CHAPTER 63

Individual Life Insurance

ARTICLE 1

General Provisions

**SECTION 38‑63‑10.** Circulation of false or misleading information by life insurers.

 No life 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 policy 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 policy or class of policies 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 38‑63‑10 [1985 Act No. 189, Section 1] recodified as Section 38‑53‑10 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑40 [1947 (45) 322; 1952 Code Section 37‑144; 1962 Code Section 37‑144] recodified as Section 38‑63‑10 by 1987 Act No. 155, Section 1; 1988 Act No. 374, Section 32.

CROSS REFERENCES

Life insurance disclosure regulation, see S.C. Code of Regulations R. 69‑30.

Replacement of life insurance and annuities, see S.C. Code of Regulations R. 69‑12.1.

Library References

Insurance 1562.

Westlaw Topic No. 217.

LAW REVIEW AND JOURNAL COMMENTARIES

Insurance [Fraud]. 25 S.C. L. Rev. 393.

NOTES OF DECISIONS

In general 1

1. In general

Substitution by insurer of its policy of less value, in place of policy of company whose business it bought out, held not a violation of this section [former Code 1962 Section 37‑144] (decided under former law). Johnson v. Independence Ins. Co. (S.C. 1933) 170 S.C. 301, 170 S.E. 352. Insurance 1563; Insurance 1578

**SECTION 38‑63‑20.** Misrepresentations to induce termination or conversion of life insurance policies.

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

HISTORY: Former 1976 Code Section 38‑63‑20 [1985 Act No. 189, Section 1] recodified as Section 38‑53‑20 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑50 [1956 (49) 1814; 1962 Code Section 37‑144.1]; recodified as Section 38‑63‑20 by 1987 Act No. 155, Section 1; 1988 Act No. 374, Section 33.

CROSS REFERENCES

Penalties for violations of the insurance laws of this state, see Section 38‑2‑10 et seq.

Replacement of life insurance and annuities, see S.C. Code of Regulations R. 69‑12.1.

Library References

Insurance 1562 to 1567.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 659 to 662.

LAW REVIEW AND JOURNAL COMMENTARIES

Insurance [Fraud]. 25 S.C. L. Rev. 393.

**SECTION 38‑63‑30.** Lower life insurance rates for females lawful.

 Life insurers may quote lower rates to female applicants because of their more favorable life expectancy.

HISTORY: Former 1976 Code Section 38‑63‑30 [1985 Act No. 189, Section 1] recodified as Section 38‑53‑30 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑100 [1960 (51) 1758; 1962 Code Section 37‑148.1] recodified as Section 38‑63‑30 by 1987 Act No. 155, Section 1.

Library References

Insurance 1521, 1542(1).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 43, 93, 97 to 98, 100 to 102.

**SECTION 38‑63‑40.** Life insurance proceeds for insured’s spouse, children, or dependents exempt from claims of insured’s creditors; exceptions; certain other proceeds exempt from claims of beneficiary’s or insured’s creditors.

 (A) Proceeds and cash surrender values of life insurance payable to a beneficiary other than the insured’s estate in which such proceeds and cash surrender values are expressed to be for the primary benefit of the insured’s spouse, children, or dependents are exempt from creditors of the insured whether or not the right to change the beneficiary is reserved and whether or not the policy is payable to the insured if the beneficiary dies first except:

 (1) if the insured has filed a petition in bankruptcy within two years of purchasing the insurance, such proceeds or cash surrender are only exempt as permitted by Section 15‑41‑30; or

 (2) the amount of premiums paid and interest thereon with intent to defraud creditors;

 (3) a creditor possessing a valid assignment from the policyowner may recover from either the cash surrender value or the proceeds of the life insurance policy the amount secured by the assignment with interest.

 (B) Proceeds of life insurance or annuity contracts, by agreement, may be held by the insurer exempt from claims of the beneficiary’s creditors.

 (C) Proceeds of group life insurance contracts are exempt from claims of the creditors of the insured.

 (D) Benefits of accident and disability contracts are exempt from claims of the creditors of the insured.

HISTORY: Former 1976 Code Section 38‑63‑40 [1985 Act No. 189, Section 1] recodified as Section 38‑53‑40 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑340 [1947 (45) 322; 1952 Code Section 37‑169; 1962 Code Section 37‑169] recodified as Section 38‑63‑40 by 1987 Act No. 155, Section 1; 1988 Act No. 305, Section 1; 1993 Act No. 89, Section 1.

Library References

Exemptions 50.

Insurance 3489.

Westlaw Topic Nos. 163, 217.

C.J.S. Exemptions Sections 73 to 83.

C.J.S. Insurance Sections 1966 to 1967.

RESEARCH REFERENCES

ALR Library

37 ALR 2nd 268 , Right of Creditors of Life Insured as to Options or Other Benefits Available to Him During His Lifetime.

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 243, Personal Life Insurance Trusts‑Creditors of the Insured.

NOTES OF DECISIONS

In general 2

Construction with other laws 3

Validity of prior laws 1

1. Validity of prior laws

Relative to right of bankrupt to surrender value of life policy, state law exempting insurance for benefit of married woman from claims of husband’s creditors held unconstitutional. In re Cunningham, 1926, 15 F.2d 700. Exemptions 50(1); Insurance 3489

2. In general

Under rule of the last antecedent, words “payable to a beneficiary,” as used in South Carolina exemption for “[p]roceeds and cash surrender values of life insurance payable to a beneficiary other than the insured’s estate” had to be interpreted as modifying only the term “life insurance,” and not “[p]roceeds and cash surrender values”; statute could not be seen as permitting exemption of policy’s cash surrender value only when payable to beneficiary of policy, as beneficiary, if not an owner, could never access cash surrender value of policy. In re Patel (Bkrtcy.D.S.C. 2010) 431 B.R. 682. Exemptions 50(1)

South Carolina exemption for “[p]roceeds and cash surrender values of life insurance payable to a beneficiary other than the insured’s estate” was, by its plain terms, available to debtor who was both the named insured and owner of whole life insurance policy purchased for benefit of his wife and children, to permit debtor to exempt policy’s cash surrender value, notwithstanding trustee’s objection that statute was enacted for benefit of beneficiaries and was applicable only upon insured’s death; only debtor, as owner/insured, could access cash surrender value of policy, and conclusion that exemption was meant to apply to owner/insureds was further supported by language in statute indicating that exemption applied “whether or not the right to change the beneficiary [wa]s reserved,” as this language would be meaningless once insured had died and beneficiaries could not be changed. In re Patel (Bkrtcy.D.S.C. 2010) 431 B.R. 682. Exemptions 50(1)

Under South Carolina law, as predicted by bankruptcy court, statute providing exemption for life insurance payable to beneficiary, but not insured’s estate, when death benefits and cash value were expressly designated for insured’s spouse, children, or dependents applied to proceeds paid to beneficiary on insured’s death, creating no exemption until insured’s death, and limited its protection to claims of insured’s creditors, and not beneficiary’s own creditors, and therefore Chapter 7 debtors could not, each as beneficiary of other’s life insurance policy, claim policies’ cash surrender values as exempt under statute. In re Sims (Bkrtcy.D.S.C. 2010) 421 B.R. 745. Exemptions 50(1)

Former Code 1962 Section 37‑169 had no application to the cash surrender value of an insurance policy, for it was the intent of the legislature to provide for an insured’s widow and his or their children by securing to them, “at the time of his death,” the benefits of the proceeds of insurance policies in force coming within the category provided by section (decided under former law). Wilson v. Mutual Ben. Life Ins. Co. of Newark, N. J. (S.C. 1936) 182 S.C. 131, 188 S.E. 803.

3. Construction with other laws

Interpreting South Carolina exemption for “[p]roceeds and cash surrender values of life insurance payable to a beneficiary other than the insured’s estate” as being available to debtor who was both the owner of and the named insured under a whole life policy, to permit debtor to totally exempt policy’s cash surrender value from property of estate, would not render meaningless another South Carolina exemption that permitted owner/insured to claim a more limited exemption, up to $4,125.00, in cash surrender value of any policy, without regard to identity of beneficiaries; while there might be some overlap between the two statutes, they were not in conflict and could be read together to achieve harmonious purpose. In re Patel (Bkrtcy.D.S.C. 2010) 431 B.R. 682. Exemptions 50(1)

**SECTION 38‑63‑50.** Spendthrift provisions in settlement agreements are valid.

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

HISTORY: Former 1976 Code Section 38‑63‑50 [1985 Act No. 189, Section 1] recodified as Section 38‑53‑50 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑350 [1953 (48) 493; 1962 Code Section 37‑169.1] recodified as Section 38‑63‑50 by 1987 Act No. 155, Section 1.

Library References

Insurance 3383.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 1879 to 1880, 1882, 2223.

RESEARCH REFERENCES

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 240, Personal Life Insurance Trusts‑Agreement by Insurance Company to Hold Proceeds in Trust.

