§ 4221. Standard nonforfeiture law. (a) In the case of policies issued on or after the operative date of this section as defined in subsection (p) hereof, no policy of life insurance, except as stated in subsection (o) hereof, shall be delivered or issued for delivery in this state unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the superintendent are at least as favorable to the defaulting or surrendering policyholder as are minimum requirements hereinafter specified and are essentially in compliance with subsection (n) hereof:

(1) That, in the event of default in any premium payment, the company will 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 value as may be hereinafter specified. In lieu of such stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper request not later than sixty days after the due date of the premium in default, a more favorable 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) That, 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, the company will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be hereinafter specified.

(3) That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty days after the due date of the premium in default.

(4) That, if the policy shall have 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, the company will pay, upon surrender of the policy within thirty days after any policy anniversary, a cash surrender value of such amount as may be hereinafter specified.

(5) In the case of policies which provide for the crediting of additional amounts pursuant to subsection (b) of section four thousand

two hundred thirty-two of this article, under which cash surrender values are adjusted in accordance with a market-value adjustment formula, 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 any 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 any paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, 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 company on the policy.

(5-a) In the case of policies which provide for the crediting of additional amounts pursuant to subsection (b) of section four thousand two hundred thirty-two of this article and which provide for surrender charges in accordance with subsection (n-1) of this section, a statement as to any charges that will be imposed upon surrender of the policy.

(5-b) In the case of policies that provide for the adjustment of any cash surrender values in accordance with a market-value adjustment formula, a statement as to the times (which shall not be less frequently than once every ten years after issuance of the policy) on which cash surrender values will be determined without the use of such a formula.

(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 any statute 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 company 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 such method of computation has been filed with the insurance supervisory official of the state in which

the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

(7) That the company shall deliver at issue to each holder of a policy under which additional amounts may be credited pursuant to subsection (b) of section four thousand two hundred thirty-two of this article, or under which cash surrender values and policy loan values are adjusted in accordance with a market-value adjustment formula, a statement containing such information as the superintendent prescribes, and shall mail to each such holder at least once each policy year or within sixty days after the end of a policy year a statement as of a date during such year as to the death benefit, cash surrender value and loan value under the policy (and any amount by which such cash surrender value and loan value were adjusted in accordance with a market-value adjustment formula) on such date as well as such further information as the superintendent requires. The statement shall be addressed to the last post-office address of the policyholder known to the company.

(8) Any of the foregoing provisions or portions of this subsection not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

The company 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.

(b) (1) In the case of contracts issued on or after the operative date of this section as defined in subsection (p) hereof and prior to the operative date of section four thousand two hundred twenty-three of this article, no contract of annuity or pure endowment, except as stated in subsection (o) hereof, shall 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 superintendent are at least as favorable to the defaulting or surrendering contract holder:

(A) That in the event of default in any stipulated payment the company will grant a paid-up nonforfeiture benefit on a plan stipulated in the contract, effective as of such due date, of such value as may be

hereinafter specified.

(B) A statement of the mortality table, if any, and interest rate used in calculating the paid-up nonforfeiture benefits available under the contract, together with a table showing either the cash surrender value or the paid-up nonforfeiture benefit, if any, available on each anniversary of the contract either during the first twenty contract years or during the term of stipulated payments, whichever is shorter, such benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the contract and that there is no indebtedness to the company on the contract.

(C) A statement that the paid-up nonforfeiture benefits available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered; an explanation of the manner in which the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the contract or any indebtedness to the company on the contract; if a detailed statement of the method of computation of the benefits shown in the contract is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the state in which the contract is delivered; and a statement of the method to be used in calculating the paid-up nonforfeiture benefit available under the contract on any contract anniversary beyond the last anniversary for which such benefits are consecutively shown in the contract.

If a company shall provide for the payment of a cash surrender value, it shall reserve the right to defer the payment of such value for a period of six months after demand therefor with surrender of the contract.

