

## VARIABLE ANNUITY MODEL REGULATION

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### Section 1. Authority

Pursuant to authority given by Section [insert applicable section] of the Insurance Laws of [insert state], the Insurance Commissioner, after due notice and publication and after affording interested persons opportunity to present written data, views and arguments, does hereby make and promulgate the following rules and regulations to be applicable to insurance companies delivering or issuing for delivery in this state variable annuities as defined in Section 2B, pursuant to Section [insert applicable section] of the insurance laws of this state.

**Editor's Note:** Insert the title of the chief insurance regulatory official wherever the term "commissioner" appears.

These regulations shall become effective [insert date].

**Drafting Note:** This section will obviously depend on the existing provisions under a given state's insurance code with respect to the method for adopting rules and regulations.

### Section 2. Definitions

- A. "Agent," as used in this regulation, means a person, corporation, partnership or other legal entity that under the laws of this state is licensed as a life insurance agent, solicitor, general agent or life insurance broker.

**Drafting Note:** States should make the necessary changes in terminology to conform with statutory language describing those persons eligible to be licensed to sell life insurance.

- B. "Variable annuity," as used in this regulation, means a policy or contract that provides for annuity benefits that vary according to the investment experience of a separate account or accounts maintained by the insurer as to the policy or contract, as provided for in Section [insert applicable section] of the laws of this state.

**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 business in this state for a period of at least three (3) years may be deemed to have satisfied the commissioner with respect to Subsection A(2) above.
- C. Before any company shall deliver or issue for delivery variable annuities within this state it shall submit to the commissioner:
- (1) A general description of the kinds of variable annuities it intends to issue;
  - (2) If requested by the commissioner, a copy of the statutes and regulations of its state of domicile under which it is authorized to issue variable annuities; and
  - (3) If requested by the commissioner, biographical data with respect to officers and directors of the company on the NAIC uniform biographical data forms.

**Drafting Note:** Subsection C suggests the type of submission which might be appropriate to afford a basis for determining that a company meets the test in Subsection A(2). The NAIC biographical data regulation and forms appear in the 1967 *Proceedings of the NAIC* II 382-385 and 1974 *Proceedings of the NAIC* I 120-123.

Some state statutes provide seasoning requirements for the licensing of foreign life insurance companies; these statutes presumably will also apply to companies seeking to be licensed to sell variable annuities. The drafters do not believe that there is a need for seasoning requirements for companies writing variable annuities beyond those required for life companies generally. If, however, an additional seasoning requirement for companies writing variable annuities is considered desirable, such a requirement should be specifically provided by statute and the drafters recommend that the statute expressly require consideration of the experience of a parent or affiliated company. See Subsection B above.

If there are specific capital and surplus requirements for companies writing variable annuities these should be the same as those for life insurance companies generally. If stricter capital and surplus requirements are considered necessary, these should be specifically provided by statute and it is strongly recommended that the statute permit waiver of these requirements pursuant to regulations adopted by the commissioner. A provision to accomplish this purpose might read as follows:

“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 and reinvested without regard to any requirements or limitations prescribed by the laws of this state governing the investments of life insurance companies; and
  - (b) The investments in the separate account or accounts shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the company.
- (2) Reserves for benefits guaranteed as to dollar amount and duration and funds guaranteed as to principal amount or stated rate of interest may be maintained in a separate account if a portion of the assets of the separate account at least equal to the reserve liability is invested in accordance with the laws and regulations of this state governing the investments of life insurance companies. That portion of the assets also shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the company.

- (3) With respect to seventy-five percent (75%) of the market value of the total assets in a separate account a company shall not purchase or otherwise acquire the securities of an issuer, other than securities issued or guaranteed as to principal or interest by the United States, if immediately after the purchase or acquisition the market value of the investment, together with prior investments of the separate account in the security taken at market, would exceed ten percent (10%) of the market value of the assets of the separate account. The commissioner, may waive this limitation if, in the opinion of the commissioner, the waiver will not render the operation of the separate account hazardous to the public or policyholders in this state.
- (4) Unless otherwise permitted by law or approved by the commissioner, a company shall not purchase or otherwise acquire for its separate accounts the voting securities of an issuer if, as a result of the acquisition, the insurance company and its separate accounts, in the aggregate, will own more than ten percent (10%) of the total issued and outstanding voting securities of the issuer. This shall not apply with respect to securities held in separate accounts where the voting rights are exercisable only in accordance with instructions from persons having interest in the accounts.
- (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 ownership of more than 10% of the voting securities of the issuer, with the holdings by the company and all of its separate accounts aggregated, except when there is a pass-through of voting rights to contractholders.