**SECTION 38‑63‑60.** Industrial life insurance.

 Industrial life insurance is that form of life insurance provided by an individual contract under which premiums are payable weekly or monthly and having the words “INDUSTRIAL POLICY” printed in bold print upon the face of the policy as part of the title. No policy of life insurance delivered or issued for delivery in South Carolina may use industrial mortality tables unless the policy is an industrial life insurance policy.

HISTORY: Former 1976 Code Section 38‑63‑60 [1985 Act No. 189, Section 1] recodified as Section 38‑53‑60 by 1987 Act No. 155, Section 1; New Section 38‑63‑60 enacted by 1988 Act No. 482, Section 2.

Library References

Insurance 1011.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 3, 7, 11 to 18, 20 to 21.

**SECTION 38‑63‑80.** Interest on lump sum payment of life insurance proceeds.

 When an individual life insurance policy provides for payment of its proceeds in a lump sum upon the death of the insured and the insurer fails to pay the proceeds within thirty days of submission of proof of death and all necessary claim papers needed in order to pay the claim properly, the payment must include interest at the legal rate from the date of death of the insured until the date the claim is paid.

HISTORY: Former 1976 Code Section 38‑63‑80 [1985 Act No. 189, Section 1] recodified as Section 38‑53‑80 by 1987 Act No. 155, Section 1; New Section 38‑63‑80 enacted by 1988 Act No. 416.

Library References

Insurance 3396.

Westlaw Topic No. 217.

C.J.S. Insurance Section 2212.

**SECTION 38‑63‑90.** Attorneys’ fees authorized.

 When a life insurer refuses to pay a claim on a life insurance policy within thirty days after a demand has been made by the beneficiary of the policy or contract, and a finding on suit of the contract made by the trial judge that the refusal was without reasonable cause or in bad faith, the insurer is liable to pay the beneficiary, in addition to any sum or any amount otherwise recoverable, all reasonable attorneys’ fees for the prosecution of the case. The amount of reasonable attorneys’ fees must be determined by the trial judge and the amount added to the judgment. If attorneys’ fees are allowed and, on appeal by the defendant, the judgment is affirmed, the Supreme Court or the court of appeals shall allow to the respondent an additional sum as the court adjudged reasonable as attorneys’ fees of the respondent on the appeal.

HISTORY: Former 1976 Code Section 38‑63‑90 [1985 Act No. 189, Section 1] recodified as Section 38‑53‑140 by 1987 Act No. 155, Section 1; New Section 38‑63‑90 enacted by 1988 Act No. 482, Section 5; 1999 Act No. 55, Section 39.

Library References

Insurance 3375, 3585.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 1670, 2135 to 2136, 2146, 2148, 2226, 2333.

**SECTION 38‑63‑100.** Charity or nonprofit corporation as life insurance beneficiary; construction of section.

 Notwithstanding any other provision of law, a bona fide charity or nonprofit corporation which is in compliance with the “Solicitation of Charitable Funds Act” (Chapter 55, Title 33) has an insurable interest in the life of an insured under a policy in which the charity or corporation is irrevocably named as a beneficiary provided that the application for insurance is signed by the insured.

 The provisions of this section do not limit or abridge any insurable interest or right to insure now existing at common law or by statute, shall be construed liberally to sustain insurable interest, and shall stand as a declaration of existing law applicable to all life insurance policies in existence on or after the effective date of this section.

HISTORY: 1992 Act No. 352, Section 1.

Library References

Insurance 1791(5), 3464.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 371 to 372, 375, 380 to 383, 1948, 1951, 1955 to 1956.

RESEARCH REFERENCES

Treatises and Practice Aids

Couch on Insurance Section 67:3, General Rule as to Bequest and Revocation.

ARTICLE 3

Policy Forms

**SECTION 38‑63‑210.** Whole contract, including application, must appear in policy; oral applications.

 Every insurer doing a life insurance business in the State shall deliver with each policy of insurance issued by it a copy of the application made by the insured so that the whole contract appears in the application and policy of insurance. If the insurer violates this requirement, no defense is allowed to the policy on account of anything contained in, or omitted from, the application. If the insurance policy is issued upon an oral application, no defense is allowed to the policy on account of anything contained in, or omitted from, the oral application.

HISTORY: Former 1976 Code Section 38‑63‑210 [1985 Act No. 189, Section 1] recodified as Section 38‑53‑200 by 1987 Act No. 155, Section 1; 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 38‑63‑210 by 1987 Act No. 155, Section 1.

CROSS REFERENCES

Effect of items (7)‑(10) of this section on the coverage of the families of employees and members, see Section 38‑65‑70.

Library References

Insurance 1750, 2981.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 489 to 496, 509, 860.

NOTES OF DECISIONS

In general 1

1. In general

Where it was contended that, since a copy of the application was not physically attached to the certificate of life insurance, the insurer was precluded from taking advantage of false statements in the application, it was held that the purpose of former Code 1962 Section 37‑146 was to give the insured the opportunity of knowing what was contained in the application (which purpose was subserved by furnishing the insured with a copy when the two certificates, one for life insurance and one for accident and health, were contemporaneously delivered) and that it would be too strained a construction of the statute to hold that such defense was foreclosed by reason of the fact that a copy of the application for the combination insurance was not physically attached to the certificate representing the life insurance contract or certificate (decided under former law). Kilpatrick v. Brotherhood of R. R. Trainmen Ins. Dept. (S.C. 1947) 210 S.C. 379, 42 S.E.2d 891.

Former Code 1962 Section 37‑146 did not require a copy of the application for the reinstatement of a lapsed life insurance policy to be delivered to the insured as a condition precedent to its admissibility in evidence in a subsequent case or proceeding involving a cancellation of the policy on the ground of false representations contained therein (decided under former law). Murray v. Metropolitan Life Ins. Co. (S.C. 1940) 193 S.C. 368, 8 S.E.2d 314.

**SECTION 38‑63‑220.** Required policy provisions.

 All individual life insurance policies must contain in substance the following:

 (a) 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 first page;

 (b) a provision stating clearly, understandably, and conspicuously on the first page that the policyholder is permitted to return the policy within a period of not less than ten days of its delivery to the policyholder. If replacement of insurance is involved, the policyholder is permitted to return the policy within a period of not less than twenty days of its delivery to the policyholder. If the policy was solicited by a direct response insurer rather than through a licensed insurance agent, the provision must state that the policyholder is permitted to return the policy within a period of not less than thirty‑one days. The entire premium paid by the policyholder must be returned immediately to the policyholder;

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

 (d) a provision that the policy and any rider or supplemental benefits attached to the policy 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 during the lifetime of the insured for a period of two years from their date of issue. Any rider or supplemental benefits subsequently attached to the policy 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 during the lifetime of the insured for a period of two years from their date of issue. If an insurer institutes proceedings to vacate a policy on the ground of the falsity of the representations contained in the application for the policy, the proceedings must commence within the time permitted in this subsection;

 (e) 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 policy is that as the premium would have purchased according to the correct age or sex;

 (f) a provision that when a policy becomes a claim by the death of the insured, settlement must be made upon receipt of proof of death. When a policy provides for payment of its proceeds in a lump sum upon the death of the insured and the insurer fails to pay the proceeds within thirty days of submission of proof of death and all necessary claim papers needed in order to pay the claim properly, the payment must include interest at the legal rate of interest from the date of death of the insured until the date the claim is paid;

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

 (h) a provision stating the amount of premium and the time and manner payable. If the death of the insured occurs during a period for which the premium has been paid, the insurer shall add to the policy proceeds a refund of any premium paid for any period beyond the date of death of the insured, provided such premium was not waived under any policy provision for waiver of premium;

 (i) 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 policy continues in full force. If a claim arises under the policy during the grace period, the amount of any premium due or overdue may be deducted from any amount payable under the policy in settlement;

 (j) a provision that the policy may be reinstated at any time within three years after the date of default in the payment of any premium, unless the policy has been surrendered for its cash value or unless the extended term insurance, if any, has expired, upon evidence of insurability satisfactory to the insurer and the payment of all overdue premiums and payment (or within the limits permitted by the then cash value of the policy reinstatement) of any other indebtedness to the insurer upon the policy with interest as to both premiums and indebtedness at a rate not exceeding eight percent a year compounded annually. However, acceptance of all or any part of a premium more than thirty days in arrears by the agent or company without requiring reinstatement application continues the policy in force without any lapse of coverage;

 (k) a provision in participating policies that, beginning not later than the end of the third policy year, the insurer shall annually ascertain and apportion the divisible surplus, if any, that will accrue on the policy anniversary or other dividend date specified in the policy. Except as provided in this section, any dividend becoming payable is, at the option of the party entitled to elect the option, either payable in cash or applied to any one of the other dividend options as may be provided by the policy. If other dividend options are provided, the policy must further state which option is automatically effective if the party has not elected some other option. If a policy specifies a period within which the other option may be elected, this period must be not less than thirty days following the date on which the dividend is due and payable. If a participating policy provides that the benefit under any paid‑up nonforfeiture provision is to be participating, it may provide that any divisible surplus becoming payable or apportioned while the insurance is in force under the nonforfeiture provision will be applied in the manner set forth in the policy;