(2) Notwithstanding the requirements of this subsection, any deferred annuity contract may provide that if the annuity allowed under any paid-up nonforfeiture benefit would be less than sixty dollars annually, the company may at its option grant a cash surrender value in lieu of such paid-up nonforfeiture benefit of such amount as may be required by subsection (f) hereof.

(c) (1) Any cash surrender value available under any policy referred to in subsection (a) hereof, in the event of default in a premium

payment due on any policy anniversary, whether or not required by such subsection, shall 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 (i) the then present value of the adjusted premiums as defined in subsections (g), (h), (i) and (k) hereof, corresponding to premiums which would have fallen due on and after such anniversary, and (ii) the amount of any indebtedness to the company on the policy, including interest due or accrued.

(2) In the case of any policy issued on or after the operative date of subsection (k) hereof, 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 paragraph one of this subsection shall be in an amount not less than the sum of the cash surrender value as defined in such paragraph for an otherwise similar policy issued at the same age without such rider or supplemental policy provision, the cash surrender value as defined in such paragraph for a policy which provides only the supplemental life insurance benefits otherwise provided by such rider or supplemental policy provision, and the cash surrender value as defined in section four thousand two hundred twenty-three of this article for a contract which provides only the supplemental annuity benefits otherwise provided by such rider or supplemental policy provision.

(3) In the case of any family policy issued on or after the operative date of subsection (k) hereof 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 seventy-one, the cash surrender value referred to in paragraph one of this subsection shall be an amount not less than the sum of the cash surrender value as defined in such paragraph for an otherwise similar policy issued at the same age without such term insurance on the life of the spouse and the cash surrender value as defined in such paragraph for a policy which provides only the benefits otherwise provided by such term insurance on the life of the spouse.

(4) Any cash surrender value available within thirty days after any

policy anniversary under any such policy paid up by completion of all premium payments or any such policy continued under any paid-up nonforfeiture benefit, whether or not required by subsection (a) hereof, shall 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 company on the policy, including interest due or accrued.

(5) Every company must provide, to any policyowner who so requests in writing, within twenty business days from the date the written request is received by the company, a statement of the cash surrender value of the policy.

(d) Any paid-up nonforfeiture benefit available under any policy referred to in subsection (a) hereof, in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be 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 section in the absence of the condition that premiums shall have been paid for at least a specified period.

(e) (1) Any paid-up nonforfeiture benefit available under any annuity or pure endowment contract referred to in subsection (b) hereof, in the event of default in a stipulated payment due on any contract anniversary shall be such that its present value as of such anniversary shall be 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 contract, including any existing paid-up additions, if there had been no default, over the sum of (i) the then present value of the adjusted stipulated payments defined in subsection (g) hereof corresponding to stipulated payments which would have fallen due on and after such anniversary, and (ii) the amount of any indebtedness to the company on the contract, including interest due or accrued.

(2) In determining the benefits referred to in paragraph one hereof and in calculating the adjusted stipulated payments referred to in subsection (g) hereof, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional dates, the annuity payments shall be deemed to commence at a date which shall be the latest permitted by the contract for the commencement of

such payments but not later than the contract anniversary nearest the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later; and the stipulated payments shall be deemed to be payable for the longest period during which they would be payable if election were made to have the annuity payments commence at such date.

(f) Any cash surrender value allowed by any annuity or pure endowment contract referred to in subsection (b) hereof and the present value, under any optional provision, of future benefits commencing on the due date of the stipulated payment in default shall each be at least equal to the then present value of the minimum paid-up nonforfeiture benefit required by subsection (e) hereof.

(g) (1) This subsection shall not apply to policies issued on or after the operative date of subsection (k) as defined herein.

(2) Except as provided in paragraph four hereof, the adjusted premiums for any policy referred to in subsection (a) hereof shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts stated in the policy as extra premiums to cover impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of (i) the then present value of the future guaranteed benefits provided for by the policy; (ii) two percent of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy; (iii) forty percent of the adjusted premium for the first policy year; (iv) 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. Provided, however, that in applying the percentages specified in items (iii) and (iv) hereof, no adjusted premium shall be deemed 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 subsection shall be the date as of which the rated age of the insured is determined.

