

## **CHAPTER 26.1-33 LIFE INSURANCE**

### **26.1-33-01. Life insurance policy contains entire contract.**

Every life insurance policy issued or delivered in this state by any life insurance corporation doing business in the state must contain the entire contract between the parties.

### **26.1-33-02. Solicitation of life insurance regulated by rule of the commissioner.**

Insurers shall deliver to purchasers of life insurance information which will improve the purchaser's ability to select the most appropriate plan of life insurance for the purchaser's needs, which will improve the purchaser's understanding of the basic features of the policy which has been purchased or which is under consideration, and which will improve the ability of the purchaser to evaluate the relative costs of similar plans of life insurance. The commissioner may adopt reasonable rules to implement this section.

#### **26.1-33-02.1. Life insurance policies and certificates - Right to return.**

A person who purchases a life insurance policy or certificate issued or delivered in this state may return the policy or certificate within twenty days of delivery to the purchaser. If a policy or certificate is returned, the purchaser is entitled to a refund of the premium. Every life insurance policy or certificate issued or delivered in this state to any person must have a notice prominently printed on or attached to the first page of the policy or certificate stating in substance that the purchaser may return the policy or certificate within twenty days of its delivery and have the premium refunded if, after examination of the policy, the applicant is not satisfied for any reason.

### **26.1-33-03. Form of life insurance policy restricted.**

No life insurance policy may be issued or delivered in this state unless the form of the policy is authorized by this chapter.

### **26.1-33-04. Single premium and nonparticipating life policies.**

A single premium life insurance policy may be issued in any form prescribed in this chapter omitting therefrom provisions or portions thereof applicable only to other than single premium policies. A nonparticipating life insurance policy may be issued in any form prescribed in this chapter if the policy contains a provision that the policy is nonparticipating, and the policy omits clauses for participation in the surplus of the company.

### **26.1-33-05. Provisions required in life policy.**

No life insurance policy may be issued or delivered in this state, unless the policy contains:

1. A provision that all premiums are payable in advance either at the home office of the company, or to an agent of the company, upon delivery of a receipt signed by one or more of the officers who are named in the policy.
2. A provision that the policyholder is entitled to a thirty-one-day grace period for the payment of every premium after the first, which may be subject to an interest charge, during which grace period the insurance continues in force. The provision may contain a stipulation that if the insured dies during the grace period, the overdue premium will be deducted in any settlement under the policy.
3. A provision that the policy constitutes the entire contract between the parties and is incontestable after it has been in force during the lifetime of the insured for two years from its date, except for nonpayment of premiums and except for violations of the policy relating to naval or military service in time of war, and, at the option of the company, provisions relative to benefits in the event of total and permanent disability and provisions that grant additional insurance specifically against death by accident also may be excepted.
4. A provision that all statements made by the insured, in the absence of fraud, are representations and not warranties, and that no such statement avoids the policy

unless it is contained in a written application and a copy of the application is endorsed upon or attached to the policy when issued.

5. A provision that if the age of the insured has been understated, the amount payable under the policy is such as the premium would have purchased at the correct age.
6. A provision that the policy participates in the surplus of the company and that, beginning not later than the end of the third policy year, the company annually will determine and account for the portion of the divisible surplus accruing on the policy, and that the owner of the policy has the right each year to have the current dividend arising from such participation paid in cash; and if the policy provides other dividend options, it must provide further which one of the four standard options is effective if the owner of the policy does not elect any of the other options. The four standard options are payment in cash, application toward payment of any premiums, application to the purchase of paid-up additions to the policy, or accumulation to the credit of the policy with interest at the rate provided for in the policy and payable at the maturity of the policy or at the anniversary of the policy. This provision, however, is not required in nonparticipating policies.
7. A provision that after the policy has been in force three years, the company at any time while the policy is in force, will advance on proper assignment of the policy and on the sole security thereof, at a specified rate of interest, a sum equal to, or at the option of the owner of the policy, less than, the reserve at the end of the current policy year on the policy and on any dividend additions thereto, computed according to a mortality table, interest rate, and method of valuation permitted by chapter 26.1-35, less a sum not more than two and one-half percent of the amount insured by the policy and of any dividend additions thereto; and that the company will deduct from the loan value any existing indebtedness on the policy and any unpaid balance of the premium for the current policy year, and may collect interest in advance on the loan to the end of the current policy year. The provision may provide further that the loan may be deferred for not exceeding six months after the application for the loan is made. It must be stipulated further in the policy that failure to repay any advance or to pay interest thereon does not void the policy unless the total indebtedness thereon to the company equals or exceeds the loan value at the time of the failure nor until one month after notice has been mailed by the company to the last-known address of the insured and of the assignee, if any. No other condition may be exacted as a prerequisite to any such advance. This provision is not required in a policy of term insurance.
8. A provision that if, in event of default in premium payments, the value of the policy is applied to the purchase of other insurance, and if the insurance is in force and the original policy has not been surrendered to the company and canceled, the policy may be reinstated within three years from the default upon evidence of insurability satisfactory to the company and payment of arrears of premiums with interest.
9. A provision that when a policy becomes a claim by the death of the insured, settlement must be made upon receipt of due proof of death, or not later than two months after receipt of the proof, and must include reasonable interest accrued from the date of death so long as a proof of death is filed within one hundred eighty days after the date of the death.
10. A table showing the amounts of installments in which the policy may provide its proceeds may be payable.
11. A title on the face and on the back of the policy correctly describing the policy.
12. A statement whether any conditions or restrictions of liability by reason of travel, occupation, change of residence, or suicide are provided. These restrictions, except in the case of armed forces or military service in time of war, may only be effective during the first year after the issuance of the policy for suicide and for two years after the issuance of the policy in all other instances.
13. A provision that in the event of the death of an insured, the insurer will refund within thirty days after notice to the insurer of the insured's death the portion of the premium, fee, or other sum paid beyond the month of death. This provision does not apply to

term life insurance, flexible premium life insurance, or to any policy when the insurer has a valid defense to the payment of benefits under the policy.

Any of the foregoing provisions or portions thereof, relating to premiums not applicable to single premium policies, may not be incorporated to the extent to which they are inapplicable in a single premium policy.