 (l) a provision that after three full years’ premiums have been paid, and after the policy has a cash surrender value, and while no premium is in default beyond the grace period for payment, the insurer will loan on the execution of a proper note or loan agreement by the owner of the policy, or on proper assignment of the policy and on the sole security of the policy, at the option of the owner of the policy, an amount not exceeding the cash value of the policy at the end of the current policy year including any dividend additions to the policy. The company may deduct from the loan value or from the proceeds of the loan any existing indebtedness on or secured by the policy not already deducted in determining the cash value, including interest due or accrued, and any unpaid balance of the premium for the current policy year, and may collect interest in advance of the loan through the end of the current policy year. The policy must reserve to the insurer the right to defer the granting of a loan, other than for the payment of any premium to the insurer, for six months after application for the loan. The policy may also provide that if interest on any indebtedness is not paid when due, it must then be added to the existing indebtedness and bear interest at the same rate, and that if and when the total indebtedness on the policy, including interest due or accrued, equals or exceeds the amount of the loan value of the policy, then the policy terminates, but not until at least thirty days’ notice has been mailed by the insurer to the last known address of the insured or policy owner and to that of any assignee of record on file with the insurer. The policy, at the insurer’s option, may provide for an automatic premium loan, subject to an election of the party entitled to elect. No condition other than as provided in this subsection may be exacted as a prerequisite to any loan. This subsection does not apply to term insurance or to term insurance benefits provided by rider or supplemental policy provisions;

 (m) a provision that is in accordance with Sections 38‑63‑240 to 38‑63‑280;

 (n) a provision that is in accordance with Article 5, Chapter 63, Title 38, Standard Nonforfeiture Law for Life Insurance.

 The director or his designee may approve policies with provisions which vary from the provisions required in this section if the provisions are more favorable to the insured or if the provisions are not applicable because of the nature of the product.

HISTORY: Former 1976 Code Section 38‑63‑220 [1985 Act No. 189, Section 1.] recodified as Section 38‑53‑210 by 1987 Act No. 155, Section 1; 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 38‑53‑210 by 1987 Act No. 155, Section 1; 1988 Act No. 482, Section 1; 1993 Act No. 181, Section 725.

Library References

Insurance 1768 to 1772, 2423, 3125.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 477 to 478, 481, 486 to 488, 2217.

RESEARCH REFERENCES

Treatises and Practice Aids

1 Causes of Action 2d 1, Causes of Action for Nonpayment of Life Insurance Benefits in Which Fraud, Misrepresentation, or Factual Misstatement Regarding Insured’s State of Health is Raised as Defense.

Couch on Insurance Section 80:1, Introduction.

Couch on Insurance Section 80:2, Right to Obtain Loan‑Generally.

Couch on Insurance Section 80:4, Prerequisites to Loan Rights.

Couch on Insurance Section 80:6, Deduction of Premiums from Loan Amount.

Couch on Insurance Section 80:9, Debt Exceeding Loan Value.

Couch on Insurance Section 80:11, Consideration for Loan.

Couch on Insurance Section 80:12, Date When Loan Arises.

Couch on Insurance Section 80:18, Effect on Amount Available Under Nonforfeiture Provisions.

Couch on Insurance Section 80:27, Treatment of Accrued Interest.

LAW REVIEW AND JOURNAL COMMENTARIES

Cancellation and Avoidance. 24 S.C. L. Rev. 569.

NOTES OF DECISIONS

In general 1

Change of beneficiary 6

Construction with other laws 2

Effect of death during contestability period 4

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Reinstatement 5

Summary judgment 7

1. In general

When insurer chose to enter contractual obligations in South Carolina, it assented to all the reasonable conditions imposed, including the incontestability statutes (decided under former law). Bolick v. Prudential Ins. Co. of America (D.C.S.C. 1966) 249 F.Supp. 735. Insurance 1165

The named beneficiary of a life insurance policy was entitled to the proceeds of the policy, despite having killed the insured (her husband), where the undisputed facts established that she had killed him in self‑defense; the mere fact that she stayed with the insured after he began physically abusing her did not lead to the logical inference that she did so in order to feloniously kill him. Metropolitan Life Ins. Co. v. Fogle (S.C.App. 1992) 309 S.C. 64, 419 S.E.2d 825. Insurance 3484

The doctrine of waiver under former Section 38‑9‑250 could not operate to rewrite an insurance policy to make suicide a covered risk, where suicide was an excluded risk and worked as a forfeiture of the policy. Alverson v. Minnesota Mut. Life Ins. Co. (S.C.App. 1985) 287 S.C. 432, 339 S.E.2d 140.

Question of proper construction of statutory incontestable clause in group life policy could best be accomplished upon trial of case on merits with policy in question before court, rather than on demurrer to answer. Jervey v. Minnesota Mut. Life Ins. Co. (S.C. 1974) 262 S.C. 655, 207 S.E.2d 90.

Where date of insured’s birth was allegedly erroneously stated in the proofs of death, insurance company was entitled to act upon the proofs as submitted by the beneficiary, in the absence of any showing that the proofs were in error (decided under former law). Blackmon v. United Ins. Co. (S.C. 1959) 235 S.C. 335, 111 S.E.2d 552.

Insurer’s tender of amount it conceived due under the policy within two‑year period is not sufficient assertion of right to vacate policy. A contest, within the meaning of an incontestable clause in an insurance policy, means some affirmative or defensive action taken in court to cancel the policy or prevent its enforcement to which the insurer and the insured, or his representative or beneficiaries, are parties (decided under former law). Parker v. Progressive Life Ins. Co. (S.C. 1959) 235 S.C. 96, 110 S.E.2d 5.

“Incontestable” statutes and policy provisions have often been called short statutes of limitation and the Supreme Court has upheld them, even against claims of fraud (decided under former law). Weston v. Metropolitan Life Ins. Co. (S.C. 1945) 206 S.C. 128, 33 S.E.2d 386, 157 A.L.R. 1198.

It is immaterial whether statements made by the insured on the application were representations or warranties, since the insurer cannot deny the truth of the application, having received the premiums for more than two years without dispute (decided under former law). Owen v. Bankers’ Life Ins. Co. of City of New York (S.C. 1909) 84 S.C. 253, 66 S.E. 290, 137 Am.St.Rep. 845.

The statute limiting the insurer to two years in which it could deny the statements contained in the application is in clear derogation of the common law and must be strictly construed (decided under former law). Love v. Prudential Ins. Co. of America (S.C. 1934) 173 S.C. 433, 176 S.E. 333.

2. Construction with other laws

Former Code 1962 Section 37‑161 and former Code 1962 Section 37‑162 were applicable only to the right of the insurer to dispute the truth of the application for insurance or to assert that the assured person had made false representations, hence, these sections were not applicable where company was contesting under a policy clause allowing the company to void the contract upon the failure of the claimant to comply with certain provisions of the policy (decided under former law). Coker v. United Ins. Co. of America (S.C. 1966) 247 S.C. 271, 146 S.E.2d 868.

Former Code 1962 Section 37‑161 and former Code 1962 Sections 37‑2, 37‑162 and 37‑857 should be construed together since they were all taken from the same act. Raggio v. Woodmen of the World Life Ins. Soc. (S.C. 1955) 228 S.C. 340, 90 S.E.2d 212.

3. Provision as part of policy

Policy clauses providing that insurer assumes no obligation unless insured is in sound health at time of issuance, and assumes no liability for death from preexisting disease, are not available as defenses after expiration of contestability period, and its protection to the insured and beneficiary cannot be avoided or impaired by the provisions of the policy (decided under former law). Blackwell v United Ins. Co. (1957) 231 SC 535, 99 SE2d 414. Parker v Progressive Life Ins. Co. (1959) 235 SC 96, 110 SE2d 5.

Former Code 1962 Section 37‑161 was a part of a policy as effectually as if it had been written therein. New York Life Ins. Co. v Greer (1933) 170 SC 151, 169 SE 837. Weston v Metropolitan Life Ins. Co. (1945) 206 SC 128, 33 SE2d 386, 157 ALR 1198. Blackwell v United Ins. Co. (1957) 231 SC 535, 99 SE2d 414. Parker v Progressive Life Ins. Co. (1959) 235 SC 96, 110 SE2d 5.