(3) 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 subsection shall be deemed 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 date of issue as the benefits under the policy, provided, however, that in the case of a policy providing a varying amount of insurance (including policies in which the death benefit prior to a date specified in the policy does not exceed the premiums paid with interest, or the cash value of the policy if greater) issued on the life of a child under age ten, the equivalent uniform amount of insurance shall be calculated as though the amount of insurance provided by the policy prior to the attainment of age ten were the amount provided by such policy at age ten.

(4) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (i) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (ii) the adjusted premiums for such term insurance, the foregoing items (i) and (ii) being calculated separately and as specified in paragraphs two and three hereof except that, for the purposes of items (ii), (iii) and (iv) of paragraph two hereof, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in item (ii) of this paragraph shall 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 item (i) of this paragraph.

(5) The adjusted stipulated payments for any annuity or pure endowment contract referred to in subsection (b) hereof shall be calculated on an annual basis and shall be such uniform percentage of the respective stipulated payments specified in the contract for each contract year that the present value, at the date of issue of the contract, of all such adjusted stipulated payments shall be equal to the sum of (i) the then present value of the future guaranteed benefits provided for by the contract; (ii) twenty percent of the adjusted stipulated payment for the

first contract year; and (iii) two percent of the adjusted stipulated payment for the first contract year for each year not exceeding twenty during which stipulated payments are payable.

(6) Except as otherwise provided in subsections (h), (i) and (j) hereof, all adjusted premiums, adjusted stipulated payments, and present values referred to in this section shall be calculated on the basis of (i) the rate of interest, not exceeding three and one-half percent per annum, specified in the policy or contract for calculating cash surrender values, if any, and paid-up nonforfeiture benefits; and (ii) a mortality table which shall be: for ordinary insurance, the Commissioners' 1941 Standard Ordinary Mortality Table, provided that 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 three years younger than the actual age of the insured; for industrial insurance, the 1941 Standard Industrial Mortality Table; for annuity and pure endowment contracts, either the 1937 Standard Annuity Mortality Table, the Annuity Mortality Table for 1949 Ultimate, any modification of either of these tables approved by the superintendent or any other table approved by the superintendent. Provided, however, that 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 one hundred and thirty percent of the rates of mortality according to such applicable table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the superintendent.

(h) (1) This subsection shall not apply to ordinary policies issued on or after the operative date of subsection (k) hereof.

(2) In the case of ordinary policies issued on or after the operative date of this subsection, all adjusted premiums and present values shall 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 not exceeding three and one-half percent per annum except that four percent per annum may be used for policies issued on or after June thirteenth, nineteen hundred seventy-four and prior to January first, nineteen

hundred seventy-nine, and a rate of interest not exceeding five and one-half percent per annum may be used for policies issued on or after January first, nineteen hundred seventy-nine, provided that 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; provided, however, that 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. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the superintendent.

(3) Any company may file with the superintendent a written notice of its election to comply with the provisions of this subsection after a specified date before January first, nineteen hundred sixty-six. After the filing of such notice, then upon such specified date (which shall be the operative date of this subsection for such company), this subsection shall become operative with respect to the ordinary policies thereafter issued by such company. If a company makes no such election, the operative date of this subsection for such company shall be January first, nineteen hundred sixty-six.

(i) (1) In the case of industrial policies issued on or after the operative date of this subsection, all adjusted premiums and present values shall be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits not exceeding three and one-half percent per annum except that four percent per annum may be used for policies issued on or after June thirteenth, nineteen hundred seventy-four and prior to January first, nineteen hundred seventy-nine and a rate of interest not exceeding five and one-half percent per annum may be used for policies issued on or after January first, nineteen hundred seventy-nine; provided, however, that 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 1961 Industrial Extended Term Insurance Table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the superintendent.

