to a contract providing for flexible considerations, the minimum nonforfeiture amount at any time at or before the commencement of an annuity payment is equal to an accumulation up to that time at a rate of interest of three percent a year of percentages of the net considerations paid before that time, decreased by the sum of:

 (1) any previous withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three percent a year; and

 (2) the amount of any indebtedness to the insurer on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the insurer to the contract.

 (D) The net considerations for a given contract year used to define the minimum nonforfeiture amount must be an amount not less than zero and are equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars and less a collection charge of one dollar and twenty‑five cents for each consideration credited to the contract during that contract year. The percentages of net considerations are sixty‑five percent of the net consideration for the first contract year and eighty‑seven and one‑half percent of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage is sixty‑five percent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all previous contract years for which the percentage was sixty‑five percent.

 (E) With respect to a contract providing for fixed scheduled considerations, minimum nonforfeiture amounts are calculated on the assumption that considerations are paid annually in advance and are defined as for contracts with flexible considerations which are paid annually with two exceptions:

 (1) the portion of the net consideration for the first contract year to be accumulated is the sum of sixty‑five percent of the net consideration for the first contract year plus twenty‑two and one‑half 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 is the lesser of:

 (a) thirty dollars; or

 (b) ten percent of the gross annual considerations.

 (F) With respect to a contract providing for a single consideration, minimum nonforfeiture amounts are defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount is equal to ninety percent and the net consideration is the gross consideration less a contract charge of seventy‑five dollars.

HISTORY: Former 1976 Code Section 38‑8‑40 [1978 Act No. 517 Section 4] recodified as Section 38‑69‑240 by 1987 Act No. 155, Section 1; 2005 Act No. 43, Section 2, eff May 3, 2005.

Editor's Note

2002 Act No. 313, Section 2, as amended by 2003 Act No. 73, Section 19 and 2005 Act No. 43, Section 3, provides as follows:

"Notwithstanding the interest rate provisions of Section 38‑69‑240(A) of the 1976 Code, for prospective sales of contracts entered into pursuant to Section 38‑69‑240 from this act's effective date through June 30, 2007, the following may be applied, at the insurer's option, to a contract issued after the effective date of this act and before July 1, 2007, on a contract‑form‑by‑contract‑form basis:

"(1) The minimum values as specified in Sections 38‑69‑250, 38‑69‑260, 38‑69‑270, 38‑69‑280, and 38‑69‑300 of the 1976 Code of any paid‑up annuity, cash surrender, or death benefits available under an annuity contract providing for flexible considerations, the minimum nonforfeiture amount at any time at or before the commencement of any annuity payments is equal to an accumulation up to that time at a rate of interest one and one‑half percent a year of percentages of the net considerations paid before that time, decreased by the sum of:

"(a) any previous withdrawals from or partial surrenders of the contract accumulated at a rate of interest of one and one‑half percent a year; and

"(b) the amount of any indebtedness to the insurer on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the insurer to the contract.

"(2) The net considerations for a given contract year used to define the minimum nonforfeiture amount must be an amount not less than zero and are equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars and less a collection charge of one dollar and twenty‑five cents for each consideration credited to the contract during that contract year. The percentages of net considerations are sixty‑five percent of the net consideration for the first contract year and eighty‑seven and one‑half percent of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage is sixty‑five percent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all previous contract years for which the percentage was sixty‑five percent."

**SECTION 38‑69‑245.** Minimum nonforfeiture amounts for contracts issued after June 30, 2007.

 (A) This section applies to contracts issued after June 30, 2007, and may be applied by an insurer, on a contract‑form‑by‑contract‑form basis, to a contract issued after June 30, 2005, and before July 1, 2007.

 (B) The minimum values as specified in Sections 38‑69‑250, 38‑69‑260, 38‑69‑270, 38‑69‑280, and 38‑69‑300 of any paid‑up annuity, cash surrender, or death benefits available under an annuity contract must be based upon minimum nonforfeiture amounts as defined in this section.

 (C) The minimum nonforfeiture amount at any time at or before the commencement of an annuity payment is equal to an accumulation up to that time at a rate of interest as indicated in subsection (E) of the net considerations paid before that time, decreased by the sum of items of (1) through (4):

 (1) any previous withdrawals from or partial surrenders of the contract accumulated at a rate of interest as indicated in subsection (E);

 (2) an annual contract charge of fifty dollars, accumulated at a rate of interest as indicated in subsection (E);

 (3) any premium tax paid by the company for the contract, accumulated at a rate of interest as indicated in subsection (E); and

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

 (D) The net considerations for a given contract year used to define the minimum nonforfeiture amount must be an amount equal to eighty‑seven and one‑half percent of the gross considerations credited to the contract during that contract year.

 (E)(1) The interest rate used in determining minimum nonforfeiture amounts must be an annual rate of interest determined as the lesser of three percent a year and the following, which must be specified in the contract if the interest rate is 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 1/20th of one percent, specified in the contract no longer than fifteen months before the contract issue date or redetermination date pursuant to subitem (d);

 (b) reduced by one hundred twenty‑five 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.