**26.1-33-06. Provisions prohibited in life policy.**

No life insurance policy may be issued or delivered in this state if it contains any of the following:

1. A provision for forfeiture of the policy for failure to repay any loan on the policy, or to pay interest on such loan, while the total indebtedness on the policy is less than the loan value thereof; or any provision for forfeiture for failure to repay any such loan or to pay interest on the loan unless the provision contains a stipulation that no forfeiture occurs until at least one month after notice has been mailed by the company to the last-known address of the insured and of the assignee, if any.
2. A provision limiting the time within which any action may be commenced to less than five years after the claim for relief accrues.
3. A provision by which the policy purports to be issued or take effect more than six months before the original application for the insurance was made. This subsection does not prohibit the exchange, alteration, or conversion of any policy of life insurance.
4. A provision for any mode of settlement at maturity of less value than the amount insured on the face of the policy plus dividend additions, if any, less any indebtedness to the company on the policy and less any premium that by the terms of the policy may be deducted.

**26.1-33-07. Life policy issued by domestic companies in foreign state may conform to laws thereof.**

The life insurance policies of a domestic life insurance company, when issued or delivered in any other state, country, province, or territory, may contain any provision required by the laws of the state, country, province, or territory in which issued, anything in this chapter to the contrary notwithstanding.

**26.1-33-08. Exempted companies.**

Sections 26.1-33-03 through 26.1-33-07 do not apply to annuity or industrial policies nor to corporations or associations operating on the assessment or fraternal plan.

**26.1-33-09. Cooperative or assessment life association must identify policies.**

Every cooperative or assessment life association transacting business in this state shall print in bold type and in red ink, near the top of the front page of each policy or certificate issued upon the life of any resident of this state, the words "issued upon the assessment plan".

**26.1-33-10. Agreement depriving insured in life policy of right to apportionment of surplus and automatic insurance void.**

No agreement between a life insurance company and a holder of a participating policy or an applicant for insurance under a participating policy relating to the apportionment annually of the surplus of the company, the rights of the policyholder in the surplus, automatic insurance, or to the limitation on contingency reserves waives any of the provisions of this chapter relating thereto.

**26.1-33-11. Group life policy - Required provisions.**

No group life insurance policy may be delivered in this state unless it contains in substance the following provisions, or provisions which in the opinion of the commissioner are more favorable to the insureds, or at least as favorable to the insureds and more favorable to the policyholder; provided, however, that the standard provisions required for an individual life insurance policy may not apply to a group life insurance policy:

1. A provision that the policyholder is entitled to a grace period of thirty-one days for the payment of any premium due except the first, during which grace period the death benefit coverage continues in force, unless the policyholder has given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder is liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such a grace period.
2. A provision that the validity of the policy may not be contested except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that no statement made by any person insured under the policy relating to insurability may be used in contesting the validity of the insurance with respect to which the statement was made after the insurance has been in force prior to the contest for a period of two years during the insured's lifetime nor unless it is contained in a written instrument signed by the insured; provided, however, that no such provision may preclude the assertion of any time of defenses based upon provisions in the policy which relate to eligibility for coverage.
3. A provision that a copy of the application, if any, of the policyholder will be attached to the policy when issued, that all statements made by the policyholder or by the persons insured are representations and not warranties, and that no statement made by any insured may be used in any contest unless a copy of the instrument containing the statement is or has been furnished to the insured or, in the event of death or incapacity of the insured, to the insured's beneficiary or personal representative.
4. A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of the individual's coverage.
5. A provision specifying an equitable adjustment of premiums or of benefits or of both to be made if the age of an insured has been misstated. The provision must contain a clear statement of the method of adjustment to be made.
6. A provision that any sum becoming due by reason of the death of an insured is payable to the beneficiary designated by the insured, except that when the policy contains conditions pertaining to family status the beneficiary may be the family member specified by the policy terms, subject to the provisions of the policy in the event there is no designated beneficiary, as to all or any part of such sum, living at the death of the insured and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding five thousand dollars to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured.
7. If the group life insurance policy is on a plan of insurance other than the term plan, a nonforfeiture provision which in the opinion of the commissioner is equitable to the insureds and to the policyholder, but this does not require the policy to contain the same nonforfeiture provision required for an individual life insurance policy.
8. A provision that the insurer will issue to the policyholder for delivery to each insured a certificate setting forth a statement as to the insurance protection to which that person is entitled, a statement as to any dependent's coverage included in the certificate, and the rights and conditions set forth in subsections 9, 10, 11, and 12.
9. A provision that if the insurance, or any portion of it, on an insured or on the dependent of an insured, ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, the insured is entitled to have issued to the insured by the insurer, without evidence of insurability, an individual life insurance policy without disability or other supplementary benefits, provided application for the individual policy is made, and the first premium paid to the insurer, within thirty-one days after such termination, and provided further that:
  - a. The individual policy must, at the option of such person, be on any one of the forms then customarily issued by the insurer at the age and for the amount

applied for, except that the group policy may exclude the option to elect term insurance;

- b. The individual policy must be in an amount not in excess of life insurance which ceases because of such termination, less the amount of life insurance for which the person becomes eligible under the same or any other group policy within thirty-one days after termination, provided that any amount of insurance which has matured on or before the date of termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, may not, for purposes of this provision, be included in the amount which is considered to cease because of the termination; and
- c. The premium on the individual life insurance policy is at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such person then belongs, and to the individual age attained on the effective date of the individual policy.

Subject to the same conditions set forth above, the conversion privilege must be available to a surviving dependent, if any, at the death of the employee or member, with respect to the coverage under the group policy which terminates by reason of such death and to the dependent of the employee or member upon termination of coverage of the dependent, while the employee or member remains under the group policy, by reason of the dependent ceasing to be a qualified family member under the group policy.