Subsection A(6) is intended primarily to permit the operation of a separate account as a unit investment trust under the 1940 Act, with all of its assets being invested in the securities of a registered investment company. It should be noted, however, that the commissioner would retain indirect control since the exception from the application of Subsections A(3) and A(4) would not apply if the investments of the investment company did not comply with these subsections.

Basic authority for exemption from investment limitations, as well as the quantitative limitations in Subsections A(3) and A(4) and the exemption from these limitations in Subsection A(5), should probably be covered by statute.

- B. Unless otherwise approved by the commissioner, assets allocated to a separate account shall 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, if any, of the assets of the separate account equal to the company's reserve liability with regard to the benefits and funds referred to in Subsection A(2) shall be valued in accordance with the rules otherwise applicable to the company's assets.

**Drafting Note:** In the case of variable annuities involving a 1940 Act registered account and in many group contracts the procedure for valuing assets will be stated in rules of the separate accounts or in a separate applicable written agreement, and the regulation is drafted to permit this.

- C. To the extent provided under the applicable contracts, that portion of the assets of a separate account equal to the reserves and other contract liabilities with respect to the account shall not be chargeable with liabilities arising out of any other business the company may conduct.

**Drafting Note:** To achieve effective insulation of certain assets held in separate accounts from claims of general creditors it is probably necessary, as a matter of general corporate law, that the insulation be specifically authorized by statute.

- D. (1) Notwithstanding any other provisions of law, a company may:
- (a) With respect to a separate account registered with the Securities and Exchange Commission as a unit investment trust, exercise voting rights in connection with securities of a regulated investment company registered under the Investment Company Act of 1940 and held in such separate accounts in accordance with instructions from persons having interests in such accounts ratably as determined by the company; or
  - (b) With respect to a separate account registered with the Securities and Exchange Commission as a management investment company, establish for the account a committee, board or other body, whose members may or may not be otherwise affiliated with the company and may be elected to membership by the vote of persons having interests in the account ratably as determined by the company. The committee, board or other body may have the power, exercisable alone or in conjunction with others, to manage the separate account and the investment of its assets.
- (2) A company, committee, board or other body may make other provisions in respect to a separate account as may be deemed appropriate to facilitate compliance with requirements of any federal or state law now or hereafter in effect if the commissioner approves the provisions as not hazardous to the public or the company's policyholders in this state.

**Drafting Note:** Certain separate accounts are registered with the Securities and Exchange Commission under the Investment Company Act of 1940, and contractholders in these separate accounts must be given voting rights, principally in connection with the management of the assets of the account. Subsection D(1) is intended to provide for a separate account registered with the SEC as a unit investment trust, under which all of the assets of the account are invested in a separate mutual fund. In this connection, see also Subsection A(6). Subsection D(1) would permit a pass-through of voting rights in the shares of the underlying mutual fund to the contractholders.

Where a separate account is registered under the 1940 Act as a management investment company, the contractholders have the right to elect a committee with power to manage the account and invest its assets, as provided in Subsection D(2).

As with the insulation provision in Subsection C, it would probably be wise in most states to provide authority for the above regulation by statute, since many states require that the assets of an insurer may be managed by its board of directors.

- E. (1) 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 one or more of its separate accounts unless, in the 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:
- (a) By a transfer of cash; or
  - (b) By a transfer of securities having a valuation which could be readily determined in the marketplace, if that transfer of securities is approved by the commissioner.
- (2) The commissioner may authorize other transfers among such accounts, if, in his opinion, such transfers would not be inequitable.

**Drafting Note:** This provision, common to many existing statutes and regulations, is intended to prevent unfair or discriminatory transfer among accounts. Regular cash flow should permit those transfers to and from the general account necessary to the operation of the variable annuity business to be made in cash.

- F. The company shall maintain in each such separate account assets with a value at least equal to the reserves and other contract liabilities with respect to the account, except as may otherwise be approved by the commissioner.

**Drafting Note:** This section varies from a number of existing regulations that provide that assets shall be equal to reserves. The drafters agreed that a deficit should not be permitted, but that build-up of surplus within the separate account should not be prohibited as it would apparently be under the existing regulations referred to.

