§ 4223. Standard nonforfeiture law for annuities. (a) (1) In the case of contracts issued on or after the operative date of this section, no contract of annuity, except as provided in subsection (b) of this section, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions that in the opinion of the superintendent are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract.

(A) That upon cessation of payment of considerations under a contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in subsections (d), (f), (g) and (i) of this section.

(B) If a contract provides for a full or partial lump sum settlement at maturity, or at any other time, that upon full or partial surrender of the contract at the commencement of any annuity payments or prior thereto at times specified in the contract (which shall not be less frequently than once every ten years after the issuance of the contract), the company will pay in lieu of any paid-up annuity benefit a cash surrender benefit (for the portion of the contract surrendered, if the contract permits partial surrenders) in an amount meeting the requirements of paragraph one of subsection (e) of this section. The contract may provide for a cash surrender benefit on any other date or dates meeting the requirements of paragraph one or two of subsection (e) of this section. The company shall reserve the right to defer the payment of such cash surrender benefit for a period of six months after demand therefor with surrender of the contract. This subparagraph shall not apply to any contract qualified for special tax treatment under subsection (b) of section four hundred three of the Internal Revenue Code to the extent such application would prevent such qualification.

(C) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity during the period it is guaranteed, and any cash surrender or death benefits that are guaranteed under the contract, and any times at which such guaranteed benefits are payable, together with sufficient information to determine the amounts of such benefits and, if the contract provides for the determination of any cash surrender value in accordance with a market-value adjustment formula authorized by paragraph two of subsection (e) of this section, a

brief description of the formula and the circumstances in which it is applied, together with a statement that a detailed description has been filed with the superintendent.

(D) A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract.

(E) (i) Except as provided in item (ii) of this subparagraph, a statement that the annuity benefits at the time of their commencement will not be less than those that would be provided by the application of an amount, hereinafter defined, to purchase any single consideration immediate annuity contract offered by the company at the time to the same class of annuitants. For contracts that provide cash surrender benefits, such amount shall be the greater of the cash surrender benefit or ninety-five percent of what the cash surrender benefit would be if there were no withdrawal charge. For contracts that do not provide cash surrender benefits, such amount shall be the present value of the paid-up annuity benefit provided under the contract in accordance with subsection (d) of this section.

(ii) For paid-up deferred annuity contracts in which each consideration paid into the contract purchases guaranteed paid-up annuity benefits determined at the time the consideration is paid, a statement that the annuity benefits at the time each consideration is paid will not be less than those that would be provided by the application of the consideration to current purchase rates for new sales of such contract or any comparable paid-up deferred annuity contract offered by the company at that time to the same class of annuitants. For purposes of this item, dividends applied to purchase paid-up additions to the contract shall be treated as considerations paid into the contract.

(iii) The statements set forth in items (i) and (ii) of this subparagraph shall not affect the amount of any benefits required to be provided under any other provision of this section.

(2) Notwithstanding the requirements of this subsection, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of three full years and either (A) the actual accumulation amount as hereinafter defined would be less than five thousand dollars or the dollar limit established pursuant to subparagraph A of paragraph 11 of subsection (a) of section four hundred eleven of the internal revenue code of 1986, as amended, or (B) the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than twenty dollars monthly, calculated on the basis of the mortality table, if any, and the interest rate, if any, specified in the contract for determining the paid-up annuity benefits, the company may at its option terminate such contract by payment of the actual accumulation amount and by such payment shall be relieved of any further obligation under such contract.

(b) (1) This section shall not apply to any:

(A) Reinsurance.

(B) Group annuity contract purchased in connection with one or more retirement plans or plans of deferred compensation established or maintained by or for one or more employers (including partnerships or sole proprietorships), employee organizations, or any combination thereof, except as otherwise provided in this subsection.

(C) Premium deposit fund.

(D) Variable annuity.

(E) Immediate annuity.

(F) Deferred annuity contract or group annuity certificate after annuity payments have commenced.

(G) Reversionary annuity.

(H) Contract delivered outside this state through an agent or other representative of the company issuing the contract or through a broker, except as otherwise provided in this subsection.