10. A provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every insured at the date of termination whose insurance terminates, including the insured dependent of a covered person, and who has been so insured for at least five years prior to the termination date is entitled to have issued by the insurer an individual life insurance policy, subject to the same conditions and limitations as are provided by subsection 9, except that the group policy may provide that the amount of such individual policy may not exceed the smaller of:
  - a. The amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which the person is or becomes eligible under a group policy issued or reinstated by the same or another insurer within thirty-one days after such termination; or
  - b. Ten thousand dollars.
11. A provision that if an insured, or the insured dependent of a covered person, dies during the period within which the individual would have been entitled to have an individual life insurance policy issued in accordance with subsection 9 or 10 and before such an individual policy has become effective, the amount of life insurance that the insured would have been entitled to have issued under the individual policy is payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.
12. When active employment is a condition of insurance, a provision that an insured may continue coverage during the insured's total disability by timely payment to the policyholder of that portion, if any, of the premium that would have been required from the insured had total disability not occurred. The continuation shall be on a premium paying basis for a period of six months from the date on which the total disability started, but not beyond the earlier of:
  - a. Approval by the insurer of continuation of the coverage under any disability provision which the group policy may contain; or
  - b. The discontinuance of the group policy.
13. A provision that the settlement of a death claim must be made upon receipt of due proof of death, or not later than two months after receipt of the proof of death, and must include reasonable interest accrued from the date of death so long as a proof of death is filed within one hundred eighty days after the date of the death.

### **26.1-33-12. Group life policy conversion privileges.**

If any individual insured under a group life insurance policy delivered in this state after July 1, 1983, becomes entitled under the terms of the policy to have an individual life insurance policy issued without evidence of insurability, subject to making of application and payment of the first premium within the period specified in the policy, and if the individual is not given notice of the existence of the right at least fifteen days prior to the expiration date of the period, then the individual has an additional period within which to exercise that right. This additional period expires fifteen days after the individual is given notice. Written notice presented to the individual or mailed by the policyholder to the last-known address of the individual or mailed by the insurer to the last-known address of the individual as furnished by the policyholder or notice of the right of conversion included in a certificate provided to each employee or notice provided by the attachment of a separate notice to the certificate constitutes notice for the purpose of this section.

#### **26.1-33-12.1. Life of a child - Disclosure.**

A group life insurance policy issued in this state which insures the life of a newborn child of the certificate holder may not include a provision delaying coverage on the life of the newborn child for a specified period, unless the existence and length of the waiting period is prominently disclosed in the certificate or rider or otherwise disclosed by the group policyholder to a certificate holder at the time the certificate holder becomes eligible or enrolls for the coverage.

#### **26.1-33-13. Variable life contracts - Separate accounts.**

Any domestic life insurance company, including any domestic fraternal benefit society that operates on a legal reserve basis, may establish one or more separate accounts and may allocate thereto amounts, including proceeds applied under optional modes of settlement or under dividend options, to provide for life insurance, and benefits incidental thereto, payable in fixed or variable amounts or both, subject to the following:

1. The income, gains, and losses, realized or unrealized from assets allocated to a separate account, must be credited to or charged against the account, without regard to other income, gains, or losses of the company.
2. Except as may be provided with respect to reserves for guaranteed benefits and funds referred to in subsection 3:
  - a. Amounts allocated to any separate account and accumulations thereon may be invested and reinvested without regard to any requirements or limitations prescribed by laws of this state governing the investments of life insurance companies.
  - b. Investments in a separate account or accounts may not be taken into account in applying the investment limitations otherwise applicable to the investments of the company.
3. Except with the approval of the commissioner and under any conditions as to investments and other matters the commissioner may prescribe, which must recognize the guaranteed nature of the benefits provided, reserves for benefits guaranteed as to dollar amount and duration and funds guaranteed as to principal amount or stated rate of interest may not be maintained in a separate account.
4. Unless otherwise approved by the commissioner, assets allocated to a separate account must be valued at their market value on the date of valuation, or if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to the separate account. Unless otherwise approved by the commissioner, the portion of the assets of the separate account equal to the company's reserve liability with regard to the guaranteed benefits and funds referred to in subsection 3 must be valued in accordance with the rules otherwise applicable to the company's assets.
5. Amounts allocated to a separate account are owned by the company, and the company may not be, nor hold itself out to be, a trustee with respect to such amounts. To the extent provided under the applicable contracts, that portion of the assets of any separate account equal to the reserves and other contract liabilities with respect to the

account is not chargeable with liabilities arising out of any other business the company may conduct.

6. No sale, exchange, or other transfer of assets may be made by a company between any of its separate accounts or between any other investment account and its separate accounts unless, in case of a transfer into a separate account, the transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless the transfer, whether into or from a separate account, is made by a transfer of cash or by a transfer of securities having a readily determinable market value, provided that a transfer of securities is approved by the commissioner. The commissioner may approve other transfers among such accounts if, in the commissioner's opinion, the transfers would not be inequitable.
7. To the extent the company determines it is necessary to comply with any applicable federal or state laws, the company, with respect to any separate account, including any separate account which is a management investment company or a unit investment trust, may provide for persons having an interest therein appropriate voting and other rights and special procedures for the conduct of the business of the account, including special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and selection of a committee, the members of which need not be otherwise affiliated with the company, to manage the business of the account.

**26.1-33-14. License required for variable life contracts.**

No company may deliver or issue for delivery in this state variable life insurance contracts unless it is licensed or organized to do a life insurance business in this state, and the commissioner is satisfied that the company's condition or method of operation in connection with the issuance of variable contracts will not render its operation hazardous to the public or its policyholders in this state. In this connection, the commissioner shall consider, among other things, the history and financial condition of the company; the character, responsibility, and fitness of the officers and directors of the company; and the laws and rules under which the company is authorized in the state of domicile to issue variable life insurance contracts. If the company is a subsidiary of an admitted life insurance company, or affiliated with such company through common management or ownership, it may be deemed by the commissioner to have met the provisions of this section if it or the parent or the affiliated company meets these requirements.

**26.1-33-15. Content of variable life contracts.**

Any variable life insurance contract delivered or issued for delivery in this state must contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar amount of the variable benefits. Any contract under which the benefits vary to reflect investment experience, including a group contract and any certificate in evidence of variable benefits issued thereunder, must state that the dollar amount will so vary and must contain on its first page a statement to the effect that the benefits under the contract are on a variable basis.