- G. Rules under any provision of the insurance laws of this state or any regulation applicable to the officers and directors of insurance companies with respect to conflict of interest shall also apply to members of a separate accounts committee, board or other similar body. No officer or director of the company nor a member of the committee, board or body of a separate account shall receive directly or indirectly any commission or any other compensation with respect to the purchase or sale of assets of the separate account.

## **Section 5. Filing of Contracts**

The filing requirements applicable to variable annuities shall be those filing requirements otherwise applicable under existing statutes and regulations of this state with respect to individual and group life insurance and annuity contract form filings, to the extent appropriate. Contract form filings shall also include a certification by a member of the American Academy of Actuaries as to the compliance with Section 7.

## **Section 6. Variable Annuity Contracts**

- A. A variable annuity providing benefits payable in variable amounts delivered or issued for delivery in this state shall contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar amount of variable benefits. A contract, including a group contract and a certificate in evidence of variable benefits issued under the contract, shall state that the dollar amount will vary to reflect investment experience and shall contain on its first page a clear statement to the effect that the benefits of the contract are on a variable basis.
- B. Illustrations of benefits payable under any variable annuity shall not include projections of past investment experience into the future or attempted predictions of future investment experience. Nothing contained herein is intended to prohibit use of hypothetical assumed rates of return to illustrate possible levels of benefits.
- C. No individual variable annuity contract calling for the payment of periodic stipulated payments shall be delivered or issued for delivery in this state unless it contains in substance the following provision or provisions which in the opinion of the commissioner are more favorable to the holders of contracts:
  - (1) A provision that there shall be a grace period of thirty (30) days or of one month, within which any stipulated payment to the insurer falling due after the first may be made, during which grace period the contract shall continue in force. The contract may include a statement of the basis for determining the date as of which a payment received during the grace period shall be applied to produce the values arising under the contract; and
  - (2) A provision that, at any time within [insert number] years from the date of default, in making periodic stipulated payments to the insurer during the life of the annuitant and unless the cash surrender value has been paid, the contract may be reinstated upon payment to the insurer of overdue payments as required by contract, and of all indebtedness to the insurer on the contract, including interest. The contract may include a statement of the basis for determining the date as of which the amount to cover overdue payments and indebtedness shall be applied to produce the values arising under the contract.

**Drafting Note:** The drafters recommend inclusion of provisions dealing with grace and reinstatement only if the law of a particular state requires these for individual fixed dollar deferred annuities. Several companies issuing variable annuity contracts do not require contractholders to make periodic stipulated payments. If a contractholder ceases making payments he or she may resume doing so at any time. It is assumed that Subsection C(1) would be inapplicable to these contracts since the provisions described above would be regarded as more favorable to the contractholders than a 30-day grace period.

- D. (1) A variable annuity contract delivered or issued for delivery in this state shall stipulate the investment increment factors to be used in computing the dollar amount of variable benefits or other variable contractual payments or values thereunder, and may guarantee that expense and mortality results shall not adversely affect the dollar amounts.

In the case of an individual variable annuity contract under which the expense and/or mortality results may adversely affect the dollar amount of benefits.

- (a) The expense and mortality factors used in computing the dollar amount of variable benefits or other contractual payments or values shall be stipulated in the contract.
  - (b) Actual emerging expense and mortality results may be reflected in the dollar amount of benefits only through a mortality and expense charge that may vary only within a specified range indicated in the policy.
- (2) In computing the dollar amount of variable benefits or other contractual payments or values under an individual variable annuity contract:
- (a) The annual net investment increment assumption shall not exceed five percent (5%) except with the approval of the commissioner.
  - (b) To the extent that the level of benefits may be affected by future mortality results, the mortality factor shall be determined from the Annuity 2000 Mortality Table, or any modification of that table not having a lower life expectancy at any age, or any annuity mortality table adopted after 1996 by the National Association of Insurance Commissioners that is approved by the commissioner for this purpose.
- (3) “Expense” as used in this subsection, may exclude some or all taxes, as stipulated in the contract.
- E. The reserve liability for variable annuities shall be established pursuant to the requirements of Section [insert citation of Standard Valuation Law] in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

## **Section 7. Nonforfeiture Benefits**

**Drafting Note:** This section should be included if the Standard Nonforfeiture Law for Individual Deferred Annuities has been adopted in this state.

