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INSURANCE CODE - INS

DIVISION 2. CLASSES OF INSURANCE [1880 - 12880.8] (*Division 2 enacted by Stats. 1935, Ch. 145.*)

PART 2. LIFE AND DISABILITY INSURANCE [10110 - 11549] (*Part 2 enacted by Stats. 1935, Ch. 145.*)

CHAPTER 1. The Contract [10110 - 10198.10] (*Chapter 1 enacted by Stats. 1935, Ch. 145.*)

ARTICLE 3b. Standard Nonforfeiture Law for Individual Deferred Annuities [10168 - 10168.10] (*Article 3b added by Stats. 1979, Ch. 1093.*)

10168. This article shall not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which shall be delivered outside this state through an agent or other representative of the company issuing the contract.
(*Added by Stats. 1979, Ch. 1093.*)

10168.1. In the case of contracts issued on or after the operative date of this article as defined in Section 10168.10, no contract of annuity, except as stated in Section 10168, 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 commissioner are at least as favorable to the contractholder, upon cessation of payment of considerations under the contract.

(a) That upon cessation of payment of considerations under a contract, or upon the written request of the contract owner, the company shall grant a paid-up annuity benefit on a plan stipulated in the contract of the value specified in Sections 10168.3, 10168.4, 10168.5, 10168.6, and 10168.8.

(b) If a contract provides for a lump-sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the company shall pay in lieu of any paid-up annuity benefit a cash surrender benefit in the amount specified in Sections 10168.3, 10168.4, 10168.6, and 10168.8. The company may, after making written request and receiving the written approval of the commissioner, reserve the right to defer the payment of the cash surrender benefit for a period not to exceed six months after demand therefor with surrender of the contract. The request shall address the necessity and equitability to all policyholders of the deferral.

(c) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender, or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of those benefits.

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

Notwithstanding the requirements of this section, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to that period would be less than twenty dollars (\$20) monthly, the company may at its option terminate the contract by payment in cash of the then present value of that portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and the interest rate specified in the contract for determining the paid-up annuity benefit, and by that payment shall be relieved of any further obligation under the contract.

(*Amended by Stats. 2003, Ch. 381, Sec. 1. Effective January 1, 2004.*)

10168.2. (a) This section shall apply to contracts issued before January 1, 2004, and may be applied by a company, on a contract-form-by-contract-form basis, to any contract issued on or after January 1, 2004, and before January 1, 2006. This section shall not apply to any contract issued on or after January 1, 2006.

(b) The minimum values as specified in Sections 10168.3, 10168.4, 10168.5, 10168.6, and 10168.8 of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

(c) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to that time at a rate of interest of 3 percent per annum of percentages of the net considerations (as hereinafter defined) paid prior to that time, decreased by the sum of (i) any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of 3 percent per annum and (ii) the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract.

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars (\$30) and less a collection charge of one dollar and twenty-five cents (\$1.25) per consideration credited to the contract during that contract year. The percentages of net considerations shall be 65 percent of the net consideration for the first contract year and $87\frac{1}{2}$ percent of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be 65 percent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was 65 percent.

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

(1) The portion of the net consideration for the first contract year to be accumulated shall be the sum of 65 percent of the net consideration for the first contract year plus $22\frac{1}{2}$ percent of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.

(2) The annual contract charge shall be the lesser of thirty dollars (\$30) or 10 percent of the gross annual consideration.

(e) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to 90 percent and the net consideration shall be the gross consideration less a contract charge of seventy-five dollars (\$75).

(Amended by Stats. 2003, Ch. 381, Sec. 2. Effective January 1, 2004.)

10168.25. (a) This section shall apply to contracts issued on and after January 1, 2006, and may be applied by a company, on a contract-form-by-contract-form basis, to any contract issued on or after January 1, 2004, and before January 1, 2006.

(b) The minimum values as specified in Sections 10168.3, 10168.4, 10168.5, 10168.6, and 10168.8 of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

(c) (1) The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to that time, at the rates of interest indicated in subdivision (d), of the net considerations (as hereafter defined) paid prior to that time, decreased by the sum of all of the following:

(A) Any prior withdrawals from or partial surrenders of the contract, accumulated at the rates of interest indicated in subdivision (d).

(B) An annual contract charge of fifty dollars (\$50), accumulated at the rates of interest indicated in subdivision (d).

(C) Any state premium tax paid by the company for the contract, accumulated at the rates of interest indicated in subdivision (d). However, the minimum nonforfeiture amount may not be decreased by this amount if the premium tax is subsequently credited back to the company.

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

(2) The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount equal to 87.5 percent of the gross considerations credited to the contract during that contract year.