(2) Any company may file with the superintendent a written notice of its election to comply with the provisions of this subsection after a specified date before January first, nineteen hundred and sixty-eight. After the filing of such notice, then upon such specified date (which shall be the operative date of this subsection for such company), this subsection shall become operative with respect to the industrial policies thereafter issued by such company. If a company makes no such election, the operative date of this subsection for such company shall be January first, nineteen hundred and sixty-eight.

(j) In the case of individual annuity and pure endowment contracts issued on or after the operative date of paragraph three of subsection (c) of section four thousand two hundred seventeen of this article, and prior to the operative date of section four thousand two hundred twenty-three of this article, all adjusted stipulated payments and present values referred to in this section shall be calculated on the basis of the Annuity Mortality Table for 1949, Ultimate, or any modification of this table approved by the superintendent, and the rate of interest not exceeding four percent per annum, specified in the contract for calculating cash surrender values, if any, and paid-up nonforfeiture benefits, except that, if such rate of interest exceeds three and one-half percent per annum, there shall be substituted for such mortality table the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the superintendent.

(k) (1) This subsection shall apply to all policies issued on or after the operative date as defined in this subsection.

(2) Except as provided in paragraph eight of this subsection, the adjusted premiums for any policy shall be calculated on an annual basis and shall 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 shall 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 be 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. Provided, however, that in applying the percentage specified in (iii) above no nonforfeiture net level premium shall be deemed to exceed four percent of either the amount of insurance, if the insurance be 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 subsection shall be the date as of which the rated age of the insured is determined.

(3) The nonforfeiture net level premium shall 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 such policy on which a premium falls due.

(4) 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 shall 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 shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.

(5) Except as otherwise provided in paragraph eight of this subsection, the recalculated future adjusted premiums for any such policy shall 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 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 time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall 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.

(6) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall 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.

(7) The recalculated nonforfeiture net level premium shall be equal to the result obtained by dividing subparagraph (A) by subparagraph (B) hereof 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.

(8) Notwithstanding any other provision of this subsection 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, such 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 such substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.

(9) All adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of

(A) the Commissioners 1980 Standard Ordinary Mortality Table, or

(B) at the election of the company for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; and shall 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 subsection for policies issued in that calendar year. Provided, however, that:

(i) At the option of the company, 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 subsection, for policies issued in the immediately preceding calendar year.

(ii) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by subsection (a) hereof, shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.

(iii) A company 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.

(iv) 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.

(v) 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.

(vi) Any ordinary mortality tables, adopted after nineteen hundred eighty by the National Association of Insurance Commissioners (or any modifications thereof for any specified class or classes of risks), that are approved by the superintendent 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.

(10) The nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred and twenty-five percent of the calendar year statutory valuation interest rate for such policy as defined in section four thousand two hundred seventeen of this article rounded to the nearer one quarter of one percent, computed, with respect to a single premium life insurance policy of the kind referred to in item (vi) of subparagraph (B) of paragraph four of subsection (c) of such section, on a year of issue basis by using a reference interest rate defined for such policy in subparagraph (F) of such paragraph for the year immediately preceding the year of issue on the assumption that the company has submitted an opinion and memorandum, in form and substance satisfactory to the superintendent, of a qualified actuary with respect to such single premium life insurance policies in accordance with item (vi) of subparagraph (B) of such paragraph.

(11) Notwithstanding any other provision in this chapter to the contrary, 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 shall not require refiling of any other provisions of that policy form.

(12) After May twenty-fourth, nineteen hundred eighty-two, any company may file with the superintendent a written notice of its election to comply, with respect to any plan of insurance, with the provisions of this subsection after a specified date before January first, nineteen hundred eighty-nine, which shall be the operative date of this subsection for that plan of insurance for such company; the operative dates of this subsection for other plans of insurance for such company

shall be any dates not later than January first of the third subsequent calendar year, but in no event later than January first, nineteen hundred eighty-nine. If a company makes no such election with respect to any plan of insurance, the operative date of this subsection for such company shall be January first, nineteen hundred eighty-nine.