A two year incontestability statute is part of a life policy; if a life insurance contract fails to contain a two year incontestable clause, it will be construed as if it had been incorporated therein at the time of issuance, and if any conflict arises between a policy and a two year incontestable statute, the conflict will be resolved in favor of the latter (decided under former law). Bolick v. Prudential Ins. Co. of America (D.C.S.C. 1966) 249 F.Supp. 735. Insurance 3125

A provision in a life policy that it should be incontestable, except for nonpayment of premiums and for fraud, does not take the policy out of this section [former Code 1962 Section 37‑161], the provision as to fraud not preserving the defense (decided under former law). Beard v. North State Life Ins. Co. (S.C. 1916) 104 S.C. 45, 88 S.E. 285. Insurance 3125

4. Effect of death during contestability period

The death of the insured, within the limiting period of two years, does not interrupt the running of the time limitation (decided unde former law). Bolick v. Prudential Ins. Co. of America (D.C.S.C. 1966) 249 F.Supp. 735.

A life insurance policy was declared void and the insurer was able to avoid liability where the insured made material misrepresentations on his application and subsequently died during the first 2 years of the policy, even though the misrepresentations were not shown to be causally related to the death; since Section 38‑63‑220 provides that an insurer must challenge the truthfulness of an application during the first 2 years, it need not prove a causal connection between the death and the misrepresentation. Carroll v. Jackson Nat. Life Ins. Co. (S.C. 1992) 307 S.C. 267, 414 S.E.2d 777.

Where insured died within two months after issuance of policy but suit was not brought within period of two years after date of policy, demurrer to defense of alleged false representations in insurance application was properly sustained (decided under former law). Parker v. Progressive Life Ins. Co. (S.C. 1959) 235 S.C. 96, 110 S.E.2d 5.

Since action against an estate to cancel a policy cannot be brought until appointment of an administrator, running of the statutory period is suspended pending such appointment (decided under former law). Arnold v. Life Ins. Co. of Ga. (S.C. 1954) 226 S.C. 60, 83 S.E.2d 553.

If the insured dies within the contestable period, and for a time there is no administrator, the running of the period of limitations is suspended while the insurer is prevented from suing (decided under former law). Weston v. Metropolitan Life Ins. Co. (S.C. 1945) 206 S.C. 128, 33 S.E.2d 386, 157 A.L.R. 1198.

The death of an insured during the period of contestability provided by statute or a policy provision, does not ordinarily interrupt the running of the time limitation provided by either or both of such (decided under former law). Henderson v. Life Ins. Co. of Va. (S.C. 1935) 176 S.C. 100, 179 S.E. 680.

5. Reinstatement

Reinstatement is a contract by virtue of which the policy already issued, under the conditions prescribed therein, is revived or restored after its lapse. Myers v. National Sales Ins. Co. (S.C.App. 2004) 362 S.C. 41, 606 S.E.2d 486. Insurance 2051; Insurance 2055

Reinstatement of a lapsed insurance policy does not create a new contract of insurance. Myers v. National Sales Ins. Co. (S.C.App. 2004) 362 S.C. 41, 606 S.E.2d 486. Insurance 2055

Two‑year contestability period of life insurance policy began anew upon reinstatement of policy that had lapsed two years after it was issued; although the reinstatement did not create a new contract of insurance, the contestability period remained a condition of the contract, the reinstatement application referred to the original application which specifically mentioned the incontestability provision, and reinstatement was subject to evidence of insurability satisfactory to the insurer and a two‑year period of contestability. Myers v. National Sales Ins. Co. (S.C.App. 2004) 362 S.C. 41, 606 S.E.2d 486. Insurance 3125

6. Change of beneficiary

Jury considering extrinsic evidence of intention regarding insured’s right to change beneficiary of life insurance policy needed to resolve all ambiguity in favor of the insured. Waters v. Southern Farm Bureau Life Ins. Co. (S.C.App. 2005) 365 S.C. 519, 617 S.E.2d 385, rehearing denied, certiorari denied. Insurance 3474

When a life insurance policy does not reserve to the insured the right to change the beneficiary, the beneficiary, upon the issuance of the policy, acquires a vested interest in the proceeds of the insurance when available according to the terms of the policy, and this interest cannot be divested by any act of the insured. Waters v. Southern Farm Bureau Life Ins. Co. (S.C.App. 2005) 365 S.C. 519, 617 S.E.2d 385, rehearing denied, certiorari denied. Insurance 3470; Insurance 3474

Language in life insurance policy requiring the form for change of beneficiary to be recorded at the home office was for the protection of the company, not the insured or the beneficiary, and, thus, fact that the insurer never received the form did not preclude change, where the insured did all he reasonably could to make the change. Life of Georgia Ins. Co. v. Bolton (S.C.App. 1998) 333 S.C. 406, 509 S.E.2d 488. Insurance 3475(5)

7. Summary judgment

Policyholder’s failure to declare intention on application regarding right to change beneficiary of life insurance policy gave rise to an ambiguity and, therefore, created genuine issue of material fact as to parties’ intention and precluded summary judgment; the policy seemed to reserve owner’s right to change beneficiary in two places and seemed to require in one place that the right be expressly reserved in application. Waters v. Southern Farm Bureau Life Ins. Co. (S.C.App. 2005) 365 S.C. 519, 617 S.E.2d 385, rehearing denied, certiorari denied. Judgment 181(23)

**SECTION 38‑63‑225.** Suicide and death exclusions.

 (A) If an individual life insurance policy contains a suicide provision, it may not limit payment of benefits for a period more than two years from the date of issue of the policy and it must provide for at least the return of premiums paid on the policy.

 (B) An individual life insurance policy or rider to such a policy delivered or issued for delivery in this State may exclude or restrict liability in the event of death occurring while the insured is a resident in a specified foreign country or countries, but except as provided in subsection (A) may not contain any provision excluding or restricting liability in the event of death caused in a certain specified manner, except as a result of:

 (1) death as a result of war, declared or undeclared, or any act or hazard of such a war;

 (2) death as a result of operating, riding, or descending from an aircraft unless the insured is a passenger and the aircraft is operated commercially to transport passengers for hire or by a private business to transport personnel or guests;

 (3) death as a result of hazardous occupations or hazardous sports specified in the policy or rider.

 If death is caused in a manner excluded in the policy or rider, the policy must provide for at least the return of premiums paid on the policy less any indebtedness to the insurer on the policy.

 (C) If an individual life insurance policy or rider contains any exclusions or restrictions of liability as allowed in subsection (B), the policy or rider must have a prominent stamp of notice of these exclusions or restrictions on the face of it and the insurer is required to have a separate form acknowledging the exclusions of liability signed by the owner of the policy.

HISTORY: 1988 Act No. 482, Section 3.

Library References

Insurance 2431, 2432(2), 2434, 3125.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 1421, 1426 to 1431, 1679, 1684 to 1686, 2217.

NOTES OF DECISIONS

In general 1

1. In general

Suicide exclusion in life insurance policy was legally enforceable under South Carolina law; insurer complied with statutory requirements for suicide exclusions by not limiting benefits for policyholders who commit suicide more than two years after the policy issue date and by returning all premiums paid on policy plus interest to primary beneficiary. McKinnon v. Lincoln Benefit Life Co. (C.A.4 (S.C.) 2006) 162 Fed.Appx. 223, 2006 WL 41200, Unreported. Insurance 2434(1)

District court fairly concluded that beneficiaries’ claims presented straightforward questions that were covered by the plain language of South Carolina insurance statute, in rejecting contention in motion to certify that case raised two allegedly novel questions that should be decided by the South Carolina Supreme Court, namely whether suicide exclusion had to comply with statutory notice requirements and whether life insurance policy language, “suicide while sane or self‑destruction while insane,” created two exclusions and thereby exceeded scope of statute governing suicide exclusions. McKinnon v. Lincoln Benefit Life Co. (C.A.4 (S.C.) 2006) 162 Fed.Appx. 223, 2006 WL 41200, Unreported. Federal Courts 3107

**SECTION 38‑63‑240.** Interest rate on insurance policy loans.

 Life insurance policies issued after May 1, 1985, may not provide for policy loan interest rates of more than eight percent per annum, except as provided in Section 38‑63‑250.

HISTORY: Former 1976 Code Section 38‑63‑240 [1985 Act No. 189, Section 1] recodified as Section 38‑53‑230 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑730 [1984 Act No. 432, Section 3] recodified as Section 38‑53‑230 by 1987 Act No. 155, Section 1.

Library References

Insurance 1868.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 562 to 567.

**SECTION 38‑63‑250.** Alternative adjustable interest rate.

 (a) In the alternative life insurers may issue policies that permit an adjustable maximum interest rate established from time to time by the life insurer as permitted by law. These adjustable maximum interest rates may not exceed the higher of the following:

 (1) the Published Monthly Average for the calendar month ending two months before the date on which the rate is determined; or

 (2) the rate used to compute the cash surrender values under the policy during the applicable period plus one percent per annum. “Published Monthly Average” means Moody’s Corporate Bond Yield Average ‑ Monthly Average Corporates as published by Moody’s Investors Service, Inc., or any successor thereto or, if Moody’s Corporate Bond Yield Average ‑ Monthly Average Corporates is no longer published, a substantially similar average, established by regulation issued by the department.