**26.1-33-16. Policy provisions exceptions for variable life contracts.**

Except for subsections 2, 6, 7, 8, and 10 of section 26.1-33-05, and except as otherwise provided in sections 26.1-33-13 through 26.1-33-15, all pertinent provisions of this title apply to separate accounts and variable life insurance contracts. Any individual variable life insurance contract, delivered or issued for delivery in this state, must contain grace, reinstatement, and nonforfeiture provisions appropriate to the contract. The reserve liability for variable contracts must be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

### **26.1-33-17. Rulemaking authority relating to variable life contracts.**

The commissioner may adopt reasonable rules to implement sections 26.1-33-13 through 26.1-33-16.

### **26.1-33-18. Nonforfeiture benefits.**

In the case of policies issued after December 31, 1978, a life insurance policy, except as stated in section 26.1-33-28, may not be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which are at least as favorable to the defaulting or surrendering policyholder as are the minimum requirements specified in this section and are essentially in compliance with section 26.1-33-27:

1. In the event of default in any premium payment, the insurer 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 the due date, of the amount as may be hereinafter specified. In lieu of the stipulated paid-up nonforfeiture benefit, the insurer may substitute, upon proper request not later than sixty days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit that provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits.
2. Upon surrender of the policy within sixty days after the due date of any premium payment in default after premiums have been paid for at least three full years in the case of ordinary insurance or five full years in the case of industrial insurance, the insurer will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of the amount as may be hereinafter specified.
3. A specified paid-up nonforfeiture benefit becomes effective as specified in the policy unless the person entitled to make the election elects another available option not later than sixty days after the due date of the premium in default.
4. If the policy has become paid up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, then the insurer will pay, upon surrender of the policy within thirty days after any policy anniversary, a cash surrender value of the amount as may be hereinafter specified.
5. In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. In the case of all other policies, a statement of the mortality table and interest rate or rates used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture 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 insurer on the policy.
6. A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered. An explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the insurer on the policy. If a detailed statement of the method of computation of the values and benefits shown in the policy is not stated in the policy, a statement that the method of computation has been filed with the commissioner. 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.

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

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

**26.1-33-19. Computation of cash surrender value.**

1. Any cash surrender value available under a life insurance policy in the event of default in a premium payment due on any policy anniversary, whether or not required by section 26.1-33-18, must be an amount not less than the excess, if any, of the present value, on the anniversary, of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of:
  - a. The then present value of the adjusted premiums as defined in sections 26.1-33-21 through 26.1-33-24 corresponding to premiums which would have fallen due on and after the anniversary; and
  - b. The amount of any indebtedness to the insurer on the policy.
2. Any life insurance policy issued on or after the operative date of section 26.1-33-24, 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 subsection 1 must be an amount not less than the sum of the cash surrender value for an otherwise similar policy issued at the same age without the rider or supplemental policy provision and the cash surrender value as defined in subsection 1 for a policy which provides only the benefits otherwise provided by the rider or supplemental policy provision.
3. For any family policy issued on or after the operative date of section 26.1-33-24, 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 subsection 1 must be an amount not less than the sum of the cash surrender value 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 subsection 1 for a policy which provides only the benefits otherwise provided by term insurance on the life of the spouse.
4. Any cash surrender value available within thirty days after any policy anniversary under any policy paid up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, whether or not required by section 26.1-33-18, must be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the insurer on the policy.

**26.1-33-20. Computation of paid-up nonforfeiture benefits.**

Any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due on any policy anniversary must be such that its present value as of the anniversary must 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 sections 26.1-33-18 through 26.1-33-28 in the absence of the condition that premiums must have been paid for at least a specified period.

**26.1-33-21. Calculation of adjusted premiums.**

1. This section does not apply to policies issued on or after the operative date of section 26.1-33-24. Except as provided in subsection 3, the adjusted premiums for any policy must be calculated on an annual basis and must be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts 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 the adjusted premiums equals the sum of:

- a. The then present value of the future guaranteed benefits provided for by the policy.
- b. Two percent of the amount of insurance, if the insurance is uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy.
- c. Forty percent of the adjusted premium for the first policy year.
- d. Twenty-five percent of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less.

In applying the percentages specified in subdivisions c and d, no adjusted premium may be deemed to exceed four percent of the amount of insurance or level amount equivalent. The date of issue of a policy for the purpose of this section is the date as of which the rated age of the insured is determined.

2. In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent level amount for the purpose of this section is deemed to be the level amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the inception of the insurance as the benefits under the policy.
3. The adjusted premiums for any life insurance policy providing term insurance benefits by rider or supplemental policy provision must be equal to:
  - a. 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 the term insurance benefits are payable, by;
  - b. The adjusted premiums for such term insurance, subdivisions a and b being calculated separately and as specified in subsections 1 and 2 except that, for the purposes of subdivisions b, c, and d of subsection 1, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in subdivision b of subsection 1 must be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in subdivision a.
4. Except as otherwise provided in sections 26.1-33-22 and 26.1-33-23, all adjusted premiums and present values referred to in sections 26.1-33-18 through 26.1-33-28, for all policies of ordinary insurance, must be calculated on the basis of the commissioners 1941 standard ordinary mortality table. However, for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to any age not more than three years younger than the actual age of the insured and such calculations for all policies of industrial insurance must be made on the basis of the 1941 standard industrial mortality table. All calculations must be made on the basis of the rate of interest, not exceeding three and one-half percent per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. 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 thirty percent of the rates of mortality according to the applicable table. For insurance issued on a substandard basis, the calculation of any adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

#### **26.1-33-22. Calculation of adjusted premiums - Ordinary policies.**

This section does not apply to ordinary policies issued on or after the operative date of section 26.1-33-24. In the case of ordinary policies issued on or after the operative date of this section, all adjusted premiums and present values referred to in sections 26.1-33-18 through

26.1-33-28 must be calculated on the basis of the commissioners 1958 standard ordinary mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided that the rate of interest may not exceed three and one-half percent per annum except that a rate of interest not exceeding five and one-half percent per year may be used for policies issued after June 30, 1977, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half percent per year may be used; and 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. 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. 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 insurer and approved by the commissioner. Upon the operative date of this section, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1966. After the filing of such notice, upon the specified date, which must be the operative date of this section for that insurer, this section becomes operative with respect to the ordinary policies issued by the insurer after that date. If an insurer makes no election, the operative date of this section for the insurer is January 1, 1966.