(l) 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 insurance company 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 subsection (a), (c), (d), (g), (h), (i) or (k) of this section, then:

(1) the superintendent 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 subsection (a), (c), (d), (g), (h), (i) or (k) hereof;

(2) the superintendent must be satisfied that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds;

(3) the cash surrender values and paid-up nonforfeiture benefits provided by such plan must not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this section, as determined by the superintendent.

(m) (1) Any cash surrender value and any paid-up nonforfeiture benefit, available under any such policy or contract in the event of default in the payment of any premium or stipulated payment due at any time other than on the policy or contract anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums or stipulated payments beyond the beginning of the policy or contract year in which the default occurs.

(2) All values referred to in subsections (c) through (k) hereof, may be calculated upon the assumption that any death benefit is payable at the end of the policy or contract year of death.

(3) Notwithstanding the provisions of subsections (c) and (e) hereof, additional benefits payable (i) in the event of death or dismemberment by accident, (ii) in the event of total and permanent disability, (iii) as reversionary annuity or deferred reversionary annuity benefits, (iv) as term insurance benefits provided by a rider or supplemental policy

provision to which, if issued as a separate policy, this section would not apply, (v) 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 such 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 (vi) as other policy benefits additional to life insurance, endowment, and annuity benefits, and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(n) (1) This subsection, in addition to all other applicable provisions of this section, shall apply to all policies issued on or after January first, nineteen hundred eighty-six.

(2) Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary shall 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 be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years, from the sum of (i) the greater of zero and the basic cash value hereinafter specified and (ii) the present value of any existing paid-up additions less the amount of any indebtedness to the company under the policy.

(3) The basic cash value shall 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 such anniversary. Provided, however, that the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in subsection (c) or (g) hereof, whichever is applicable, shall be the same as are the effects specified in such subsection, whichever is applicable, on the cash surrender values defined in that subsection.

(4) The nonforfeiture factor for each policy year shall be an amount equal to a percentage of the adjusted premium for the policy year, as

defined in subsection (g) or (k) hereof, whichever is applicable. Except as is required by the next succeeding sentence of this paragraph, such 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 be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years; and

(B) must be such that no percentage after the later of the two policy anniversaries specified in subparagraph (A) hereof may apply to fewer than five consecutive policy years.

Provided, that no basic cash value may be less than the value which would be obtained if the adjusted premiums for the policy, as defined in subsection (g) or (k) hereof, whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the basic cash value.

(5) All adjusted premiums and present values referred to in this subsection shall 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 subsections of this section.

(6) (A) The cash surrender values referred to in this subsection shall include any endowment benefits provided for by the policy.

(B) 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 shall be determined in manners consistent with the manners specified for determining the analogous minimum amounts in subsections (a), (c), (d), (k) and (m) hereof.

(C) 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 (i) through (vi) in paragraph three of subsection (m) hereof shall conform with the principles of this subsection.

(n-1) (1) Notwithstanding any other provision in this section, any policy that meets the requirements of this subsection shall be deemed to provide the minimum nonforfeiture benefits and cash surrender values required by this section. Any policy which is issued by a company after the operative date of this subsection for the company and under which additional amounts may be credited pursuant to subsection (b) of section four thousand two hundred thirty-two of this article must meet the requirements of this subsection.

(2) In this subsection,

(A) "Policy value" means an amount equal to gross premiums paid under a policy (excluding separately identified premiums for riders or supplementary benefits that are not credited to the policy value) plus interest credited less the amount of any partial withdrawals and the following charges as specified in the policy: (i) expense charges, (ii) benefits charges, (iii) service charges, and (iv) partial surrender charges.

(B) "Benefit charges" means mortality charges made for life insurance on the insured person or persons and any charges made for riders or supplementary benefits.

(C) "Service charges" means charges for the cost of transactions requested by the policyowner such as partial withdrawals and benefit illustrations. Transactional charges made under mandatory policy provisions shall not be assessed unless specifically permitted by law or regulation for such transactions.

(D) "Expense charges" means charges (other than service charges) deducted from gross premiums before premiums are credited to the policy value or otherwise deducted from the policy value.