 (b) If the maximum rate of interest is determined pursuant to this section, the policy shall contain a provision setting forth the frequency at which the rate is to be determined for the policy.

 (c) The maximum rate for each policy must be determined at regular intervals but only once each twelve months.

 (d) At the intervals specified in the policy:

 (1) the rate being charged may be increased whenever the increase as determined under subsection (a) would increase the rate by one‑half percent or more per annum, but not more than twice in any calendar year;

 (2) the rate being charged must be reduced whenever the reduction as determined under subsection (a) would decrease that rate by one‑half percent or more per annum.

 (e) The life insurer shall:

 (1) notify the policyholder at the time a cash loan is made of the initial rate of interest on the loan;

 (2) notify the policyholder with respect to premium loans of the initial rate of interest on the loan as soon as it is reasonably practical to do so, but in no event later than sixty days after making the initial loan. Notice need not be given to the policyholder when a further premium loan is added, except as provided in item (3);

 (3) send to policyholders with loans at least thirty days’ advance notice of any increase in the rate and within due course notify the policyholder of any decrease in the interest rate;

 (4) include in the notices required above the substance of the pertinent provisions of Section 38‑63‑240 or subsections (a) and (b).

 (f) The loan value of the policy must be determined in accordance with the provisions of this article but no policy may terminate in a policy year as the sole result of change in the interest rate during that policy year, and the life insurer shall maintain coverage during that policy year until the time at which it would otherwise have terminated if there had been no change during that policy year.

 (g) The substance of the pertinent provisions of Section 38‑63‑240 or subsections (a) and (b) must be set forth in the policies to which they apply.

 (h) For the purposes of this section:

 (1) the rate of interest on policy loans hereunder shall include the interest rate charged on reinstatement of policy loans for the period during and after any lapse of a policy;

 (2) policy loan includes any premium loan made under a policy to pay one or more premiums that were not paid to the life insurer as they fell due;

 (3) policyholder includes the owner of the policy or the person designated to pay premiums, if different, as shown on the records of the life insurer;

 (4) policy includes certificates issued by a fraternal benefit society and annuity contracts which provide for policy loans.

 However, before May 1, 1986, no life insurer may issue policies that permit such rates unless at the same time it also makes available policies providing for a rate of interest under Section 38‑63‑240.

HISTORY: Former 1976 Code Section 38‑63‑250 [1985 Act No. 189, Section 1] recodified as Section 38‑53‑240 by 1987 Act No. 155, Section 1; Former 1976 Code Sections 38‑9‑720 [1984 Act No. 43, Section 2] and 38‑9‑740 [1984 Act No. 432, Section 4] recodified as Section 38‑63‑250 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 726.

Library References

Insurance 1868.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 562 to 567.

**SECTION 38‑63‑260.** Policies with face value less than five thousand dollars.

 Notwithstanding any other provision of this article, for life insurance policies having a face value of less than five thousand dollars, life insurers may issue policies with an adjustable maximum policy loan interest rate when the policy loan is three hundred dollars or more, but, if the policy loan is less than three hundred dollars, a fixed policy loan interest rate of not more than eight percent per annum must be charged.

HISTORY: Former 1976 Code Section 38‑63‑260 [1985 Act No. 189, Section 1] recodified as Section 38‑53‑250 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑760 [1984 Act No. 432, Section 6] recodified as Section 38‑63‑250 by 1987 Act No. 155, Section 1.

Library References

Insurance 1868.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 562 to 567.

**SECTION 38‑63‑270.** Applicability to policies issued before effective date.

 The provisions of Sections 38‑63‑240 to 38‑63‑260 and of Section 38‑63‑280 do not apply to any insurance contract issued before May 1, 1985, unless the policyholder requests in writing the applicability of the provisions.

HISTORY: Former 1976 Code Section 38‑63‑270 [1985 Act No. 189, Section 1] recodified as Section 38‑53‑260 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑760 [1984 Act No. 432, Section 6] recodified as Section 38‑63‑260 by 1987 Act No. 155, Section 1.

**SECTION 38‑63‑280.** Written disclosures.

 At the time an insurer makes a policy or premium loan that provides for periodic adjustment of policy or premium loan interest rates, the insurer shall provide a separate written disclosure form to the policyholder using plain understandable language that:

 (a) Provides an explanation of the dollar impact on policy or premium loans when the adjustable interest rate moves up or down.

 (b) Provides an explanation of the impact of a policy or premium loan on the benefits payable to the policyholder upon the death of the insured if a policy or premium loan remains unpaid at the time of death of the insured.

HISTORY: Former 1976 Code Section 38‑63‑280 [1985 Act No. 189, Section 1] recodified as Section 38‑53‑270 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑770 [1984 Act No. 432, Section 7] recodified as Section 38‑63‑270 by 1987 Act No. 155, Section 1.

Library References

Insurance 1868.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 562 to 567.

ARTICLE 5

Standard Nonforfeiture Law for Life Insurance

**SECTION 38‑63‑510.** Short title; operative date of valuation manual defined.

 (1) This article is known and may be cited as the “Standard Nonforfeiture Law for Life Insurance”.

 (2) The term “operative date of the valuation manual” means January first of the first calendar year that the valuation manual, as defined in Section 38‑9‑180, is effective.

HISTORY: Former 1976 Code Section 38‑7‑10 [1960 (51) 1554; 1962 Code Section 37‑171; 1982 Act No. 403, Section 1] recodified as Section 38‑63‑510 by 1987 Act No. 155, Section 1; 2016 Act No. 148 (S.850), Section 2, eff April 21, 2016.

Effect of Amendment

2016 Act No. 148, Section 2, inserted paragraph identifier (1) and added (2).

CROSS REFERENCES

Inapplicability of this article to variable life insurance policies, see Section 38‑67‑50.

Loss ratio, long term care insurance, see S.C. Code of Regulations R. 69‑44 Section 19.

Premium rate schedule increases, long term care insurance, see S.C. Code of Regulations R. 69‑44 Section 20.

Preneed life insurance minimum standards for determining reserve liabilities and nonforfeiture values, see S.C. Code of Regulations R. 69‑57.3.

Recognition of the 2001 CSO Mortality Table for use in determining minimum reserve liabilities and nonforfeiture benefits, see S.C. Code of Regulations R. 69‑57.1.

**SECTION 38‑63‑520.** Paid‑up nonforfeiture benefit and cash surrender value provisions are required in life insurance policies.

 No policy of life insurance, except as stated in Section 38‑63‑640, 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 defaulting or surrendering policyholder as are the minimum requirements hereinafter specified and are essentially in compliance with Section 38‑63‑630:

 (1) In the event of default in any premium payment, the insurer shall grant, upon proper request not later than sixty days after the due date of the premium in default, a paid‑up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such amount as may be hereinafter specified. In lieu of the stipulated paid‑up nonforfeiture benefit, the insurer may substitute, upon proper request not later than sixty days after the due date of the premium in default, an actuarially equivalent alternative paid‑up nonforfeiture benefit which provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits.

 (2) Upon surrender of the policy within sixty days after the due date of any premium payment in default after premiums have been paid for at least three full years in the case of ordinary insurance or five full years in the case of industrial insurance, the insurer shall pay, in lieu of any paid‑up nonforfeiture benefit, a cash surrender value of such amount as may be specified in this article.

 (3) A specified paid‑up nonforfeiture benefit becomes effective as specified in the policy unless the person entitled to make the election elects another available option not later than sixty days after the due date of the premium in default.

 (4) If the policy has become paid up by completion of all premium payments or if it is continued under any paid‑up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the insurer shall pay, upon surrender of the policy within thirty days after any policy anniversary, a cash surrender value of such amount as may be specified in this article.

 (5) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid‑up nonforfeiture benefits available under the policy. In the case of all other policies, a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid‑up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid‑up nonforfeiture benefits, if any, available under the policy on each policy anniversary either during the first twenty policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid‑up additions credited to the policy and that there is no indebtedness to the insurer on the policy.

 (6) A statement that the cash surrender values and the paid‑up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid‑up nonforfeiture benefits are altered by the existence of any paid‑up additions credited to the policy or any indebtedness to the insurer on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that the method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered.

 Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

 The insurer shall reserve the right to defer the payment of any cash surrender value for a period of six months after demand therefor with surrender of the policy.

HISTORY: Former 1976 Code Section 38‑7‑20 [1960 (51) 1554; 1962 Code Section 37‑172; 1964 (53) 2139; 1982 Act No. 403, Section 2] recodified as Section 38‑63‑520 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 727.

CROSS REFERENCES

Calculation of any cash surrender value available under any paid‑up nonforfeiture benefit, including any paid‑up dividend additions, whether or not required by this section, see Section 38‑63‑600.

Provisions governing benefits, premiums, cash surrender values and paid‑up nonforfeiture benefits pertaining to life insurance plans whose minimum values cannot be determined by the methods described in Sections 38‑63‑520 to 38‑63‑600, see Section 38‑63‑610.