(2) This section shall apply to any certificate issued, or issued for delivery, under a group annuity contract (other than a group annuity contract issued to an employee benefit plan within the meaning of the federal employee retirement income security act of 1974, 29 U.S.C. §1001 et seq.) to a person solicited for the sale of such certificate in this state if:

(A) such certificate provides benefits under an individual retirement account or is issued as an individual retirement annuity, both as defined in section four hundred eight of the Internal Revenue Code, except for a simplified employee pension as defined in subsection (k) of section four hundred eight of such code; or

(B) such certificate is issued as an annuity contract in accordance with subsection (b) of section four hundred three of such code under a program for the purchase of such annuity contract where the payments are derived wholly from a salary reduction agreement or an agreement to forego an increase in salary; or

(C) the benefits provided under such group annuity contract are derived wholly from funds contributed by the persons covered thereunder.

(c) (1) Except as provided in paragraph four of this subsection, the minimum values as specified in subsections (d), (e), (f), (g) and (i) of this section of any paid-up annuity, cash surrender or death benefits attributable to any account subject to this section under an annuity contract shall be based (except as provided in subsection (e) of this section with respect to the use of a market-value adjustment formula) upon the actual accumulation amount computed as provided in this subsection. For contracts that provide a cash surrender benefit prior to the commencement of annuity payments, the death benefit attributable to any account, other than an equity index account, shall not be less than the actual accumulation amount, as defined in paragraph two of this subsection, and the death benefit attributable to an equity index account shall not be less than the value of the equity index account, as defined in paragraph four of this subsection.

(2) The "actual accumulation amount" with respect to an account other than an equity index account at any time at or prior to the commencement of any annuity payments is:

(A) the net considerations credited to such account; minus

(B) premium taxes and premium charges attributable to the account; plus

(C) interest (which shall not be less in any year than the minimum annual effective rate of interest as specified in subparagraph (F) of this paragraph applied to the sum of the actual accumulation amount and the amount of any indebtedness to the company on the contract attributable to the account), additional amounts and dividends, credited

by the company to the account; minus

(D) administrative charges (which shall not exceed fifty dollars per year per contract); minus

(E) the sum of (i) the amount appropriate according to the terms of the contract to reflect transfers to other accounts, any prior withdrawals from or partial surrenders of the account and (ii) the amount of any indebtedness to the company attributable to such account, including interest due and accrued.

(F) the minimum annual effective rate of interest shall be the lesser of three percent and the following:

(i) the five-year constant maturity treasury rate reported by the federal reserve as of a date, or average over a period, within the fifteen months prior to the contract issue or redetermination date rounded to the nearest one-twentieth of one percent;

(ii) reduced by one hundred twenty-five basis points; and

(iii) where the resulting minimum guaranteed interest rate is not less than one percent. The minimum annual effective rate of interest at issue shall be specified in the contract. The basis and calculation for setting the minimum annual effective rate of interest at issue of a contract shall be filed with the superintendent. If the contract provides that the minimum annual effective rate of interest may be redetermined, the redetermination date, basis, calculation and period shall be stated in the contract. The basis is the date or average over a specified period that produces the values of the five-year constant maturity treasury rate to be used at each redetermination date or at issue.

(3)(A) "Net considerations" means the gross considerations credited to the account (including transfers from other accounts under the contract) less contract charges allocated to the account, but net considerations shall not, for any contract year for any account, be less than zero.

(B) "Contract charges" means the fixed dollar charges provided for in the contract (subject to any maximum limit based on the amount of annual considerations credited to the contract) but shall not exceed fifty dollars in any year.

(C) "Premium charge percentage" means a charge provided for in the contract based on a percentage of net considerations credited to the contract but shall not exceed (i) ten percent of any net consideration

so credited if the contract does not contain a market-value adjustment formula or (ii) seven percent of any net consideration so credited if the contract contains a market-value adjustment formula.

(D) "Premium specific" when applied to a contract means that each net consideration credited to the contract is associated with a portion of the actual accumulation amount under the contract and of the amount of any indebtedness under the contract to the company and that a separate withdrawal charge percentage is applicable to each such portion.

(4)(A) The minimum values as specified in subsections (d), (e), (f), (g) and (i) of this section of any paid-up annuity, cash surrender or death benefits available under an equity index account in an annuity contract shall be based upon the greater of the minimum accumulation value and the equity index value, as defined in this paragraph, provided that:

(i) at least once every ten years the minimum accumulation value and the equity index value will be reset to equal the greater of the two values; and

(ii) the value of an equity index account during any contract year may not be less than the value of the equity index account at the start of the contract year plus net considerations credited to the equity index account during the contract year less transfers, withdrawals and surrenders from the equity index account during the contract year.