(E) "Excess first year expense charges" means the greatest amount by which (x) can exceed (y) based, for stipulated premium policies, on the premiums set forth in the policy and, for other policies, on the assumption that any premium (other than a single premium) payable in the first policy year is also payable during the entire premium paying period, where

(x) is the amount of the expense charges made in the first policy year and

(y) is the arithmetic average of the corresponding charges which the policy states would be imposed in policy years two through twenty or the

premium paying period, if shorter.

(F) "Excess expense charges for a face amount increase" means the greatest amount by which (x) can exceed (y) based, for stipulated premium policies, on the premiums set forth in the policy and, for other policies, on the assumption that the net level whole life annual premium for the increase applies throughout the remaining premium paying period, where

(x) is the amount of the expense charges attributable to an increase in face amount of insurance in the first policy year of the increase, and

(y) is the arithmetic average of the corresponding charges attributable to the increase which the policy states would be imposed in the nineteen policy years following the increase or the premium paying period, if shorter.

(G) "Interest credited" means the amount of interest credited to the policy value but, with respect to policies meeting the requirements of subparagraph (A) of paragraph three of this subsection, not less than three percent in any year.

(H) "Net level whole life annual premium at issue" means an annual premium based on face amounts of insurance set forth in the policy and on the assumption of level annual premiums for life, the mortality table rate used to calculate the maximum mortality charges (but not greater than that permitted under item (iv) of subparagraph (A) of paragraph three of this subsection) and an interest rate based on the rate specified in the policy but not less than the lesser of four percent and the nonforfeiture interest rate per annum pursuant to paragraph ten of subsection (k) of this section.

(I) "Net level whole life annual premium for an increase in the face amount of insurance" means an additional annual premium for an increase in the face amount of insurance determined as of the date of the increase in accordance with subparagraph (H) of this paragraph as though such increase were a separate policy.

(J) "Increase in face amount of insurance" means an increase in the schedule of face amounts of insurance provided for in the policy and made at the request of the policyholder and shall not include increases in face amount resulting from a change in the death benefit option or changes in death benefit pursuant to policy terms that do not affect the

face amount.

(K) "Surrender charge" means a deferred charge made to the policy value in the event of a full or partial surrender of the policy, reduction in the face amount of insurance or premium, or a default in a premium payment.

(L) "Cash surrender value" means an amount equal to the policy value less any surrender charge, before reduction for outstanding loans or other amounts due under the policy.

(M) "Deferred first year expense charge", at issue or for an increase in the face amount of insurance, means any portion of the allowable first year expense charge that is not deducted from premiums or charged to the policy value in the year of issue, or in the policy year of a face amount increase, but deferred and charged to the policy value in subsequent years.

(N) "Consumer price ratio" means the ratio (not to exceed two) of (x) the consumer price index (for all urban households) for the September preceding the policy year in which the ratio is being applied to (y) the consumer price index for September, nineteen hundred eighty-five.

(3) A policy that meets the requirements of this subsection must provide for cash surrender values that meet the requirements of either subparagraph (A) or subparagraph (B) and comply with the provisions of subparagraphs (C) and (D) of this paragraph.

(A) Cash surrender values shall be deemed to meet the requirements of this subparagraph, if the following conditions are met:

(i) Expense charges for any policy year shall not exceed the following:

(I) ninety percent of premiums received up to the net level whole life annual premium at issue (regardless of when received),

(II) ten percent of all other premiums received,

(III) ninety percent of any net level whole life annual premium for increases in the face amount of insurance (including increases offsetting previous decreases),

(IV) ten dollars per one thousand dollars of initial face amount in the first policy year,

(V) one dollar per one thousand dollars of the first one hundred thousand dollars of face amount in subsequent policy years,

(VI) ten dollars per one thousand dollars of any increase in the face

amount of insurance in the year of increase (including increases offsetting previous decreases),

(VII) a charge per policy in the first policy year equal to the product of one hundred fifty dollars and the consumer price ratio, and

(VIII) in policy years after the first, a charge per policy per month equal to the product of five dollars and the consumer price ratio.