Library References

Insurance 2037.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 811, 814 to 816, 1088 to 1090, 1092 to 1094, 1100 to 1110.

NOTES OF DECISIONS

In general 1

1. In general

Termination of employment lasting only 5 minutes and designed solely to enable employees to exercise their option under group life insurance policy to obtain the cash surrender value of the policy was in fact a temporary layoff and did not entitle employees to collect such cash value (decided under former law). Moss v. Aetna Life Ins. Co. (S.C. 1976) 267 S.C. 370, 228 S.E.2d 108.

**SECTION 38‑63‑530.** Minimum cash surrender values.

 (1) In event of default. Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required by Section 38‑63‑520, must be an amount not less than the excess, if any, of the present value on such anniversary of the future guaranteed benefits which would have been provided for by the policy, including any existing paid‑up additions, if there had been no default, over the sum of (a) the then present value of the adjusted premiums as defined in Sections 38‑63‑570 to 38‑63‑600, corresponding to premiums which would have fallen due on and after such anniversary, and (b) the amount of indebtedness to the insurer on the policy.

 Any policy issued on or after the operative date of Section 38‑63‑600, as defined therein, which provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value referred to in the first paragraph of this section must be an amount not less than the sum of the cash surrender value as defined in that paragraph for an otherwise similar policy issued at the same age without the rider or supplemental policy provision and the cash surrender value as defined in that paragraph for a policy which provides only the benefits otherwise provided by the rider or supplemental policy provision.

 Any family policy issued on or after the operative date of Section 38‑63‑600, as defined therein, which defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse’s age of seventy‑one, the cash surrender value referred to in the first paragraph of this section must be an amount not less than the sum of the cash surrender value as defined in that paragraph for an otherwise similar policy issued at the same age without the term insurance on the life of the spouse and the cash surrender value as defined in that paragraph for a policy which provides only the benefits otherwise provided by the term insurance on the life of the spouse.

 (2) On paid‑up policies. Any cash surrender value available within thirty days after any policy anniversary under any policy paid up by completion of all premium payments or any policy continued under any paid‑up nonforfeiture benefit, whether or not required by Section 38‑63‑620, must be an amount not less than the present value on such anniversary of the future guaranteed benefits provided for by the policy, including any existing paid‑up additions, decreased by any indebtedness to the insurer on the policy.

HISTORY: Former 1976 Code Section 38‑7‑30 [1960 (51) 1554; 1962 Code Section 37‑173; 1982 Act No. 403, Section 3] recodified as Section 38‑63‑530 by 1987 Act No. 155, Section 1.

CROSS REFERENCES

Omission of certain additional benefits in ascertaining cash surrender values, notwithstanding this section, see Section 38‑63‑560.

Provisions governing benefits, premiums, cash surrender values and paid‑up nonforfeiture benefits pertaining to life insurance plans whose minimum values cannot be determined by the methods described in Sections 38‑63‑520 to 38‑63‑600, see Section 38‑63‑610.

Library References

Insurance 2037.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 811, 814 to 816, 1088 to 1090, 1092 to 1094, 1100 to 1110.

**SECTION 38‑63‑540.** Minimum paid‑up nonforfeiture benefits.

 Any paid‑up nonforfeiture benefit available under the policy in the event of default in a premium payment due on any policy anniversary must be such that its present value as of such anniversary is at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by this article in the absence of the condition that premiums must have been paid for at least a specified period.

HISTORY: Former 1976 Code Section 38‑7‑40 [1960 (51) 1554; 1962 Code Section 37‑174] recodified as Section 38‑63‑540 by 1987 Act No. 155, Section 1.

CROSS REFERENCES

Provisions governing benefits, premiums, cash surrender values and paid‑up nonforfeiture benefits pertaining to life insurance plans whose minimum values cannot be determined by the methods described in Sections 38‑63‑520 to 38‑63‑600, see Section 38‑63‑610.

Library References

Insurance 2037.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 811, 814 to 816, 1088 to 1090, 1092 to 1094, 1100 to 1110.

**SECTION 38‑63‑550.** Calculation of cash surrender values and paid‑up nonforfeiture benefits when default occurs not on anniversary date of policy.

 Any cash surrender value and any paid‑up nonforfeiture benefit available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary must be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary.

HISTORY: Former 1976 Code Section 38‑7‑50 [1960 (51) 1554; 1962 Code Section 37‑175] recodified as Section 38‑63‑550 by 1987 Act No. 155, Section 1.

CROSS REFERENCES

Provisions governing benefits, premiums, cash surrender values and paid‑up nonforfeiture benefits pertaining to life insurance plans whose minimum values cannot be determined by the methods described in Sections 38‑63‑520 to 38‑63‑600, see Section 38‑63‑610.

Library References

Insurance 2037.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 811, 814 to 816, 1088 to 1090, 1092 to 1094, 1100 to 1110.

**SECTION 38‑63‑560.** Additional benefits and premiums must be disregarded.

 Notwithstanding the provisions of Section 38‑63‑530, additional benefits payable: (a) in the event of death or dismemberment by accident or accidental means; (b) in the event of total and permanent disability; (c) as reversionary annuity or deferred reversionary annuity benefits; (d) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this article would not apply; (e) as term insurance on the life of a child or on the lives of children provided in a policy, on the life of a parent of the child, if the term insurance expires before the child’s age is twenty‑six, is uniform in amount after the child’s age is one, and has not become paid up by reason of the death of a parent of the child; and (f) as other policy benefits additional to life insurance and endowment benefits, and premiums for all these additional benefits, must be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this article, and these additional benefits are not required to be included in any paid‑up nonforfeiture benefits.

HISTORY: Former 1976 Code Section 38‑7‑60 [1960 (51) 1554; 1962 Code Section 37‑175.1; 1964 (53) 2139] recodified as Section 38‑63‑560 by 1987 Act No. 155, Section 1.

CROSS REFERENCES

Inapplicability of this article to certain policies subject to calculation as specified in Sections 38‑63‑530 to 38‑63‑600, see Section 38‑63‑640.

Library References

Insurance 2037.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 811, 814 to 816, 1088 to 1090, 1092 to 1094, 1100 to 1110.

**SECTION 38‑63‑570.** Calculation of adjusted premiums and present values.

 This section does not apply to policies issued on or after the operative date of Section 38‑63‑600 as defined therein. Except as provided in the third paragraph of this section the adjusted premiums for any policy must be calculated on an annual basis and must be the uniform percentage of the respective premiums specified in the policy for each policy year, excluding any extra premiums charged because of impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums must be equal to the sum of: (a) the then present value of the future guaranteed benefits provided for by the policy; (b) two percent of the amount of insurance, if the insurance is uniform in amount, or of the equivalent uniform amount as defined in this section if the amount of insurance varies with duration of the policy; (c) forty percent of the adjusted premium for the first policy year; and (d) twenty‑five percent of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less. However, in applying the percentages specified in terms (c) and (d) above no adjusted premium may be considered to exceed four percent of the amount of insurance or uniform amount equivalent thereto. The date of issue of a policy for the purpose of this section is the date as of which the rated age of the insured is determined.

 In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this section is considered to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the inception of the insurance as the benefits under the policy. However, in the case of a policy providing a varying amount of insurance issued on the life of a child under the age ten, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age ten were the amount provided by the policy at age ten.

 The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision is equal to (i) the adjusted premiums for an otherwise similar policy issued at the same age without the term insurance benefits, increased, during the period for which premiums for the term insurance benefits are payable, by (ii) the adjusted premiums for the term insurance, the foregoing items (i) and (ii) being calculated separately and as specified in the first two paragraphs of this section except that, for the purposes of (b), (c), and (d) of the first such paragraph, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (ii) must be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (i).

HISTORY: Former 1976 Code Section 38‑7‑70 [1960 (51) 1554; 1962 Code Section 37‑175.2; 1964 (53) 2139; 1982 Act No. 403, Section 4] recodified as Section 38‑63‑570 by 1987 Act No. 155, Section 1.

Library References

Insurance 2037.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 811, 814 to 816, 1088 to 1090, 1092 to 1094, 1100 to 1110.