(iii) if an amount is withdrawn from the equity index account, the greater of the minimum accumulation value and the equity index value shall not be reduced by more than the amount withdrawn. The lesser of the two values shall not be reduced by more than the amount withdrawn multiplied by the ratio of the lesser of the two values to the greater of the two values.

(B) The minimum accumulation value for an equity index account shall equal the actual accumulation amount, as defined in paragraph two of this subsection, with the following adjustments:

(i) the amounts added pursuant to subparagraph (C) of paragraph two of this subsection shall not include any additional amounts, but shall include the amounts, if any, credited to the minimum accumulation value when values are reset in accordance with item (i) of subparagraph (A) of this paragraph; and

(ii) the reduction described in item (ii) of subparagraph (F) of

paragraph two of this subsection may be increased by not more than one percent upon demonstration satisfactory to the superintendent that the present value of the additional reduction does not exceed the market value of the benefit at the contract issue date, and, if applicable, at each date thereafter that the guaranteed interest rate, or equity index formula, can be changed.

(C) The equity index value shall equal the actual accumulation amount as defined in paragraph two of this subsection, with the following adjustments:

(i) the amounts added pursuant to subparagraph (C) of paragraph two of this subsection shall not include any interest; but shall include the amounts, if any, credited based on an equity index formula and the amounts, if any, credited to the equity index value when values are reset in accordance with item (i) of subparagraph (A) of this paragraph;

(ii) the amounts credited to the equity index value shall be based upon an equity index formula specified in the contract meeting the requirements of subparagraph (D) of this paragraph; and

(iii) the equity index value at the end of any contract year may not be less than the equity index value at the start of the contract year plus net considerations credited to the equity index account during the contract year less transfers, withdrawals and surrenders from the equity index account during the contract year.

(D) The equity index formula shall be based on:

(i) a percentage change in an equity index;

(ii) guaranteed factors, such as participation rates, margins, caps and floors that adjust the percentage change in the equity index or where such factors are not guaranteed but subject to change after contract issue and:

(I) such changes occur not more frequently than annually;

(II) such changes are limited by guaranteed factors stated in the contract; and

(III) the use of factors other than the guaranteed factors stated in the contract are considered additional amounts within the meaning of subsection (a) of section four thousand two hundred thirty-two of this article.

(iii) be applied not more frequently than monthly nor less frequently than annually; and

(iv) use the equity index value as the base to which the percentage change in the equity index as modified by factors in the formula is applied.

(v) in the absence of withdrawals and net considerations, not result in a percentage change in the equity index value over a contract year of less than the percentage change in the equity index as adjusted and applied by the terms of the contract.

(E) The contract shall describe:

(i) the equity index used in the formula, including any alternative index should the equity index no longer be publicly available;

(ii) the period of time over which the percentage change in the index is calculated;

(iii) any initial participation rate, margin, cap, floor or other factor used to adjust the percentage change in the equity index, the period or periods of time for which such factor is applicable and if the factor is subject to change after the contract is issued, the maximum or minimum as applicable for such factor over the contract's lifetime and the procedures for determining and disclosing any change in such factor; and

(iv) the application of the equity index formula.

(d) Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the actual accumulation amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate, if any, specified in the contract for determining any minimum paid-up annuity benefits guaranteed in the contract.

(e) (1) A cash surrender benefit that meets the requirements of this paragraph shall not be less than the excess of (i) the actual accumulation amount over (ii) the withdrawal charge percentage times the sum of (I) the actual accumulation amount and (II) the amount of any indebtedness under the contract to the company. Subject to the foregoing sentence and section four thousand two hundred thirty-two of this article, such benefit may be determined in any manner established pursuant to authority granted by the board of directors of the company or a committee thereof (including any formula that takes into account changes in interest rates of publicly-traded obligations or other investments).

(2) A cash surrender benefit that meets the requirements of this paragraph shall not be less than the excess of (i) the actual accumulation amount, as adjusted by a market-value adjustment formula, over, if the contract is not premium specific, (ii) the withdrawal charge percentage times the sum of (I) the actual accumulation amount, as adjusted by such market-value adjustment formula and (II) the amount of any indebtedness under the contract to the company or, if the contract is premium specific, (iii) the aggregate of such withdrawal charge percentage under the contract times the sum of (I) the corresponding portion of the actual accumulation amount, as adjusted by such market-value adjustment formula, and (II) the corresponding portion of the amount of any indebtedness under the contract to the company.