(ii) Any surrender charge provided in the policy shall be such that the initial surrender charge together with the expense charges made in the first policy year (and on premiums up to the net level whole life annual premium if received after the first year) do not exceed the sum of the amounts determined in accordance with clauses (I) and (II) (for premiums received in the first year) and clauses (IV) and (VII) of item (i) of this subparagraph. The surrender charge at any time shall not be greater than the difference between the maximum initial surrender charge permitted under this subparagraph and the sum of all the deferred expense charges made up to that time. Any additional surrender charges that are imposed in connection with an increase in face amount of the policy shall be such that such additional charges together with any expense charges made in connection with such increase do not exceed the sum of the amounts determined in accordance with clauses (III) and (VI) of item (i) of this subparagraph.

(iii) Deferred first year expense charges shall be such that: (I) the charge for any one year shall not exceed the maximum allowable surrender charge for that year, and (II) the total of all such charges at any time plus the surrender charge at that time shall not exceed the maximum initial surrender charge. Any deferred first year expense charge imposed with respect to an increase in the face amount of insurance shall be subject to comparable limitations.

(iv) A policy meeting the requirements of this subparagraph if issued before the operative date of subsection (k) of this section may not impose mortality charges in excess of those based on the commissioners 1958 standard ordinary mortality table in the case of a standard medically underwritten insured or the commissioners 1958 extended term insurance table in the case of any other standard insured, and if issued on or after such operative date may not impose mortality charges in excess of those based on the commissioners 1980 standard ordinary mortality table in the case of a standard medically underwritten insured

or the commissioners 1980 extended term insurance table in the case of any other standard insured. At the option of the company, maximum charges based on the commissioners 1980 standard ordinary mortality table may be computed using ten-year select mortality factors. Maximum charges may also be based on any other table (or modification thereof for the specified class of risk) approved by the superintendent pursuant to item (vi) of subparagraph (B) of paragraph nine of subsection (k) of this section. For insurance issued on a substandard basis, such charges may be based on appropriate modifications of such tables.

(B) Cash surrender values shall be deemed to meet the requirements of this subparagraph, if the following conditions are met:

(i) Policy values shall not be less than a minimum policy value which reflects the same transactions, the same interest credited and the same benefit charges that are reflected in the actual policy value, except that the excess first year expense charges shall not be greater than the initial expense allowance, and any excess expense charges for a face amount increase after issue shall not be greater than the increase expense allowance. For purposes of this item, the initial expense allowance shall be (I) the lesser of (aa) one hundred twenty-five percent of the net level whole life annual premium at issue and (bb) four percent of the average face amount of insurance provided under the policy during the first ten policy years plus (II) one percent of such average face amount, and the increase expense allowance shall be (I) the lesser of (aa) one hundred twenty-five percent of the net level whole life annual premium for an increase in the face amount of insurance and (bb) four percent of the average increase in face amount of insurance over a period of ten policy years (excluding any increases previously taken into account in determining an expense allowance under this item) plus (II) one percent of any such average increase.

(ii) Any surrender charge provided in the policy shall be such that the initial surrender charge together with any excess first year expense charges do not exceed the initial expense allowance. Any additional surrender charges that are imposed in connection with an increase in face amount shall be such that any such additional charge together with any excess expense charges made in connection with such increase do not exceed the increase expense allowance.