**SECTION 38‑63‑580.** Basis for calculation of adjusted premiums and present values of industrial policies.

 This section does not apply to industrial policies issued on or after the operative date of Section 38‑63‑600 as defined therein. All adjusted premiums and present values referred to in this article must, for policies of industrial insurance issued prior to January 1, 1968, be calculated on the basis of either the 1941 Standard Industrial Mortality Table or the Commissioners’ 1961 Standard Industrial Mortality Table as may be elected by the insurer and approved by the Secretary of Commerce or his designee. However, adjusted premiums and present values for all policies of industrial insurance issued on or after January 1, 1968, must be calculated on the basis of the latter table. All calculations must be made on the basis of the rate of interest specified in the policy for calculating cash surrender values and paid‑up nonforfeiture benefits so long as the rate of interest does not exceed three and one‑half percent per annum, except that a rate of interest not exceeding four percent per annum may be used for policies issued on or after January 3, 1976, and prior to January 1, 1979, and a rate of interest not exceeding five and one‑half percent per annum may be used for policies issued on or after January 1, 1979, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one‑half percent per annum may be used. However, in calculating the present value of any paid‑up term insurance with the accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than one hundred thirty percent of the rates of mortality according to the 1941 Standard Industrial Mortality Table, if this table is used for calculating adjusted premiums and present values, or more than those shown in the Commissioners’ 1961 Industrial Extended Term Insurance Table, if the Commissioners’ 1961 Standard Industrial Mortality Table is used for calculating adjusted premiums and present values. For insurance issued on a substandard basis, the calculation of adjusted premiums and present values may be based on any other table of mortality as may be specified by the insurer and approved by the Secretary of Commerce or his designee.

HISTORY: Former 1976 Code Section 38‑7‑80 [1960 (51) 1554; 1962 Code Section 37‑175.3; 1964 (53) 2139; 1976 Act No. 452 Section 1; 1978 Act No. 577 Section 1; 1982 Act No. 403, Section 5] recodified as Section 38‑63‑580 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 728; 1994 Act No. 361, Section 9.

CROSS REFERENCES

Applicability of this section in determining the minimum standard of valuation of reserves for certain industrial life insurance policies, see Section 38‑9‑180.

Minimum cash surrender value available under a policy in the event of default in a premium payment due on any policy anniversary, based in part on the then present value of the adjusted premiums as defined in Sections 38‑63‑570 to 38‑63‑600, see Section 38‑63‑530.

Library References

Insurance 2037.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 811, 814 to 816, 1088 to 1090, 1092 to 1094, 1100 to 1110.

**SECTION 38‑63‑590.** Basis for calculation of adjusted premiums and present values of ordinary policies.

 This section does not apply to ordinary policies issued on or after the operative date of Section 38‑63‑600 as defined therein. In case of ordinary policies, all adjusted premiums and present values referred to in this article must be calculated on the basis of the Commissioners’ 1958 Standard Ordinary Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid‑up nonforfeiture benefits so long as the rate of interest does not exceed three and one‑half percent per annum, except that a rate of interest not exceeding four percent per annum may be used for policies issued on or after January 3, 1976, and prior to January 1, 1979, and a rate of interest not exceeding five and one‑half percent per annum may be used for policies issued on or after January 1, 1979, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one‑half percent per annum may be used, and, for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured. In calculating the present value of any paid‑up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners’ 1958 Extended Term Insurance Table, and, for insurance issued on a substandard basis, the calculation of the adjusted premiums and present values may be based on any other table of mortality as may be specified by the insurer and approved by the director or his designee.

HISTORY: Former 1976 Code Section 38‑7‑90 [1960 (51) 1554; 1962 Code Section 37‑175.4; 1976 Act No. 452, Section 2; 1978 Act No. 577 Section 2; 1982 Act No. 403, Section 6] recodified as Section 38‑63‑590 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 729.

CROSS REFERENCES

Minimum cash surrender value available under a policy in the event of default in a premium payment due on any policy anniversary, based in part on the then present value of the adjusted premiums as defined in Sections 38‑63‑570 to 38‑63‑600, see Section 38‑63‑530.

Valuation of reserves for certain life insurance policies issued before, or on or after, the operative date stated in this section, see Section 38‑9‑180.

Library References

Insurance 2037.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 811, 814 to 816, 1088 to 1090, 1092 to 1094, 1100 to 1110.

**SECTION 38‑63‑600.** Basis for calculating adjusted premiums and present values of policies issued on or after date of election of compliance by insurer or January 1, 1989, if later.

 (1) This section applies to all policies issued on or after the operative date of this section as defined herein. Except as provided in subsection (7) of this section, the adjusted premiums for any policy must be calculated on an annual basis and must be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid‑up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums must be equal to the sum of (i) the then present value of the future guaranteed benefits provided for by the policy; (ii) one percent of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years; and (iii) one hundred twenty‑five percent of the nonforfeiture net level premium as hereinafter defined. In applying the percentage specified in (iii) above, no nonforfeiture net level premium may be considered to exceed four percent of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years. The date of issue of a policy for the purpose of this section is the date as of which the rated age of the insured is determined.

 (2) The nonforfeiture net level premium must be equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one per annum payable on the date of issue of the policy and on each anniversary of the policy on which a premium falls due.

 (3) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values must initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any such change in the benefits or premiums the future adjusted premiums, nonforfeiture net level premiums, and present values must be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.

 (4) Except as otherwise provided in subsection (7) of this section, the recalculated future adjusted premiums for any such policy must be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards and also excluding any uniform annual contract charge or policy fee specified by the policy in a statement of the method to be used in calculating the cash surrender values and paid‑up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums must be equal to the excess of (A) the sum of (i) the then present value of the then future guaranteed benefits provided for by the policy and (ii) the additional expense allowance, if any, over (B) the then cash surrender value, if any, or present value of any paid‑up nonforfeiture benefit under the policy.

 (5) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, must be the sum of (i) one percent of the excess, if positive, of the average amount of insurance at the beginning of each of the first ten policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first ten policy years subsequent to the time of the most recent previous change or, if there has been no previous change, the date of issue of the policy; and (ii) one hundred twenty‑five percent of the increase, if positive, in the nonforfeiture net level premium.

 (6) The recalculated nonforfeiture net level premium must be equal to the result obtained by dividing (A) by (B) where (A) equals the sum of (i) the nonforfeiture net level premium applicable prior to the change times the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred, and (ii) the present value of the increase in future guaranteed benefits provided for by the policy, and (B) equals the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.

 (7) Notwithstanding any other provisions of this section to the contrary, in the case of a policy issued on a substandard basis which provides reduced graded amounts of insurance so that, in each policy year, the policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for the substandard policy may be calculated as if it were issued to provide the higher uniform amounts of insurance on the standard basis.

 (8) All adjusted premiums and present values referred to in this article:

 (A) must for all policies of ordinary insurance be calculated on the basis of (i) the Commissioners’ 1980 Standard Ordinary Mortality Table or (ii) at the election of the insurer for any one or more specified plans of life insurance, the Commissioners’ 1980 Standard Ordinary Mortality Table with Ten‑Year Select Mortality Factors;

 (B) must for all policies of industrial insurance be calculated on the basis of the Commissioners’ 1961 Standard Industrial Mortality Table; and

 (C) must for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this section for policies issued in that calendar year. However:

 (a) At the option of the insurer, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this section, for policies issued in the immediately preceding calendar year.

 (b) Under any paid‑up nonforfeiture benefit, including any paid‑up dividend additions, any cash surrender value available, whether or not required by Section 38‑63‑520, must be calculated on the basis of the mortality table and rate of interest used in determining the amount of the paid‑up nonforfeiture benefit and paid‑up dividend additions, if any.

 (c) An insurer may calculate the amount of any guaranteed paid‑up nonforfeiture benefit including any paid‑up additions under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.

 (d) In calculating the present value of any paid‑up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners’ 1980 Extended Term Insurance Table for policies of ordinary insurance and not more than the Commissioners’ 1961 Industrial Extended Term Insurance Table for policies of industrial insurance.

 (e) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the aforementioned tables.

 (f) For policies issued prior to the operative date of the valuation manual, any Commissioners’ Standard ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the department for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners’ 1980 Standard Ordinary Mortality Table with or without Ten‑Year Select Mortality Factors or for the Commissioners’ 1980 Extended Term Insurance Table.

 For policies issued on or after the operative date of the valuation manual, the valuation manual shall provide the Commissioners’ Standard mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the Commissioners’ 1980 Standard Ordinary Mortality Table with or without the Ten‑Year Select Mortality Factors or for the Commissioners’ 1980 Extended Term Insurance Table. If the director approves, by regulation, any Commissioners’ Standard ordinary mortality table adopted by the National Association of Insurance Commissioners for use in determining the minimum nonforfetiture standard for policies issued on or after the operative date of the valuation manual, then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.

 (g) For policies issued prior to the operative date of the valuation manual, any Commissioners’ industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the department for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners’ 1961 Standard Industrial Mortality Table or the Commissioners’ 1961 Industrial Extended Term Insurance Table.

 For policies issued on or after the operative date of the valuation manual, the valuation manual must provide the Commissioners’ Standard mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the Commissioners’ 1961 Standard Industrial Mortality Table or the Commissioners’ 1961 Industrial Extended Term Insurance Table. If the director approves, by regulation, any Commissioners’ Standard industrial mortality table adopted by the National Association of Insurance Commissioners for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual, then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.