**26.1-33-23. Calculation of adjusted premiums - Industrial policies.**

This section does not apply to industrial policies issued on or after the operative date of section 26.1-33-24. In the case of industrial policies issued on or after the operative date of this section, all adjusted premiums and present values referred to in sections 26.1-33-18 through 26.1-33-28 must 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, provided that such rate of interest may not exceed three and one-half percent per annum except that a rate of interest not exceeding five and one-half percent per year may be used for policies issued after June 30, 1977, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half percent per year may be used. 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. For insurance issued on a substandard basis, the calculations of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner. Upon the operative date of this section, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1968. After the filing of such notice, upon the specified date, which must be the operative date of this section for that insurer, this section must become operative with respect to the industrial policies issued after that date by the insurer. If an insurer makes no election, the operative date of this section for the insurer is January 1, 1968.

**26.1-33-24. Calculations of adjusted premiums by the nonforfeiture net level premium method.**

1. This section applies to all policies issued on or after the operative date of this section. Except as provided in subsection 7, the adjusted premiums for any policy must be calculated on an annual basis and must be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums equals the sum of:

- a. The then present value of the future guaranteed benefits provided for by the policy;
- b. One percent of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years; and
- c. One hundred twenty-five percent of the nonforfeiture net level premium as hereinafter defined.

In applying the percentage specified in subdivision c, no nonforfeiture net level premium may exceed four percent of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years. The date of issue of a policy for the purpose of this section is the date as of which the rated age of the insured is determined.

- 2. The nonforfeiture net level premium is equal to the present value, at the date of issue of the life insurance policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one per annum payable on the date of issue of the policy and on each anniversary of the policy on which a premium falls due.
- 3. In the case of life insurance policies that cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or that provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values must initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any change in the benefits or premiums the future adjusted premiums, nonforfeiture net level premiums, and present values must be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.
- 4. Except as otherwise provided in subsection 7, the recalculated future adjusted premiums for any life insurance policy must be the 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 equals the excess of:
  - a. The sum of:
    - (1) The then present value of the then future guaranteed benefits provided for by the policy; plus
    - (2) The additional expense allowance, if any; divided by
  - b. The then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.
- 5. The additional expense allowance, at the time of the change to the newly defined benefits or premiums, is the sum of:
  - a. 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
  - b. One hundred twenty-five percent of the increase, if positive, in the nonforfeiture net level premium.
- 6. The recalculated nonforfeiture net level premium is equal to the result obtained by dividing the sum of 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 the present value of the increase in future guaranteed benefits provided for by the policy by the present value of an annuity

- of one per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.
7. Notwithstanding any other provision of this section to the contrary, in the case of a life insurance policy issued on a substandard basis which provides reduced graded amounts of insurance so that, in each policy year, the policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for the substandard policy may be calculated as if it were issued to provide the higher uniform amounts of insurance on the standard basis.
  8. All adjusted premiums and present values referred to in sections 26.1-33-18 through 26.1-33-28 must for all ordinary life insurance policies be calculated on the basis of the commissioners 1980 standard ordinary mortality table, or at the election of the insurer for any one or more specified plans of life insurance, the commissioners 1980 standard ordinary mortality table with ten-year select mortality factors; must for all policies of industrial insurance be calculated on the basis of the commissioners 1961 standard industrial mortality table; and must for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this section for policies issued in that calendar year. However:
    - a. At the option of the insurer, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this section, for policies issued in the immediately preceding calendar year.
    - b. Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by section 26.1-33-18, must 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.
    - c. An insurer may calculate the amount of any guaranteed paid-up nonforfeiture benefit, including any paid-up additions under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.
    - d. In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioners 1980 extended term insurance table for ordinary life insurance policies and not more than the commissioners 1961 industrial extended term insurance table for industrial insurance policies.
    - e. For insurance issued on a substandard basis, the calculation of any adjusted premiums and present values may be based on appropriate modifications of the tables.
    - f. For policies issued before the operative date of the valuation manual, any commissioners standard ordinary mortality tables, adopted after 1980 by the national association of insurance commissioners, that are approved by rule adopted by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the commissioners 1980 standard ordinary mortality table with or without ten-year select mortality factors or for the commissioners 1980 extended term insurance table. For policies issued on or after the operative date of the valuation manual, the valuation manual must provide the commissioners standard mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the commissioners 1980 standard ordinary mortality table with or without ten-year select mortality factors or for the commissioners 1980 extended term insurance table. If the commissioner approves by rule any commissioners standard ordinary mortality table adopted by the national association of insurance commissioners for use in determining the minimum nonforfeiture standard for policies issued on or after the

operative date of the valuation manual, then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.

- g. For policies issued before the operative date of the valuation manual, any commissioners standard industrial mortality tables, adopted after 1980 by the national association of insurance commissioners, that are approved by rule adopted by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the commissioners 1961 standard industrial mortality table or the commissioners 1961 industrial extended term insurance table. For policies issued on or after the operative date of the valuation manual, the valuation manual must provide the commissioners standard mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the commissioners 1961 standard industrial mortality table or the commissioners 1961 industrial extended term insurance table. If the commissioner approves by rule any commissioners standard industrial mortality table adopted by the national association of insurance commissioners for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.
9. The nonforfeiture interest rate is defined:
  - a. For policies issued before the operative date of the valuation manual, the nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred twenty-five percent of the calendar year statutory valuation interest rate for such policy as defined in chapter 26.1-35, rounded to the nearer one quarter of one percent, but the nonforfeiture interest rate may not be less than four percent.
  - b. For policies issued on or after the operative date of the valuation manual the nonforfeiture interest rate per annum for any policy issued in a particular calendar year must be provided by the valuation manual.
10. Notwithstanding any other provision in this title 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 does not require refiling of any other provisions of that policy form.
11. Upon the operative date of this section, any insurer may file with the commissioner a written notice of its election to comply with the provision of this section after a specified date before January 1, 1989, which must be the operative date of this section for the insurer. If an insurer makes no election, the operative date of this section for the insurer is January 1, 1989.