(d) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of 3 percent per annum and the following, which shall be specified in the contract if the interest rate will be reset:

(1) The five-year Constant Maturity Treasury Rate reported by the Federal Reserve as of a date, or averaged over a period, rounded to the nearest one-twentieth of 1 percent, specified in the contract no longer than 15 months prior to the contract issue date or redetermination date under paragraph (2), reduced by 125 basis points, if, for contracts issued before January 1, 2022, the resulting rate is not less than 1 percent or 100 basis points, and, for contracts issued on or after January 1, 2022, the resulting rate is not less than 0.15 percent or 15 basis points.

(2) The interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date, basis, and period, if any, shall be stated in the contract. The basis is the date, or average over a specified period, that produces the value of the five-year Constant Maturity Treasury Rate to be used at each redetermination date.

(e) During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in paragraph (1) of subdivision (d) by up to an additional 100 basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date thereafter, of the additional reduction shall not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. Lacking a demonstration that is acceptable to the commissioner, the commissioner may disallow or limit the additional reduction.

(f) The commissioner may adopt regulations to implement the provisions of subdivision (e) and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts with respect to which the commissioner determines adjustments are justified.

(Amended by Stats. 2021, Ch. 627, Sec. 12. (AB 1511) Effective January 1, 2022.)

10168.3. 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 minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

(Added by Stats. 1979, Ch. 1093.)

10168.4. Contracts that provide cash surrender benefits shall comply with all of the following:

(a) Cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued on the indebtedness, and increased by any existing additional amounts credited by the company to the contract.

(b) For purposes of subdivision (a), the present value shall be calculated on the basis of an interest rate that is not more than 1 percent higher than the interest rate specified in the contract for accumulating the net considerations to determine the maturity value.

(c) The cash surrender benefit shall not be less than the minimum nonforfeiture amount at the time of the surrender.

(d) (1) Except as otherwise provided in paragraph (2), the death benefit shall be at least equal to the cash surrender benefit.

(2) For contracts issued or delivered on or after January 1, 2016, to persons who are 65 years of age or older, the death benefit shall be at least equal to the annuity value or accumulation value, excluding any surrender charges or penalties upon death.

(Repealed and added by Stats. 2015, Ch. 100, Sec. 2. (SB 426) Effective January 1, 2016.)

10168.45. (a) (1) For an individual annuity contract subject to this article that is surrendered by the contract owner, the insurer shall return to the owner all moneys due in relation to that contract as expeditiously as possible but not later than 45 days from the date the surrender is effective as provided in subdivision (b).

(2) An insurer may defer payment of cash surrender value for up to six months if the approval described in subdivision (b) of Section 10168.1 has been received by the insurer.

(b) (1) (A) A surrender of a contract is effective on the date the request is received if the request is made to the insurer, or servicing agent authorized by the insurer in writing to receive requests for surrender on the insurer's behalf, and contains the elements specified by the insurer in the contract.

(B) The effective date of the surrender of a contract may be up to 45 days after the request for surrender is received if it is permitted by the contract and requested by the contract owner.

(2) The insurer may require the request for surrender to be in writing.

(3) The elements the insurer may require as part of the request for surrender are limited to the following:

(A) A statement that makes it clear that the contract owner intends to surrender, in whole or in part, the contract in question.

(B) The contract number of the contract to be surrendered.

(C) The name, address, and telephone number of the contract owner on the contract to be surrendered.

(D) A clear method of delivery and payee instructions for payment of the surrender value.

(E) For partial surrender, the withdrawal amount, including requested beginning date, frequency, and maximum annual withdrawal amount, and instructions on subaccount withdrawals.

(F) Instructions for tax withholding.

(G) The signature of the owner of the contract, which may be either a wet signature or an electronic signature at the insurer's discretion, and if required by the contract or by a legally binding document that the insurer has actual notice of, the signature of a collateral assignee, irrevocable beneficiary, or other person having an interest in the contract through the legally binding document.

(H) Either the contract itself, or, in lieu of the contract, a statement that the contract has been lost or destroyed.

(4) The insurer may require the contract owner to complete an administrative form as part of the surrender process. The insurer's administrative form may only request information required to complete the surrender transaction, as set forth in paragraph (3). An administrative form shall be sent or mailed to the contract owner within two business days of the request, and shall be available for the contract owner to access on the insurer's Internet Web site if the contract owner accesses his or her account information through the insurer's Internet Web site. The insurer's requirement to complete an administrative form shall not further the effective date of the surrender or extend the 45-day period in which the surrender is required to be processed.

(A) The administrative form shall be designed to provide the insurer with the information needed to complete the surrender transaction consistent with the contract owner's request.

(B) If the insurer requires an administrative form and the contract owner completes and submits that form within 14 days of the surrender request, the insurer shall return all moneys due as expeditiously as possible but not later than 30 days from the effective date of the surrender.

(c) When the contract owner requests information about surrendering a contract from the insurer or servicing agent, the insurer or servicing agent shall provide, upon request, as expeditiously as possible, a written notice setting forth either the requirements of this section or the insurer's requirements.