 (9) The nonforfeiture interest rate is:

 (a) for policies issued prior to the operative date of the valuation manual, the nonforfeiture interest rate is per annum for any policy issued in a particular calendar year must be equal to one hundred twenty‑five percent of the calendar year statutory valuation interest rate for the policy as defined in the Standard Valuation Law rounded to the nearest one‑quarter of one percent, provided, however, that the nonforfeiture interest rate shall not be less than four percent; and

 (b) for policies issued on and after the operative date of the valuation manual, the nonforfeiture interest rate per annum for any policy issued in a particular calendar year must be provided by the valuation manual.

 (10) Notwithstanding any other provision of law, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form which involves only a change in the interest rate or mortality table used to compute nonforfeiture values does not require refiling of any other provisions of that policy form.

 (11) After the effective date of this section, any insurer may file with the department a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1989, which shall be the operative date of this section for that insurer. If an insurer does not make that election, the operative date of this section for that insurer is January 1, 1989.

HISTORY: Former 1976 Code Section 38‑7‑91 [1982 Act No. 403, Section 7] recodified as Section 38‑63‑600 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Sections 730, 731; 2016 Act No. 148 (S.850), Section 3, eff April 21, 2016.

Effect of Amendment

2016 Act No. 148, Section 3, in (8)(f) and (8)(g), substituted “For policies issued prior to the operative date of the valuation manual, any Commissioners’ Standard” for “Any”, and added the undesignated paragraphs; and rewrote (9), adding references to the valuation manual, and in (a) added the text following “nearest one‑quarter of one percent”.

CROSS REFERENCES

Effect of operative date stated in this section on valuation of life insurance policies and reserves, see Section 38‑9‑180.

Effect of the definition of the then present value of adjusted premiums and the operative date set forth in this section upon the determination of the minimum cash surrender under a policy in the event of default in a premium payment due on any policy anniversary, see Section 38‑63‑530.

Inapplicability of provisions governing the calculation of adjusted premiums and present values to certain policies issued on or after the operative date set forth in this section, see Sections 38‑63‑570 to 38‑63‑590.

Regulation permitting smoker/nonsmoker mortality tables for use in determining minimum reserve liabilities and nonforfeiture benefits, see S.C. Code of Regulations R. 69‑38.

Library References

Insurance 2037.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 811, 814 to 816, 1088 to 1090, 1092 to 1094, 1100 to 1110.

**SECTION 38‑63‑610.** Premiums, values, and benefits of life insurance plans providing for future premium determination.

 In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurer based on then estimates of future experience or, in the case of any plan of life insurance which is of such a nature that minimum values cannot be determined by the methods described in Sections 38‑63‑520 to 38‑63‑600, then:

 (a) The director or his designee must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by Sections 38‑63‑520 to 38‑63‑600.

 (b) The director or his designee must be satisfied that the benefits and the pattern of premiums of that plan are not misleading to prospective policyholders or insureds.

 (c) The cash surrender values and paid‑up nonforfeiture benefits provided by the plan may not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this article, as determined by regulations promulgated by the department.

HISTORY: Former 1976 Code Section 38‑7‑92 [1982 Act No. 403, Section 7] recodified as Section 38‑63‑610 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 732.

Library References

Insurance 2037.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 811, 814 to 816, 1088 to 1090, 1092 to 1094, 1100 to 1110.

**SECTION 38‑63‑620.** Calculation of cash surrender values, paid‑up nonforfeiture benefits, adjusted premiums, and present values; net value of paid‑up additions.

 Any cash surrender value and any paid‑up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, must be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in Sections 38‑63‑530, 38‑63‑540, and 38‑63‑570 to 38‑63‑600 may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid‑up additions, other than paid‑up term additions, may not be less than the amounts used to provide such additions.

HISTORY: Former 1976 Code Section 38‑7‑100 [1960 (51) 1554; 1962 Code Section 37‑175.5; 1982 Act No. 403, Section 8] recodified as Section 38‑63‑620 by 1987 Act No. 155, Section 1.

Library References

Insurance 2037.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 811, 814 to 816, 1088 to 1090, 1092 to 1094, 1100 to 1110.

**SECTION 38‑63‑630.** Cash surrender value of policies issued on or after January 1, 1986.

 This section, in addition to all other applicable sections of this article, applies to all policies issued on or after January 1, 1986. Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary must be in an amount which does not differ by more than two‑tenths of one percent of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years, from the sum of (a) the greater of zero and the basic cash value hereinafter specified and (b) the present value of any existing paid‑up additions less the amount of any indebtedness to the company under the policy.

 The basic cash value must be equal to the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, excluding any existing paid‑up additions and before deduction of any indebtedness to the company, if there had been no default, less the then present value of the nonforfeiture factors, as hereinafter defined, corresponding to premiums which would have fallen due on and after the anniversary. The effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in Section 38‑63‑530 or 38‑63‑570, whichever is applicable, must be the same as are the effects specified in Section 38‑63‑530 or 38‑63‑570, whichever is applicable, on the cash surrender values defined in that section.

 The nonforfeiture factor for each policy year must be an amount equal to a percentage of the adjusted premium for the policy year, as defined in Section 38‑63‑570 or 38‑63‑600, whichever is applicable. Except as is required by the next succeeding sentence of this paragraph, the percentage:

 (a) Must be the same percentage for each policy year between the second policy anniversary and the later of (i) the fifth policy anniversary and (ii) the first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid‑up additions and before deducting any indebtedness, of at least two‑tenths of one percent of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years.

 (b) Must be such that no percentage after the later of the two policy anniversaries specified in the preceding item (a) may apply to fewer than five consecutive policy years.

 No basic cash value may be less than the value which would be obtained if the adjusted premiums for the policy, as defined in Section 38‑63‑570 or 38‑63‑600, whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the basic cash value.

 All adjusted premiums and present values referred to in this section must for a particular policy be calculated on the same mortality and interest bases as are used in demonstrating the policy’s compliance with the other sections of this article. The cash surrender values referred to in this section include any endowment benefits provided for by the policy.

 Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary and the amount of any paid‑up nonforfeiture benefit available under the policy in the event of default in a premium payment must be determined in ways consistent with the ways specified for determining the analogous minimum amounts in Sections 38‑63‑520 to 38‑63‑540, 38‑63‑600, and 38‑63‑620. The amounts of any cash surrender values and of any paid‑up nonforfeiture benefits granted in connection with additional benefits such as those listed as items (a) through (f) of subsection (8) of Section 38‑63‑600 shall conform with the principles of this section.

HISTORY: Former 1976 Code Section 38‑7‑101 [1982 Act No. 403, Section 9] recodified as Section 38‑63‑630 by 1987 Act No. 155, Section 1.

Library References

Insurance 2037.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 811, 814 to 816, 1088 to 1090, 1092 to 1094, 1100 to 1110.

**SECTION 38‑63‑640.** Excepted policies.

 This article does not apply to:

 (a) any reinsurance;

 (b) group insurance;

 (c) pure endowment;

 (d) annuity or reversionary annuity contract;

 (e) any term policy of uniform amount, which provides no guaranteed nonforfeiture or endowment benefits, or renewal thereof, of twenty years or less expiring before age seventy‑one, for which uniform premiums are payable during the entire term of the policy;

 (f) any term policy of decreasing amount, which provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in Sections 38‑63‑570 to 38‑63‑600, is less than the adjusted premium so calculated, on a term policy of uniform amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance and for a term of twenty years or less expiring before age seventy‑one, for which uniform premiums are payable during the entire term of the policy;

 (g) any policy, which provides no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value of any paid‑up nonforfeiture benefit, at the beginning of any policy year, calculated as specified in Sections 38‑63‑530 to 38‑63‑600, exceeds two and one‑half percent of the amount of insurance at the beginning of the same policy year;

 (h) any policy which is delivered outside this State through an agent or other representative of the company issuing the policy.

 For purposes of determining the applicability of this article, the age at expiry for a joint term life insurance policy is the age of expiry of the oldest life.

HISTORY: Former 1976 Code Section 38‑7‑110 [1960 (51) 1554; 1962 Code Section 37‑175.6; 1982 Act No. 403, Section 10] recodified as Section 38‑63‑640 by 1987 Act No. 155, Section 1.

Library References

Insurance 2037.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 811, 814 to 816, 1088 to 1090, 1092 to 1094, 1100 to 1110.

**SECTION 38‑63‑650.** Operative date of article.

 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 January 1, 1966. After the filing of the notice, then upon the specified date, which shall be the operative date for that insurer, this article becomes operative with respect to the policies thereafter issued by the insurer. If an insurer makes no election, the operative date of this article for that insurer is January 1, 1966.

HISTORY: Former 1976 Code Section 38‑7‑120 [1960 (51) 1554; 1962 Code Section 37‑175.7] recodified as Section 38‑63‑650 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 733.

CROSS REFERENCES

Valuation of reserve for certain life insurance policies issued before, or on or after, the operative date stated in this section, see Section 38‑9‑180.

**SECTION 38‑63‑660.** 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 13.

CROSS REFERENCES

Regulation pertaining to replacement of life insurance and annuities, see S.C. Code of Regulations R. 69‑12.1.