#### **26.1-33-25. Nonforfeiture benefits for indeterminate premium plans.**

In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurer based on estimates of future experience, or in the case of any plan of life insurance which is of such a nature that minimum values cannot be determined by the methods described in sections 26.1-33-18 through 26.1-33-24, then:

1. The commissioner must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by sections 26.1-33-18 through 26.1-33-24;
2. The commissioner 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 the plan may not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of sections 26.1-33-18 through 26.1-33-28, as determined by rules adopted by the commissioner; and

4. Notwithstanding any other provision in the laws of this state, any policy, contract, or certificate providing life insurance under any plan must be affirmatively approved by the commissioner before it can be marketed, issued, delivered, or used in this state.

**26.1-33-26. Benefits on default off the anniversary - Exempted benefits.**

Any cash surrender value and any paid-up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, must be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in sections 26.1-33-19 through 26.1-33-24 may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, may be not less than the amounts used to provide the additions. Notwithstanding section 26.1-33-19, additional benefits payable:

1. In the event of death or dismemberment by accident or accidental means;
2. In the event of total and permanent disability;
3. As reversionary annuity or deferred reversionary annuity benefits;
4. As term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, sections 26.1-33-18 through 26.1-33-28 would not apply;
5. 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 years, is uniform in amount after the child's age is one year, and has not become paid up by reason of the death of a parent of the child; and
6. As other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits, must be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by sections 26.1-33-18 through 26.1-33-28, and no such additional benefits may be required to be included in any paid-up nonforfeiture benefits.

**26.1-33-27. Determination of minimum values after January 1, 1987.**

1. This section, in addition to all other applicable sections of this law, applies to all policies issued after December 31, 1986. Any cash surrender value available under a life insurance policy in the event of default in a premium payment due on any policy anniversary must be in an amount which does not differ by more than two-tenths of one percent of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years, from the sum of:
  - a. The greater of zero and the basic cash value hereinafter specified; and
  - b. The present value of any existing paid-up additions less the amount of any indebtedness to the insurer under the policy.
2. The basic cash value is 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 insurer, if there had been no default, less the then present value of the nonforfeiture factors, as defined in this chapter, corresponding to premiums that would have fallen due on and after the anniversary. However, the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in section 26.1-33-19 or 26.1-33-21, whichever is applicable, shall be the same as are the effects specified in section 26.1-33-19 or 26.1-33-21, whichever is applicable, on the cash surrender values defined in that section.
3. The nonforfeiture factor for each policy year is an amount equal to a percentage of the adjusted premium for the policy year, as defined in section 26.1-33-21 or 26.1-33-24, whichever is applicable. Except as is required by subsection 4, the percentage:
  - a. Must be the same percentage for each policy year between the second policy anniversary and the later of:
    - (1) The fifth policy anniversary; and

- (2) The first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least two-tenths of one percent of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years; and
  - b. Must be such that no percentage after the later of the two policy anniversaries specified in subdivision a may apply to fewer than five consecutive policy years.
4. No basic cash value may be less than the value which would be obtained if the adjusted premiums for the policy, as defined in section 26.1-33-24, 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 section must for a particular policy be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with sections 26.1-33-18 through 26.1-33-28. The cash surrender values referred to in this section include any endowment benefits provided for by the policy.
6. Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment must be determined in manners consistent with the manners specified for determining the analogous minimum amounts in sections 26.1-33-18 through 26.1-33-20, 26.1-33-24, and 26.1-33-26. The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed in subsections 1 through 6 of section 26.1-33-26 must conform with the principles of this section.

**26.1-33-28. Exceptions.**

Sections 26.1-33-18 through 26.1-33-27 do not apply to:

1. Reinsurance;
2. Group insurance;
3. Pure endowment;
4. An annuity or reversionary annuity contract;
5. A term policy of uniform amount, which provides no guaranteed nonforfeiture or endowment benefits, or renewal thereof, of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy;
6. A term policy of decreasing amount, which provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in sections 26.1-33-21 through 26.1-33-24 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;
7. 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 sections 26.1-33-19 through 26.1-33-24, exceeds two and one-half percent of the amount of insurance at the beginning of the same policy year; nor
8. A policy delivered outside this state through an insurance producer or other representative of the insurer issuing the policy.

For purposes of determining the applicability of sections 26.1-33-18 through 26.1-33-28, the age of expiry for a joint term life insurance policy is the age of expiry of the oldest life.



### **26.1-33-29. Applicability of life policy simplification standards.**

1. Except as provided in subsection 3, sections 26.1-33-29 through 26.1-33-32 apply to all individual and group life insurance policies, insurance certificates under group life insurance policies, and death benefit certificates issued by fraternal benefit societies filed after June 30, 1982. No policy may be delivered or issued for delivery in this state after June 30, 1986, unless the policy form has been approved by the commissioner or is permitted to be issued under sections 26.1-33-29 through 26.1-33-32. Any policy form that has been approved or permitted to be issued prior to July 1, 1986, and that meets the standards set by sections 26.1-33-29 through 26.1-33-32 need not be refiled for approval, but may continue to be delivered or issued for delivery in this state upon the filing with the commissioner of a list of the forms identified by form number and accompanied by a certificate as to each form in the manner provided in subsection 6 of section 26.1-33-30.
2. The commissioner may extend the dates in subsection 1.
3. Sections 26.1-33-29 through 26.1-33-32 do not apply to:
  - a. A policy that is a security subject to federal jurisdiction.
  - b. A group life insurance policy covering a group of one thousand or more lives at date of issue. However, this does not except any certificate issued pursuant to a group policy delivered or issued for delivery in this state.
  - c. A group annuity contract that serves as a funding vehicle for pension, profit sharing, or deferred compensation plans.
  - d. A form used in connection with, as a conversion from, as an addition to, or in exchange pursuant to a contractual provision for, a policy delivered or issued for delivery on a form approved or permitted to be issued prior to the dates the form must be approved under sections 26.1-33-29 through 26.1-33-32.
  - e. The renewal of a policy delivered or issued for delivery prior to the dates the form must be approved under sections 26.1-33-29 through 26.1-33-32.
4. No other state law setting language simplification standards applies to a policy form.