- A. This section shall not apply to any:
- (1) Reinsurance;
  - (2) Group annuity contract purchases in connection with one or more retirement plans or plans of deferred compensation established or maintained by or for one or more employers (including partnerships or sole proprietorships), employee organizations, or any combination thereof, or other than plans providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended;
  - (3) Premium deposit fund;
  - (4) Investment annuity;
  - (5) Immediate annuity;
  - (6) Deferred annuity contract after annuity payments have commenced;
  - (7) Reversionary annuity; or
  - (8) To any contract which is to be delivered outside this state through an agent or other representative of the company issuing the contract.
- B. To the extent that a variable annuity contract provides benefits that do not vary in accordance with the investment performance of a separate account before the annuity commencement date, the contract shall contain provisions that satisfy the requirements of Section [insert citation to the Standard Nonforfeiture Law for Deferred Annuities] and shall not otherwise be subject to this section.

**Drafting Note:** For the purpose of demonstrating that the minimum nonforfeiture amounts under the fixed portion of the contract comply with the Standard Nonforfeiture Law for Deferred Annuities, the company should assume that 100% of the considerations are allocated to the fixed account. If the contract provides for transfers between the fixed and variable accounts, the transaction charge may not exceed the charge for transfers to another separate account or to another investment division within the same separate account, as determined in Subsection D of this section.

- C. In the case of a contract issued on or after [insert operative date of this section which should be at least 18 months after adoption] no variable annuity contract, except as stated in Subsections A and B, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or provisions which in the opinion of the commissioner are at least as favorable to the contractholder, upon cessation of payment of considerations under the contract:
- (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 described in the contract that complies with Subsection H. The contract may provide that the company reserves the right, at its option, to defer the determination and payment of a cash surrender benefit for any period during which the New York Stock Exchange is closed for trading (except for normal holiday closing) or when the Securities and Exchange Commission has determined that a state of emergency exists that may make determination and payment impractical.
  - (3) A statement that a paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract.
- D. (1) The minimum values as specified in this section of paid-up annuity, cash surrender or death benefits available under a variable annuity contract shall be based upon nonforfeiture amounts meeting the requirements of this subsection.
- (2) The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to that time at rates of interest equal to the net investment return (as hereinafter defined) of the net considerations (as defined in Subsection E) paid prior to that time, decreased by the sum of Paragraphs (a) through (d) below:
- (a) Any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest equal to the net investment return;
  - (b) An annual contract charge of \$50, accumulated at rates of interest equal to the net investment return;
  - (c) Any premium tax paid by the company for the contract, accumulated at rates of interest equal to the net investment return; and
  - (d) The amount of any indebtedness to the company on the contract, including interest due and accrued.

**Drafting Note:** The premium tax credit is only permitted if the tax is actually paid by the company. If the tax is paid and subsequently credited back to the company, such as upon early termination of the contract, the tax credit may not be taken.

- (3) “Net investment return” means that the rate of investment return to be credited to the variable annuity contract in accordance with the terms of the contract after deductions for tax charges, if any, and for asset charges either at a rate not in excess of that stated in the contract, or in the case of a contract issued by a nonprofit corporation under which the contractholder participates fully in the investment, mortality and expense experience of the account, in an amount not in excess of the actual expense not offset by other deductions. The net investment return to be credited to a contract shall be determined at least monthly.
- E. The net considerations for a given contract year used to define the minimum nonforfeiture amount in Subsection D shall be an amount equal to eighty-seven and one-half percent (87.5%) of the gross considerations credited to the contract during that contract year.
- F. Demonstration that a contract’s nonforfeiture amounts comply with this section shall be based on the following assumptions:

  - (1) Values should be tested at the end of each of the first twenty (20) contract years;
  - (2) A net investment return of seven percent (7%) per year should be used;
  - (3) If the contract provides for transfers to another separate account or to another investment division within the same separate account, one transfer per contract year should be assumed;
  - (4) In determining the state premium tax applicable to the contract, the state of residence should be assumed to equal the state of delivery;
  - (5) With respect to contracts providing for periodic considerations, monthly considerations of \$100 should be assumed for each of the first 240 months;
  - (6) With respect to contracts providing for a single consideration, a \$10,000 single consideration should be assumed; and
- G. Any paid-up annuity benefit available under a variable annuity contract shall be such that its present value on the annuity commencement date is at least equal to the minimum nonforfeiture amount on that date. The present value shall be computed using the mortality table, if any, and the guaranteed or assumed interest rates used in calculating the annuity payments.
- H. For variable annuity contracts that provide cash surrender benefits, the cash surrender benefit at any time prior to the annuity commencement date shall not be less than the minimum nonforfeiture amount computed after the request for surrender is received by the company. The death benefit under such contracts shall be at least equal to the cash surrender benefit.
- I. A variable annuity contract that does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the annuity commencement date shall include a statement in a prominent place in the contract that these benefits are not provided.
- J. Notwithstanding the requirements of this section, a variable annuity contract may provide under the situations specified in Paragraph (1) or (2) of this subsection that the company, at its option, may cancel the annuity and pay the contractholder its accumulated value and by such payment be released of any further obligation under the contract:

