

**Drafting Note:** The objective is to define the contracts covered by the regulations to include all forms of annuity contracts where the benefits vary according to the investment experience of a separate account authorized by the enabling statute, including group and individual, variable accumulation and variable benefit, etc. Exclusion of particular kinds of contracts from sections of the regulation that may be inapplicable is handled in those sections.

**Section 3. Qualification of Insurance Companies To Issue Variable Annuities**

- A. A company shall not deliver or issue for delivery variable annuities within this state unless it is licensed or organized to do a life insurance or annuity business in this state and the commissioner is satisfied that its condition or method of operation in connection with the issuance of these 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:
- (1) The history and financial condition of the company;
  - (2) The character, responsibility and fitness of the officers and directors of the company; and
  - (3) The law and regulation under which the company is authorized in the state of domicile to issue variable annuities.
- B. If the company is a subsidiary of an admitted life insurance company, or affiliated with a company by common management or ownership, it may be deemed by the commissioner to have satisfied the provisions of Subsection A(2) if either it or the admitted life company satisfies the provisions of Subsection A(2). Companies licensed and having a satisfactory record of doing

“The commissioner may waive any or all the requirements set forth in Section [insert applicable section] if by reasons of a company’s capital structure, surplus, amount of business in force and plan of operations, it substantially conforms to these requirements, or, in the opinion of the commissioner, otherwise affords adequate protection to contractholders.”

#### **Section 4. Separate Account**

A domestic company issuing variable annuities shall establish one or more separate accounts pursuant to Section [insert applicable section] of the insurance laws of this state, subject to the following provisions:

- A. (1) Except as may be provided with respect to reserves for guaranteed benefits and funds referred to in Subsection A(2):
  - (a) Amounts allocated to a separate account and its accumulations may be invested

- (5) The limitations provided in Paragraphs (3) and (4) of this subsection shall not apply to investments with respect to a separate account in the securities of an investment company registered under the Investment Company Act of 1940, if the investments of the investment company comply in substance with Paragraphs (3) and (4).

**Drafting Note:** Virtually all statutes contain the broad language in Subsection A(1) permitting investments without regard to investment limitations with respect to life insurance companies. Subsection A(3) would impose a quantitative limitation to promote diversification and limit investment risk. It should be noted that while separate accounts registered under the 1940 Act will be subject to the 5% rule under that Act, there would appear to be sound reasons for permitting greater flexibility, up to 10%, with respect to separate accounts not subject to the 1940 Act. It is further provided that the commissioner may waive this limitation where it would not render the operation of the account hazardous.

Subsection A(4) would prohibit the acquisition by the separate account of the securities of an issuer if the acquisition would result in the



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**Section 7. Nonforfeiture Benefits**

Drafting Note



- (1) That upon cessation of payment of considerations under a contract, the company will grant a paid-up annuity benefit on a plan described in the contract that complies with Subsection G. The description will include a statement of the mortality table, if any, and guaranteed or assumed interest rates used in calculating annuity payments.
- (2) If a contract provides for a lump sum settlement at maturity or at any other time, that upon surrender of the contract at or prior to the commencement of annuity payments, the company will pay in lieu of a paid-up annuity benefit a cash surrender benefit

(3)

J. Notwithstanding the requirements of this section, a variable annuity contract may provide

- (2) The value of the contractholder's account.

## **Section 9. Foreign Companies**

If the law or regulation in the place of domicile of a foreign company provides a degree of protection to the policyholders and the public substantially equal to that provided by these regulations, the commissioner, to the extent deemed appropriate by the commissioner, may consider compliance with that law or regulation as compliance with these regulations.

**Drafting Note:** This blanket provision would permit a commissioner to waive any or all of these requirements applicable to foreign companies in cases where the quality of regulation in the state of domicile is such that he or she would have every reason to expect that the company would be adequately regulated.

## **Section 10. Qualifications of Agents for the Sale of Variable Annuities**

- A.
  - (1) A person may not sell or offer for sale in this state any variable annuity contract unless the person is an agent and has filed with the commissioner, in a form satisfactory to the commissioner, evidence that the person holds any license or authorization that may be required for the solicitation or sale of variable annuity contracts by any federal or state securities law.
  - (2) Any examination administered by the Department for the purpose of determining the eligibility of any person for licensing as an agent shall, after the effective date of this regulation, include such questions concerning the history, purpose, regulation and sale of variable annuity contracts as the commissioner deems appropriate.
- B. A person qualified in this state under this section to sell or offer to sell variable annuity contracts shall immediately report to the commissioner:
  - (1) Any suspension or revocation of his or her agent's license in any other state or territory of the United States;
  - (2) The imposition of any disciplinary sanction, including suspension or expulsion from membership, suspension, or revocation of or denial of registration, imposed upon him or her by any national securities exchange, or national securities association, or any federal, state or territorial agency with jurisdiction over securities or variable annuity contracts;
  - (3) Any judgment or injunction entered against him or her on the basis of conduct deemed to have involved fraud, deceit, misrepresentation or violation of any insurance or securities law or regulation.
- C. The commissioner may reject an application or suspend or revoke or refuse to renew an agent's qualification under this section to sell or offer to sell variable annuity contracts upon any ground that would bar the applicant or agent from being licensed to sell other life insurance contracts in this state. The rules governing any proceeding relating to the suspension or revocation of an agent's license shall also govern any proceeding for suspension or revocation of an agent's qualification to sell or offer to sell variable annuity contracts.

*Chronological Summary of Action (all references are to the Proceedings of the NAIC).*

1975 Proc. I 2, 6, 573, 752, 755-760 (adopted).

1980 Proc. I 29, 38, 406, 516, 540, 545-555 (amended and reprinted).

2006 Proc. 2<sup>nd</sup> Quarter 39, 55-61 (amended).