### **26.1-33-30. Minimum life policy language simplification standards.**

1. No policy form may be delivered or issued for delivery in this state, unless:
  - a. The text achieves a minimum score of forty on the Flesch reading ease test or an equivalent score on any other comparable test as provided in subsection 3.
  - b. It is printed, except for specification pages, schedules, and tables, in not less than ten-point type, one point leaded.
  - c. The style, arrangement, and overall appearance of the policy give no undue prominence to any portion of the text of the policy or to any endorsement or rider.
  - d. It contains a table of contents or an index of the principal sections of the policy, if the policy has more than three thousand words printed or three or fewer pages of text, or if the policy has more than three pages regardless of the number of words.
2. The commissioner may authorize a lower score than the Flesch reading ease score required in subdivision a of subsection 1 whenever the commissioner finds that a lower score:
  - a. Will provide a more accurate reflection of the readability of a policy form.
  - b. Is warranted by the nature of a particular policy form or type or class of policy forms.
  - c. Is caused by certain policy language which is drafted to conform to the requirements of any state law or rule, or agency interpretation.
3. A Flesch reading ease test score is measured by the following method:
  - a. For policy forms containing ten thousand words or less of text, the entire form must be analyzed. For policy forms containing more than ten thousand words, the readability of two 200-word samples per page may be analyzed instead of the entire form. The samples must be separated by at least twenty printed lines.

- b. The number of words and sentences in the text must be counted and the total number of words divided by the total number of sentences. The figure obtained must be multiplied by a factor of one and fifteen thousandths.
- c. The total number of syllables must be counted and divided by the total number of words. The figure obtained must be multiplied by a factor of eighty-four and six-tenths.
- d. The sum of the figures computed under subdivisions b and c subtracted from two hundred six and eight hundred thirty-five thousandths equals the Flesch reading ease score for the policy form.
- e. For purposes of subdivisions b, c, and d, the following procedures must be used:
  - (1) A contraction, hyphenated word, or numbers and letters, when separated by spaces, are counted as one word.
  - (2) A unit of words ending with a period, semicolon, or colon, but excluding headings and captions, is counted as a sentence.
  - (3) A syllable means a unit of spoken language consisting of one or more letters of a word as divided by an accepted dictionary. When the dictionary shows two or more equally acceptable pronunciations of a word, the pronunciation containing fewer syllables may be used.
4. As used in this section, "text" includes all printed matter except:
  - a. The name and address of the insurer, the name, number, or title of the policy, the table of contents or index, captions and subcaptions, specification pages, schedules, and tables.
  - b. Any policy language drafted to conform to the requirements of any federal law, regulation, or agency interpretation, any policy language required by any collectively bargained agreement, any medical terminology, any words defined in the policy, and any policy language required by law or rule; provided, however, the insurer identifies the language or terminology excepted by this subdivision and certifies, in writing, that the language or terminology is entitled to be excepted by this subdivision.
5. The commissioner may approve any other reading test for use as an alternative to the Flesch reading ease test if the other test is comparable in result to the Flesch reading ease test.
6. Filings subject to this section must provide the minimum reading ease score or a statement that the score is lower than the minimum required but should be approved in accordance with subsection 2. To confirm the accuracy of any statement, the commissioner may require the submission of further information to verify the certification in question.
7. At the option of the life insurance company or fraternal benefit society, riders, endorsements, applications, and other forms made a part of the policy may be scored as separate forms or as part of the policy with which they may be used.

**26.1-33-31. Approval of life policy forms.**

A policy form meeting the requirements of subsection 1 of section 26.1-33-30 must be approved notwithstanding any other law which specifies the contents of a policy, if the policy form provides the policyholders and claimants protection not less favorable than they would be entitled to under such laws.

**26.1-33-32. Effect of life policy simplification standards on filed policies.**

Sections 26.1-33-29 through 26.1-33-31 do not negate any law of this state permitting the issuance of a policy form after it has been on file for the required time period and has not been disapproved by the commissioner.

**26.1-33-33. Life policy transferable.**

A life insurance policy may pass by transfer, will, or succession to any person, whether that person has an insurable interest or not, and that person may recover upon the policy in

accordance with the terms of the policy. An insured under a group life insurance policy, pursuant to agreement among the insured, the group policyholder, and the insurer, may make an assignment of all or any part of the incidents of ownership held by the insured under the policy, including any right to designate a beneficiary and any right to have an individual policy issued in case of termination of employment. An assignment, whether made prior to or subsequent to July 1, 1971, is valid for the purpose of vesting in the assignee all the incidents of ownership assigned, and entitles the insurer to deal with the assignee as the owner in accordance with the policy, but without prejudice to the insurer on account of any payment made or individual policy issued prior to receipt by the insurer of such notice as may be required by the policy.

**26.1-33-34. Notice of transfer of life policy unnecessary - Exception.**

Notice to an insurer of a transfer or bequest of a life insurance policy is not necessary to preserve the validity of the policy unless notice is required by the policy.

**26.1-33-35. Insurance in favor of corporation or limited liability company on life of corporate officer or employee or limited liability company manager or employee - Powers of corporation or limited liability company.**

Whenever a domestic corporation or limited liability company causes to be insured the life of any director, officer, agent, or employee of the corporation or on the life of any governor, manager, agent, or employee of the limited liability company, or whenever a domestic corporation or limited liability company is named as a beneficiary in or assignee of any life insurance policy, due authority to effect, assign, release, relinquish, convert, or surrender, or to change the beneficiary in, the policy, or to take any other or different action with reference to, the insurance, is sufficiently evidenced to the insurance company by a written statement to that effect signed by the president and the secretary or other corresponding officers of the corporation or limited liability company. The statement is binding upon the corporation or limited liability company and protects the insurance company in any act done or suffered by it upon the faith of the notice without further inquiry into the validity of the corporate authority or the regularity of the corporate proceedings. No person may be disqualified, by reason of interest in the subject matter, from acting as a director or as a member of the executive committee of the corporation on any corporate act touching the insurance or from acting as a governor or as a member of the executive committee of the limited liability company or any limited liability company act touching the insurance.