  - (1) If, at the time the annuity becomes payable, the accumulated value is less than \$2,000, or would provide an initial income of less than \$20 per month; or
  - (2) If, prior to the time the annuity becomes payable under a periodic payment variable annuity contract, no considerations have been received under the contract for a period of two (2) full years and the total considerations paid prior to such period, reduced to reflect any partial withdrawals from or partial surrenders of the contract, and the accumulated value amount to less than \$2,000.

- K. For a variable annuity contract that provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of Subsection D of this section, additional benefits payable in the event of total and permanent disability, as reversionary annuity or deferred reversionary annuity benefits, or as other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section. The inclusion of additional benefits shall not be required in any paid-up benefits, unless the additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

## **Section 8. Required Reports**

- A. A company issuing individual variable annuities shall mail to the contractholder at least once in each contract year after the first at his or her last address known to the company, a statement or statements reporting the investments held in the separate account. The company shall submit annually to the insurance commissioner a statement of business of its separate account or accounts in such form as may be prescribed by the National Association of Insurance Commissioners.

**Drafting Note:** The drafters intended to leave this language sufficiently flexible to apply in the event that the separate account statement is combined with the regular life annual statement blank.

- B. A company issuing individual variable annuities shall mail to the contractholder at least once in each contract year after the first at his or her last address known to the company a statement reporting as of a date not more than four (4) months previous to the date of mailing. In the case of an annuity contract under which payments have not yet commenced, the statement shall contain:
- (1) The number of accumulation units credited to the contract and the dollar value of a unit; or
  - (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.

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*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).*

## VARIABLE ANNUITY MODEL REGULATION

**This chart is intended to provide readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings related to the NAIC model. Such guidance provides readers with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state’s activity in this area and has determined whether the citation most appropriately fits in the Model Adoption column or Related State Activity column based on the definitions listed below. The NAIC’s interpretation may or may not be shared by the individual states or by interested readers.**

**This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Nor does this state page reflect a determination as to whether a state meets any applicable accreditation standards. Every effort has been made to provide correct and accurate summaries to assist readers in locating useful information. Readers should consult state law for further details and for the most current information.**

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**KEY:**

**MODEL ADOPTION:** States that have citations identified in this column adopted the most recent version of the NAIC model in a **substantially similar manner**. This requires states to adopt the model in its entirety but does allow for variations in style and format. States that have adopted portions of the current NAIC model will be included in this column with an explanatory note.

**RELATED STATE ACTIVITY:** Examples of Related State Activity include but are not limited to: older versions of the NAIC model, statutes or regulations addressing the same subject matter, or other administrative guidance such as bulletins and notices. States that have citations identified in this column **only** (and nothing listed in the Model Adoption column) have **not** adopted the most recent version of the NAIC model in a **substantially similar manner**.

**NO CURRENT ACTIVITY:** No state activity on the topic as of the date of the most recent update. This includes states that have repealed legislation as well as states that have never adopted legislation.

<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Alabama	NO CURRENT ACTIVITY	
Alaska	ALASKA ADMIN. CODE tit. 3, §§ 28.010 to 28.190 (1973/2011) (All variable contracts).	
American Samoa	NO CURRENT ACTIVITY	
Arizona	ARIZ. REV. STAT. ANN. §§ 20-2631 to 20-2638 (1996).	
Arkansas	ARK. CODE R. § 6 (1970).	
California	CAL. CODE REGS. tit. 10, §§ 2525 to 2533.1 (1972).	
Colorado	COLO. CODE REGS. § 4-1-1 (1994/2010).	
Connecticut	NO CURRENT ACTIVITY	
Delaware	18 DEL. CODE REGS. § 1201 (1969/2003) (All variable contracts).	
District of Columbia		D.C. MUN. REGS. tit. 26, § 1004 (1961).