 (2) The redetermination date, basis, and period, if any, must 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.

 (F) During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in subsection (E)(1)(b) by up to an additional one hundred basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date after that, of the additional reduction must not exceed the market value of the benefit. The director or his designee may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. If a demonstration is not acceptable to the director, or his designee, he may disallow or limit the additional reduction.

 (G) The director, or his designee, may adopt rules to implement the provisions of subsection (F) 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 that the director, or his designee, determines adjustments are justified.

HISTORY: 2005 Act No. 43, Section 1, eff May 3, 2005.

**SECTION 38‑69‑250.** Paid‑up annuity benefits; present value.

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

HISTORY: Former 1976 Code Section 38‑8‑50 [1978 Act No. 517 Section 5] recodified as Section 38‑69‑250 by 1987 Act No. 155, Section 1.

**SECTION 38‑69‑260.** Cash surrender benefits.

 For contracts which provide cash surrender benefits, the cash surrender benefits available prior to maturity may not be less than the present value as of the date of surrender of that portion of the maturity value of the paid‑up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, the present value being calculated on the basis of an interest rate not more than one percent higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the insurer on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the insurer to the contract. In no event may any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts must be at least equal to the cash surrender benefit.

HISTORY: Former 1976 Code Section 38‑8‑60 [1978 Act No. 517 Section 6] recodified as Section 38‑69‑260 by 1987 Act No. 155, Section 1.

**SECTION 38‑69‑270.** Contracts not providing cash surrender benefits.

 For contracts which do not provide cash surrender benefits, the present value of any paid‑up annuity benefit available as a nonforfeiture option at any time prior to maturity may not be less than the present value of that portion of the maturity value of the paid‑up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid‑up annuity. The present value is calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value and increased by any existing additional amounts credited by the insurer to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, the present values are calculated on the basis of the interest rate and the mortality table specified in the contract for determining the maturity value of the paid‑up annuity benefit. However, in no event may the present value of a paid‑up annuity benefit be less than the minimum nonforfeiture amount at that time.

HISTORY: Former 1976 Code Section 38‑8‑70 [1978 Act No. 517 Section 7] recodified as Section 38‑69‑270 by 1987 Act No. 155, Section 1.

**SECTION 38‑69‑280.** Maturity date under certain contracts.

 For the purpose of determining the benefits calculated under Sections 38‑69‑260 and 38‑69‑270, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date is considered to be the latest date for which election is permitted by the contract but may not be considered to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

HISTORY: Former 1976 Code Section 38‑8‑80 [1978 Act No. 517 Section 8] recodified as Section 38‑69‑280 by 1987 Act No. 155, Section 1.

**SECTION 38‑69‑290.** Statements required in certain contracts.

 Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that those benefits are not provided.

HISTORY: Former 1976 Code Section 38‑8‑90 [1978 Act No. 517 Section 9] recodified as Section 38‑69‑290 by 1987 Act No. 155, Section 1.

**SECTION 38‑69‑300.** Calculating benefits available other than on anniversary date.

 Any paid‑up annuity, cash surrender, or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, must be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

HISTORY: Former 1976 Code Section 38‑8‑100 [1978 Act No. 517 Section 10] recodified as Section 38‑69‑300 by 1987 Act No. 155, Section 1.

**SECTION 38‑69‑310.** Contracts providing annuity and insurance benefits.

 For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits must be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of Sections 38‑69‑250, 38‑69‑260, 38‑69‑270, 38‑69‑280, and 38‑69‑300, additional benefits payable (a) in the event of total and permanent disability, (b) as reversionary annuity or deferred reversionary annuity benefits, or (c) as other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits, must be disregarded in ascertaining the minimum nonforfeiture amounts and paid‑up annuity, cash surrender, and death benefits that may be required by this section. The inclusion of such additional benefits is not required in any paid‑up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts and paid‑up annuity, cash surrender, and death benefits.

HISTORY: Former 1976 Code Section 38‑8‑110 [1978 Act No. 517 Section 11] recodified as Section 38‑69‑310 by 1987 Act No. 155, Section 1.

**SECTION 38‑69‑320.** Effective date of article as to insurer.

 After May 31, 1978, an insurer may file with the department a written notice of its election to comply with the provisions of this article after a specified date before May 31, 1980. After the filing of the notice, upon the specified date, which is the operative date of this article for the insurer, this article becomes operative with respect to annuity contracts thereafter issued by the insurer. If an insurer makes no election, the operative date of this article for the insurer is May 31, 1980.

HISTORY: Former 1976 Code Section 38‑8‑120 [1978 Act No. 517 Section 12] recodified as Section 38‑69‑320 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 743.

**SECTION 38‑69‑330.** Promulgation of regulations.

 The Director of the Department of Insurance or his designee shall promulgate regulations to implement the provisions of this chapter.

HISTORY: 2000 Act No. 312, Section 15.