**26.1-33-36. Rights in life policies exempt from claims of creditors.**

The surrender value of any life insurance policy which, upon the death of the insured, would be payable to the spouse, children, or any relative of the insured dependent, or likely to be dependent, upon the insured for support, is exempt absolutely from the claims of creditors of the insured to the extent provided in section 28-22-03.1. No creditor of the insured, and no court or officer of a court acting for any such creditors, may elect for the insured to have the life insurance policy surrendered or in anywise converted into money, and no life insurance policy or property right in the policy belonging to the holder, except for the value thereof in excess of the amount provided by section 28-22-03.1, may be subject to seizure under any process of any court under any circumstance.

**26.1-33-37. Suicide - Determination - No defense to life policy or certificate after one year.**

The sanity or insanity of the person is not a factor in determining whether a person committed suicide within the terms of a life insurance policy or certificate regulating the payment of benefits in the event of the insured's suicide. In any suit on a life insurance policy or certificate, it is no defense after the policy or certificate has been in force one year that the insured committed suicide, and any provision or stipulation to the contrary in the policy or certificate is void.

**26.1-33-38. Measure of indemnity in life policy.**

Unless the interest of a person insured is susceptible of exact pecuniary measurement, the measure of indemnity under a life insurance policy is the sum fixed in the policy.

**26.1-33-39. Life policy - When payable.**

A life insurance policy may be made payable on the death of the insured or on the insured's surviving a specified period, or periodically so long as the insured lives, or otherwise contingently on the continuance or termination of life.

**26.1-33-40. Avails of life policy payable to deceased or to the deceased's heirs, personal representatives, or estate - Exemption - Distribution.**

The avails of a life insurance policy or of a contract payable by any mutual aid or benevolent society, when made payable to the deceased, to the personal representatives of the deceased, to the deceased's heirs, or to the deceased's estate, is not subject to the debts of the decedent upon the death of the insured or member of the society except by special contract. The avails must be inventoried as a part of the estate of the decedent and must be considered as part of the general assets of the estate. The insured may transfer the avails of the life insurance policy or contract either by will or by contract. Nothing contained in this section affects, in any manner, any life insurance policy or beneficiary certificate which is made payable to a designated person, including the spouse of the insured, or to persons or to members of a family designated as a class, such as "all children" or "all brothers and sisters", even though the members of the class are not designated by name; or permits any insured to dispose of the avails of a contract by a mutual or fraternal society by will to anyone who could not be a beneficiary in the contract under the charter or bylaws of the society.

**26.1-33-41. Designation of beneficiary not affected by wills law.**

A designation in accordance with the terms of any insurance, annuity, or endowment contract when the designation in any agreement issued or entered into by the insurance company in connection therewith, supplemental thereto, or in settlement thereof, or the designation under a thrift, pension, retirement, death benefit, stock bonus, or profit-sharing contract, plan, system, or trust, created by an employer for the exclusive benefit of some or all of the employer's employees, or their beneficiary, of a person to be a beneficiary, payee, or owner of any right, title, or interest thereunder upon the death of another, is not subject to or defeated or impaired by any law relating to the signing and attestation of wills, even though the designation is revocable with the rights of the beneficiary, payee, or owner, or otherwise subject to defeasance.

**26.1-33-42. Designation of trustee as beneficiary - Prior existence of will not required - Payments - Discharge.**

1. Under section 26.1-33-41, it is permissible to designate as beneficiary, payee, or owner a trustee named in any inter vivos or testamentary trust whether or not such will or codicil is in existence at the date of such designation. It is not necessary to the validity of the trust that there be in existence a trust corpus other than the right to receive the benefits or to exercise the rights resulting from such a designation.
2. It is also permissible to designate as a beneficiary, payee, or owner a trustee named or to be named in, or ascertainable under, the will of the designator. Benefits or rights resulting from such a designation are payable or transferable to the trustee upon admission of the will or codicil to probate. Upon the payment of benefits to the trustee, the benefits must be held, administered, and disposed of in accordance with the terms of the testamentary trust created by the will or codicil. Payment of the benefits does not cause the benefits or rights to be included in the property administered as part of the designator's estate as subject to the claims of creditors.
3. If a trustee is designated pursuant to this section and no qualified trustee makes claim to the benefits or rights resulting from the designation within one year of the death of the designator, or if it is satisfactory to the person obligated to make the payment or

transfer as furnished within the one-year period that there is or will be no trustee to receive the proceeds, payment or transfer must be made to the person or representative of the designator, unless otherwise provided by the designation or other controlling agreement made during the lifetime of the designator.

4. The payment of the benefits due or a transfer of the rights given under a designation pursuant to this section and the receipt of the payment or transfer executed by the trustee or other authorized payee constitutes a full discharge and acquittance of the person or institution obligated to make payment or transfer.

**26.1-33-43. Commingling of death benefits with trust assets.**

Death benefits held in trust may be commingled with any other assets which may properly come into the trust. Sections 26.1-33-41 and 26.1-33-42 do not invalidate previous life insurance policy beneficiary designations naming trustees of trusts established by will.

**26.1-33-44. Life insurance policy ownership or retention by trust - Duties of trustee.**

Notwithstanding any other provision of law, the duties of a trustee regarding the acquisition, retention, or ownership of a life insurance policy upon the life of any one or more of the grantor of the trust, the grantor's spouse, children, grandchildren, or parents include a duty of loyalty and fair dealing, but, except as provided below, do not include a duty to:

1. Determine whether any life insurance policy in the trust is or remains a proper investment;
2. Exercise a policy option, right, or privilege available under a life insurance policy; or
3. Diversify the investment.

A trustee is not liable to the beneficiaries under the trust instrument or to any other person for a loss that is claimed to result from the absence of these duties, except if a trustee acquires a replacement policy for the trust which replaces an existing policy owned by the trust or previously owned by the trust. The trustee's exoneration from duty provided in this section does not apply to the replacement policy and only applies to a policy transferred to a trust by the grantor or some other party other than the trustee or acquired by the trustee of a trust which before the acquisition of the policy had never owned any such life insurance policy.