

**Fifty-eighth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 7, 2003**

SENATE BILL NO. 2235  
(Senators Every, Klein)

AN ACT to amend and reenact section 26.1-34-02 of the North Dakota Century Code, relating to minimum nonforfeiture amounts of annuity contracts.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 26.1-34-02 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-34-02. Minimum nonforfeiture amount defined.** The minimum values as specified in sections 26.1-34-03 through 26.1-34-06 and section 26.1-34-08 of any paid-up annuity, cash surrender, or death benefits available under an annuity contract must be based upon minimum nonforfeiture amounts as defined in this section:

1. For an annuity contract issued before August 1, 2003:

a. With respect to annuity contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments must be equal to an accumulation up to such time at a rate of interest of three percent per year of percentages of the net considerations, as hereinafter defined, paid prior to such time, decreased by the sum of any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three percent per year and 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 must be an amount not less than zero and must equal the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars and less a collection charge of one dollar and twenty-five cents for each consideration credited to the contract during that contract year. The percentages of net considerations must be sixty-five percent of the net consideration for the first contract year and eighty-seven and one-half percent of the net considerations for the second and later contract years. Notwithstanding the preceding sentence, the percentage must be sixty-five percent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five percent.

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

a. (1) The portion of the net consideration for the first contract year to be accumulated is the sum of sixty-five percent of the net consideration for the first contract year plus twenty-two and one-half percent of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.

b. (2) The annual contract charge is the lesser of thirty dollars or ten percent of the gross annual considerations.

3. c. With respect to contracts providing for a single consideration, minimum nonforfeiture amounts must be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount must equal ninety percent and the net consideration must be the gross consideration less a contract charge of seventy-five dollars.
2. For an annuity contract issued after July 31, 2005:
- a. The minimum nonforfeiture amount at any time at or before the commencement of any annuity payments must be equal to an accumulation up to such time at rates of interest, as provided under subdivision c, of the net considerations, as defined under subdivision b, paid before such time, decreased by the sum of:
- (1) Any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as provided under subdivision c;
  - (2) An annual contract charge of fifty dollars, accumulated at rates of interest as provided under subdivision c;
  - (3) Any premium tax paid by the company for the contract, accumulated at rates of interest as provided under subdivision c; and
  - (4) The amount of any indebtedness to the company on the contract, including interest due and accrued.
- b. The net considerations for a given contract year used to define the minimum nonforfeiture amount under subdivision a must be an amount equal to eighty-seven and one-half percent of the gross considerations credited to the contract during that contract year.
- c. The interest rate used in determining minimum nonforfeiture amounts must be determined as the lesser of:
- (1) Three percent per annum; or
  - (2) The five-year constant maturity rate reported by the federal reserve as of a date or average over a period, reduced by one hundred twenty-five basis points. The rate calculated under this paragraph may not be less than one percent, must be specified in the contract, and must be determined no more than fifteen months before the contract issue date or redemption date.
- d. The interest rate used in determining minimum nonforfeiture amounts applies for an initial period and may be redetermined for additional periods. The redetermination date basis and period, if any, must be stated in the contract. The basis is the date or average over a specified period that produces the value of the five-year constant maturity treasury rate to be used at each redetermination date.
- e. Notwithstanding subdivisions a, b, c, and d, during the period or term that a contract provides substantive participation in an equity indexed benefit, the contract may increase the reduction of one hundred twenty-five basis points under paragraph 2 of subdivision c by an amount not to exceed one hundred basis points, in order to reflect the value of the equity index benefit. The present value at the contract issue date, the present value at each redetermination date, or the additional reduction may not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the reduction does not exceed the market value of the benefit. Lacking such a demonstration acceptable to the commissioner, the commissioner may disallow or limit the additional reduction.

- f. The commissioner may adopt rules to implement the provisions of subdivision e and to provide further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts if the commissioner determines that adjustments are justified.
- 3. For an annuity contract issued after July 31, 2003, and before August 1, 2005, on a contract form by contract form basis, a company may elect to apply the provisions of subsection 1 or subsection 2.

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President of the Senate

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Speaker of the House

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Secretary of the Senate

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Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2235.

Senate Vote:      Yeas    44          Nays    0          Absent    3

House Vote:      Yeas    94          Nays    0          Absent    0

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Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2003.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2003.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2003,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

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Secretary of State