(3) (A) If the cash surrender benefit is computed on the basis of the actual accumulation amount without adjustment by a market-value adjustment formula and the contract does not include an equity index account, "withdrawal charge percentage" means a percentage not greater than ten percent less the premium charge percentage, if any, provided for under the contract.

(B) If the contract has an equity index account, "withdrawal charge percentage" for such account means the percentage provided in subparagraph (A) of this paragraph reduced by one percent for each year beginning after the third year the contract has been in force and further reduced to zero after the tenth year the contract has been in force.

(4) If the cash surrender benefit is computed on the basis of the actual accumulation amount adjusted by a market value adjustment formula, "withdrawal charge percentage" means a percentage not greater than seven percent reduced by one percent for each year the contract has been in force or, if the contract is premium specific, for each year after the net consideration associated with such withdrawal charge percentage was credited to the contract and less the premium charge percentage, if any, provided in the contract (but not less than zero). After any period during which interest was credited to the contract at a specified rate and the company, pursuant to the contract, set a new specified rate and a new period during which such rate is to be so credited, the withdrawal charge percentage for such new period shall be a percentage not in excess of the greater of (A) any remaining

withdrawal charge percentage at the beginning of the new period and (B) the lesser of (i) five percent and (ii) one percent times the number of years in such new period, reduced (but not below zero) by one percent for each year the contract remains in force during such period, provided, however, that the withdrawal charge percentage for such new period shall be zero unless the contract provides for a date, within thirty days of the last day of such new period, on which the contract may be surrendered for a cash surrender benefit determined without the use of a market-value adjustment formula.

(5) "Market-value adjustment formula" means a formula which is described in the contract for increasing and decreasing the actual accumulation amount in order to determine cash surrender values payable in accordance with subparagraph (B) of paragraph one of subsection (a) of this section and which takes into account (i) changes in interest rates on publicly-traded obligations or other investments or in interest rates provided in, or declared pursuant to, contracts of the same class as the contract being surrendered and (ii) the length of time between the date on which the contract is surrendered and the next date on which the contract 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 of market-value adjustment formulae.

(f) For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the greater of (1) the sum for each account other than an equity index account of the actual accumulation amount as defined in paragraph two of subsection (c) of this section plus the sum for each equity index account of the value of the equity index account as defined in paragraph four of subsection (c) of this section and (2) the present value of that portion of the maturity value of the annuity benefit provided at maturity under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the guaranteed interest rate specified in the contract for determining the maturity value of the annuity benefit provided at maturity, but not less than the

accumulation interest rate as defined in subsection (c) of this section, and increased by any existing additional amounts and dividends credited by the company to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit, increased by any additional amounts and dividends credited by the company to the contract.

(g) For the purpose of determining the benefits calculated under subsections (e) and (f) of this section, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

(h) If the contract fails at any time prior to the commencement of annuity payments to provide cash surrender benefits or to provide death benefits at least equal to the actual accumulation amount, it shall contain a statement in a prominent place that such benefits are not provided.

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

(j) For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of subsections (d), (e), (f), (g) and (i) of this section,

additional benefits payable in the event of total and permanent disability, as reversionary annuity or deferred reversionary annuity benefits, or as other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the accumulation amounts, and the paid-up annuity, cash surrender and death benefits, that may be required by this section. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum paid-up annuity, cash surrender or death benefits.

(k) (1) At least once in each contract year, the company shall mail to each holder of a contract subject to this section under which benefit payments have not yet commenced a statement as of a date during such year as to any paid-up annuity benefit or the amount available under each account to provide a paid-up annuity benefit, any cash surrender benefit and any death benefit, under the contract. If the minimum annual effective rate of interest is subject to redetermination, then the statement shall include the current minimum annual effective rate of interest and the next redetermination date. For contracts containing an equity index account, the statement shall identify the minimum accumulation value, the equity index value, any changes in the participation rate, margin, cap, floor or other factor used in the equity index formula. The statement shall be addressed to the last post-office address of the contractholder known to the company.

(2) This subsection shall not apply to any contract providing for a single consideration if the paid-up annuity benefits, any cash surrender benefits and any death benefits under the contract are identical in amount to those specified at issue.

(l) The operative date of this section shall be:

(1) as to a company which filed with the superintendent a written notice of its election to comply with this section after a specified date before January first, nineteen hundred eighty-one, such specified date; and

(2) as to a company which made no such election, January first, nineteen hundred eighty-one.