**VARIABLE ANNUITY MODEL REGULATION**

<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Florida		FLA. ADMIN. CODE ANN. r. 69O-162.001 to 69O-162.016 (1974/2017).
Georgia	GA. COMP. R. & REGS. 120-2-22 (1969).	
Guam	NO CURRENT ACTIVITY	
Hawaii		Memorandum 2012-2 (2012).
Idaho	IDAHO ADMIN. CODE r. 18.01.16 (1969/1993) (All variable contracts).	
Illinois	ILL. ADMIN. CODE tit. 1451 §§ 10 to 100 (1972/2001) (portions of model) (applies to all variable contracts).	
Indiana		760 IND. ADMIN. CODE 1-7-1 to 1-7-8 (1971/2013).
Iowa	IOWA ADMIN. CODE r. 191-31.1 to 191-31.7 (1968/2007).	
Kansas	KAN. ADMIN. REGS. §§ 40-15-1 to 40-15-8 (1969/1986).	
Kentucky	806 KY. ADMIN. REGS. § 15:010 (1975/1984).	
Louisiana	LA. ADMIN. CODE tit. 37 §§ XIII.7701 to XIII.7719 (Regulation 28) (1969/2009).	
Maine		ME. CODE R. § 310 (1984).
Maryland		MD. CODE REGS. 31.09.04.01 to 31.09.04.09 (1965/1988).
Massachusetts	NO CURRENT ACTIVITY	
Michigan		MICH. ADMIN. CODE r. 500.621 to 500.629 (1971/1978); BULLETIN 2009-15-INS (2009).

**VARIABLE ANNUITY MODEL REGULATION**

<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Minnesota	NO CURRENT ACTIVITY	
Mississippi	MISS. INS. REG. L A & H 78-2 (1978).	
Missouri	20 MISS. CODE R. § 400-1.020 (1969/1985).	
Montana		MONT. ADMIN. R. 30-10-103 to 30-10-104 (1991).
Nebraska	NO CURRENT ACTIVITY	
Nevada	NO CURRENT ACTIVITY	
New Hampshire	NO CURRENT ACTIVITY	
New Jersey		N.J. ADMIN. CODE §§ 11:4-44.1 to 11:4-44.4 (1996/2001) (All variable contracts); § 11:4-43.3 (2000/2006).
New Mexico		N.M. CODE R. §§ 13.9.3.1 to 13.9.3.25 (1997).
New York		N.Y. COMP. CODES R. & REGS. tit. 11, §§ 50.1 to 50.12 (Regulation 47) (1971/2000).
North Carolina	11 N.C. ADMIN. CODE §§ .0302 to .0305 (1978/1988).	
North Dakota	N.D. ADMIN. CODE 45-04-02-01 to 45-04-02-08 (1974/1986).	
Northern Marianas	NO CURRENT ACTIVITY	
Ohio	NO CURRENT ACTIVITY	
Oklahoma	OKLA. ADMIN. CODE §§ 365:10-9-10 to 365:10-9-18 (1969).	
Oregon	NO CURRENT ACTIVITY	

**VARIABLE ANNUITY MODEL REGULATION**

<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Pennsylvania	31 PA. CODE §§ 85.01 to 85.40 (1978/1981) (portions of model).	
Puerto Rico	P.R.R. RULE XLV (1975).	
Rhode Island	NO CURRENT ACTIVITY	
South Carolina	S.C. CODE ANN. REGS. 69-12 (Part A) (1976/1988).	
South Dakota	S.D. ADMIN. R. 20:06:07:01 to 20:06:07:08 (1978/1986).	
Tennessee	TENN. COMP. R. & REGS. 0780-1-17 (1974/1978) (All variable contracts).	
Texas		28 TEX. ADMIN. CODE §§ 3.701 to 3.706 (1985).
Utah		UTAH ADMIN. CODE r.-133 (1989/1994).
Vermont	NO CURRENT ACTIVITY	
Virgin Islands	NO CURRENT ACTIVITY	
Virginia	14 VA. ADMIN. CODE 5-20-10 to 5-20-80 (1969).	
Washington	NO CURRENT ACTIVITY	
West Virginia	NO CURRENT ACTIVITY	
Wisconsin	WIS. ADMIN. CODE INS. § 2.13 (1981/2009) (All variable contracts).	BULLETIN 8-13-2009 (2009).
Wyoming	16 WYO. CODE R. § 1 (1968).	