

VARIABLE CONTRACT MODEL LAW

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Section 1. Domestic Companies

A domestic life insurance company may establish one or more separate accounts, and may allocate amounts to it (including without limitation proceeds applied under optional modes of settlement or under dividend options) to provide for life insurance or annuities (and incidental benefits), payable in fixed or variable amounts or both, subject to the following:

- A. The income, gains and losses, realized or unrealized, from assets allocated to a separate account shall be credited to or charged against the account, without regard to other income, gains or losses of the company.
- B. Except as may be provided with respect to reserves for guaranteed benefits and funds referred to in Subsection C:
 - (1) Amounts allocated to a separate account and accumulations thereon 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
 - (2) 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.
- C. Except with the approval of the commissioner and under such conditions as to investments and other matters as the commissioner may prescribe, which shall 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 shall not be maintained in a separate account.

Drafting Note: Wherever “commissioner” is referred to in this Act, “director” or “superintendent” should be substituted where applicable.

Drafting Note: It is intended that separate account investments except as to conditions imposed by the commissioner under Subsection C, should be exempt from the laws of the state governing the investments of life insurance companies. In some states it may be necessary to provide for the exemption by reference to the appropriate sections or to a particular article or chapter. Some states, however, may not want to provide an exemption from all investment laws applicable to domestic companies, but merely from some specific sections establishing requirements or restrictions on the quantity of investments, such as a limit on the amount of common stocks which may be held by the company. These states may want to require that separate account investments meet certain of the qualitative requirements of the investment laws. In this event, the exemption must refer to specific sections, which will have to be carefully selected. If certain qualitative restrictions are retained, it then may become necessary, in order to recognize the “unit investment trust” approach to variable contract business, to specifically provide that all of the assets of a separate account may be invested “in the shares of an open-end investment company or companies registered under the federal Investment Company Act of 1940.”

- D. 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; provided that, 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 guaranteed benefits and funds referred to in Subsection C shall be valued in accordance with the rules otherwise applicable to the company’s assets.
- E. Amounts allocated to a separate account in the exercise of the power granted by this Act shall be owned by the company, and the company shall not be, nor hold itself out to be, a trustee with respect to these amounts. If and to the extent so provided under the applicable contracts, that portion of the assets of any such 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.

- F. 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 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 the transfer of securities is approved by the commissioner. The commissioner may approve other transfers among the accounts if, in his or her opinion, the transfers would not be inequitable.
- G. To the extent the company deems it necessary to comply with any applicable federal or state laws, the company, with respect to a separate account, including without limitation any separate account that 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 without limitation special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and the selection of a committee, the members of which need not be otherwise affiliated with the company, to manage the business of the account.

Drafting Note: Certain separate accounts are registered with the Securities and Exchange Commission under the Investment Company Act of 1940, and variable annuity contractholders in the separate accounts must be given voting rights, principally in connection with the management of the assets of the account. The foregoing provision is accordingly recommended since many states require that the assets of an insurer be managed by its Board of Directors.

Section 2. Contract Statement Required

A contract 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 the variable benefits. Any such contract under which the benefits vary to reflect investment experience, including a group contract and any certificate in evidence of variable benefits issued thereunder, shall state that the dollar amount will so vary and shall contain on its first page a statement to the effect that the benefits thereunder are on a variable basis.

Section 3. License Required

- A. A company shall not deliver or issue for delivery within this state variable contracts 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 the 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 contracts. The state of entry of an alien company shall be deemed its place of domicile for this purpose.
- B. 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 either it or the parent or the affiliated company meets the requirements.

Section 4. Power of Commissioner

Notwithstanding any other provision of law, the commissioner shall have sole authority to regulate the issuance and sale of variable contracts, and to issue such reasonable rules and regulations as may be appropriate to carry out the purposes and provisions of this Act.

Section 5. Applicability

Except for Sections [insert applicable sections] of the Insurance Law in the case of a variable annuity contract and Sections [insert applicable sections] in the case of a variable life insurance policy and except as otherwise provided in this Act, all pertinent provisions of the Insurance Law shall apply to separate accounts and contracts relating thereto. Any individual variable life insurance contract, delivered or issued for delivery in this state shall contain grace, reinstatement and nonforfeiture provisions appropriate to such a contract.

Drafting Note: Wherever this Act refers to the “Insurance Law,” any necessary changes in reference should be made to indicate the applicable statute or statutes.

The reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

Drafting Note: Insert appropriate section numbers above to make inapplicable any provisions in the Insurance Law requiring (i) grace, reinstatement and nonforfeiture provisions for either annuity contracts or life insurance policies, (ii) policy loans, (iii) tables of installment payment of contract proceeds, (iv) that annuity contracts be participating, and (v) any other provisions relating to annuities or insurance which require either elimination or modification for variable contracts, such as any provision requiring that the policy stipulate the dollar amount of benefits under the policy. If the law of a particular state requires provisions dealing with grace, reinstatement or nonforfeiture in individual fixed-dollar deferred annuities, the second sentence of this section should be modified by inserting the words “or annuity” after the word “insurance.” If the law of a particular state requires any such provision with respect to a group contract, a new sentence should be added specifying that the provision, appropriate to a variable group contract, shall be required.

Section 6. Effective Date

This Act shall take effect [insert date].

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

1970 Proc. I 300, 344, 367-370, 379 (adopted).

1972 Proc. I 15, 16, 555, 607 (amended).