(iii) The policy shall provide that at least once each policy year the

policyholder has the option to apply the portion of the cash surrender value necessary to provide an amount of guaranteed paid-up life insurance at least as great as the lesser of (I) and (II), where (I) is the amount of paid-up life insurance provided by applying the cash surrender value to provide such paid-up insurance, computed on the basis of an interest rate (not less than the lesser of (aa) four percent and (bb) the nonforfeiture interest rate per annum pursuant to paragraph ten of subsection (k) of this section minus one percent) guaranteed in the policy for this purpose, and a mortality basis (not less favorable to the policyholder than the mortality basis specified for an insured not medically underwritten in item (iv) of subparagraph (A) of this paragraph) guaranteed in the policy for this purpose, and (II) is the amount of paid-up life insurance such that the amount at risk on the paid-up insurance is the same as the amount at risk under the policy. If the option is elected, the portion of the cash surrender value not applied to provide the paid-up life insurance shall be paid to the policyholder. The guaranteed paid-up life insurance benefit may be provided under the policy or by means of a separate single premium life insurance policy issued by the company or an affiliate or subsidiary thereof. For purposes of this item, the term "cash surrender value" is after reduction for outstanding loans or other amounts due under the policy.

(C) The surrender charge in policy years after the first shall not exceed the maximum initial surrender charge permitted under this subsection multiplied by the ratio of (i) the value of a life annuity due of one dollar per year for the balance of the amortization period to (ii) the corresponding annuity value at issue, based on the mortality table and interest rate used in calculating the net level whole life annual premiums. For all policies the maximum amortization period is twenty years.

(D) Any surrender charge that is imposed on an increase in premium payments under a policy meeting the requirements of this subsection that does not result in any increase in face amount of the policy shall not exceed the difference between (I) the maximum initial surrender charge computed on the assumption that premiums were paid at the increased rate from the date of issuance of the policy and (II) the maximum initial surrender charge permitted under this subsection.

(4) The superintendent may issue regulations to implement this subsection.

(5) The operative date of this subsection for a company shall be January first, nineteen hundred eighty-eight, or the operative date of this act for the company, whichever is earlier.

(n-2) Notwithstanding any other provision of this section, any policy that provides for the crediting of additional amounts pursuant to subsection (b) of section four thousand two hundred thirty-two of this article may provide for cash surrender benefits determined in accordance with a market-value adjustment formula, provided, however, that such policy provides for cash surrender benefits determined without adjustment in accordance with such a formula at specified times (which shall not be less frequent than once every ten years after issuance of the policy). For purposes hereof, "market-value adjustment formula" means a formula which is described in the policy for increasing and decreasing cash surrender values that would otherwise meet the minimum requirements of subsection (n-1) of this section and which takes into account (1) changes in interest rates on publicly-traded obligations or other investments or in interest rates provided in, or declared pursuant to, policies of the same class as the policy being surrendered and (2) the length of time between the date on which the policy is surrendered and the next date on which the policy would have provided cash surrender benefits determined without the use of any market-value adjustment formula. The superintendent may promulgate reasonable regulations to define permissible forms or market-value adjustment formulae.

(o) (1) This section shall not apply to any of the following:

(A) Reinsurance.

(B) Group insurance.

(C) Group annuity contract.

(D) A single premium pure endowment or annuity contract.

(E) A reversionary annuity contract.

(F) A term policy of uniform amount, which provides no guaranteed nonforfeiture or endowment benefits, or renewal thereof, of thirty years or less expiring before age eighty-one, for which uniform premiums are payable during the entire term of the policy.

(G) A term policy of decreasing amount, which provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium,

calculated as specified in subsections (g), (h), (i) and (k) hereof, 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.

(H) A 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 subsections (c), (d), (g), (h), (i) and (k) hereof, exceeds two and one-half percent of the amount of insurance at the beginning of the same policy year.

(I) A policy or contract delivered outside this state through an agent or other representative of the company issuing the policy or through a broker.

(2) For purposes of determining the applicability of this section, the age at expiry for a joint term life insurance policy shall be the age at expiry of the oldest life.

(p) (1) Any company may file with the superintendent a written notice of its election to comply with the provisions of this section after a specified date before January first, nineteen hundred forty-eight.

(2) After the filing of such notice, then upon such specified date (which shall be the operative date for such company), this section shall become operative with respect to the policies and contracts thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be January first, nineteen hundred forty-eight.

(q) The provisions of this section shall not apply to any policy qualified for special tax treatment under subsection (b) of section four hundred three of the Internal Revenue Code of 1986, as amended, to the extent such application would prevent such qualification.