(d) A contract subject to this section shall do either of the following:

(1) Include language, which may be included by endorsement, setting forth the permitted requirements for surrender described in this section. Alternatively, if the insurer requires only some of the elements permitted in paragraph (3) of subdivision (b) for a surrender request, the contract language may exclude any of the elements in paragraph (3) of subdivision (b) that the insurer does not require to process the surrender.

(2) Be accompanied by a notice setting forth the permitted requirements for a surrender described in this section. Alternatively, if the insurer requires only some of the elements permitted in paragraph (3) of subdivision (b) for a surrender request, the notice may exclude any of the elements in paragraph (3) of subdivision (b) that the insurer does not require to process the surrender.

(e) (1) For a written request and for purposes of this section, "received" means the first day that the written notice is delivered to the address of the insurer or servicing agent authorized by the insurer in writing to receive requests for surrender on the insurer's behalf.

(2) (A) An insurer or servicing agent shall maintain a procedure for ensuring that requests for surrender are logged or stamped on the date received and not on a later date due to the insurer's or servicing agent's internal routing or delivery procedures.

(B) If the procedure required pursuant to subparagraph (A) is not maintained, it shall be conclusively presumed that a request was received on the earliest of the following:

(i) The delivery date shown on an express, certified, or registered mail receipt form of the United States Postal Service or by a commercial carrier.

(ii) Two business days after the request was postmarked by the United States Postal Service.

(iii) One business day before the date stamped received by the insurer or servicing agent.

(C) For purposes of this paragraph, "business day" has the meaning set forth in subdivision (b) of Section 1215.

(D) Postmarks generated by postage meters not located at an office of the United States Postal Service are to be disregarded.

(f) (1) This section does not alter a contractual provision governing calculation of cash or surrender or other values, unless that contractual provision applies a valuation date other than the effective date of surrender described in subdivision (b) to the calculation of cash or surrender or other values.

(2) The effective date established by subdivision (b) is intended to establish a date certain on which a contract owner may rely in determining when the 45-day period specified in subdivision (a) begins to run and a date certain for the insurer to use for the valuation of the contract.

(3) Notwithstanding paragraph (3) of subdivision (b), an insurer may request information that is reasonably necessary to process the surrender in addition to that listed in subdivision (b). An insurer's request for additional information does not delay an effective date established by a contract owner's compliance with subdivision (b).

(4) An insurer may request a signature guarantee if there is reason to believe a fraudulent situation may occur.

(g) This section shall only apply to contracts issued on or after January 1, 2019.

(Amended by Stats. 2018, Ch. 231, Sec. 14. (AB 2045) Effective January 1, 2019.)

10168.5. 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 present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the 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. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

(Added by Stats. 1979, Ch. 1093.)

10168.6. For the purpose of determining the benefits calculated under Sections 10168.4 and 10168.5, the following apply:

(a) In the case of annuity contracts under which the fixed maturity date is later than the later of the anniversary of the contract next following the annuitant's 70th birthday or the 10th anniversary of the contract, the maturity date shall be deemed to be the later of the anniversary of the contract next following the annuitant's 70th birthday or the 10th anniversary of the contract.

(b) 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.

(Amended by Stats. 2016, Ch. 304, Sec. 11. (AB 2884) Effective January 1, 2017.)

10168.7. Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

(Added by Stats. 1979, Ch. 1093.)

10168.8. 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.

(Added by Stats. 1979, Ch. 1093.)

10168.9. 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 Sections 10168.3, 10168.4, 10168.5, 10168.6, and 10168.8, additional benefits payable (a) in the event of total and permanent disability, (b) as reversionary annuity or deferred reversionary annuity benefits, or (c) as other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this article. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

(Added by Stats. 1979, Ch. 1093.)

10168.92. The commissioner may adopt regulations to implement the provisions of this article.

(Added by Stats. 2003, Ch. 381, Sec. 4. Effective January 1, 2004.)

10168.93. (a) Notwithstanding any other provision of law, the form of any annuity contract that is subject to this article shall be filed by the obligor under the contract with the commissioner before it is marketed, issued, delivered, or used in this state.

(b) Nothing contained in this section shall be construed as requiring or providing for the prior approval by the commissioner of forms of individual annuity contracts prior to the time the forms are marketed, issued, delivered, or used in this state.

(Added by Stats. 2004, Ch. 601, Sec. 3. Effective January 1, 2005.)

10168.10. After the effective date of this article, any company may file with the commissioner a written notice of its election to comply with the provisions of this article after a specified date before the second anniversary of the effective date of this article. After the filing of such notice, then upon such specified date, which shall be the operative date of this article for such company, this article shall become operative with respect to annuity contracts thereafter issued by such company. If a company makes no such election, the operative date of this article for such company shall be the second anniversary of the effective date of this article.

(Added by Stats. 1979, Ch. 1093.)