

**TITLE 365. INSURANCE DEPARTMENT**  
**CHAPTER 10. LIFE, ACCIDENT AND HEALTH**  
**SUBCHAPTER 9. ANNUITIES**

**PART 3. PERTAINING TO SEPARATE ACCOUNTS IN CONNECTION WITH VARIABLE ANNUITY CONTRACTS**

**365:10-9-10. Purpose**

The purpose of this Part is to set forth requirements regarding the qualification of insurance companies to issue variable annuity contracts, the maintenance of separate accounts, the filing of variable contracts, the content of variable contracts, required reports, and the licensing of variable annuity contract agents.

**365:10-9-11. Definitions**

The following words or terms, when used in this section, shall have the following meaning, unless the context clearly indicates otherwise:

**"Agent"** means any person, corporation, partnership or other legal entity which under the laws of this State is licensed as a life insurance agent, or solicitor, general agent, or life insurance broker.

**"Variable annuity contract"** means any contract, which provides for annuity benefits which may vary according to the investment experience of any separate account or accounts maintained by the insurer as to such contract.

**"Variable annuity contract agent"** means an agent who shall sell or offer to sell any variable annuity contract.

**365:10-9-12. Qualification of insurance companies to issue variable annuity contracts**

(a) **Variable annuity contract prerequisites.** No company shall deliver or issue for delivery variable annuity contracts within this state unless:

- (1) It is licensed to do life insurance or annuity business in this state; and
- (2) The Commissioner is satisfied that its condition, or methods of operation, in connection with the issuance of such 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:
  - (A) The history and financial condition of the company;
  - (B) The character, responsibility and general fitness of the officers and directors of the company; and
  - (C) The law and regulations under which the company is authorized in the state of domicile to issue variable annuity contracts.

(b) **Exception through affiliates.** If the company is a subsidiary of an admitted life insurance company, or affiliated with such company by common management or ownership, it may be deemed by the Commissioner to have satisfied the provisions of this section, if either it or such admitted life company satisfies the aforementioned provisions. Companies licensed and having a satisfactory record of doing business in this state for a period of at least three years may be deemed to have satisfied the Commissioner with respect to this section.

(c) **Information required by Commissioner prior to issuing variable annuity contracts.** Before any company shall deliver or issue for delivery variable annuity contracts within this state it shall submit to the Commissioner:

- (1) a general description of the kinds of variable annuity contracts it intends to issue;
- (2) a copy of the statutes and regulations of its state of domicile under which it is authorized to issue variable annuity contracts; and
- (3) biographical data with respect to officers and directors of the company on the NAIC uniform biographical data forms.

**365:10-9-13. Separate account or separate accounts**

(a) **Separate accounts.** A domestic company issuing variable annuity contracts shall establish one or more separate accounts pursuant to 36 O.S. §§6061-6062 and the following provisions:

- (1) Except as hereinafter provided, amounts allocated to any 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; provided, that to the extent that the company's reserve liability with regard to:

(A) benefits guaranteed as to dollar amount and duration, and

(B) funds guaranteed as to principal amount of stated rate of interest is maintained in any separate account, a portion of the assets of such separate account, at least equal to such reserve liability, shall be, except as the Commissioner may otherwise approve, invested in accordance with the laws of this state governing the investments of life insurance companies. The investments in such separate account or accounts shall not be taken into account in applying the investment limitations applicable to the investments of the company.

(2) With respect to 75% of the market value of the total assets in a separate account no company shall purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal or interest by the United States, if immediately after such purchase or acquisition the market value of such investment, together with prior investments of such separate account in such security taken at market, would exceed 10% of the market value of the assets of said separate account. The Commissioner may waive such limitations if, in his opinion, such waiver will not render the operation of such separate account hazardous to the public or the policyholders.

(3) No separate accounts shall invest in the voting securities of a single insurer, if such investment would result in the company owning an amount in excess of 10% of the total issued and outstanding voting securities of such insurer; provided, that the foregoing shall not apply with respect to securities held in separate accounts, the voting rights in which are exercisable only in accordance with instructions from persons having an interest in such accounts.

(4) The limitations provided in (2) and (3) of this subsection shall not apply to the investment with respect to a separate account in the securities of an investment company registered under the Investment Company Act of 1940, provided that the investments of such investment company comply in substance with (2) and (3) of this subsection.

**(b) Valuation of assets in separate accounts.** 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 in accordance with the applicable contract or the rules or other written agreement applicable to such separate account; provided, that the portion of the assets of such separate account, equal to the company's reserve liability with regard to the benefits and funds referred to in 365:10-9-13 of this subsection, if any, shall be valued in accordance with the rules otherwise applicable to the company's assets.

**(c) Separate accounts not chargeable with liabilities.** 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 such account, such account shall not be chargeable with liabilities arising out of any other business the company may conduct.

**(d) Accounts registered with the Securities and Exchange Commission.** Notwithstanding any other provisions of law a company may:

(1) with respect to any separate account registered with the Securities and Exchange Commission as a unit investment trust, exercise voting rights in connection with any 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

(2) with respect to any separate account registered with the Securities and Exchange Commission as a management investment company, establish for such account a committee, board, or other body, the members of which may or may not be otherwise affiliated with such company and may be elected to such membership by the vote of persons having an interest in such account ratably as determined by the company. Such committee, board or other body may have the power, exercisable alone or in conjunction with others, to manage such separate account and the investment of its assets. A company, committee, board or other body may make such other provisions in respect to any such separate account as may be deemed appropriate to facilitate compliance with requirements of any Federal or State law now or hereafter in effect; provided that the Commissioner approves such provisions as not hazardous to the public or the company's policyholders in this state.

**(e) Transactions between separate accounts.** 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, such 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 such transfer, whether into or from a separate account, is made:

(1) by a transfer of cash, or

(2) by a transfer of securities having a valuation which could be readily determined in the marketplace, provided that such transfer of securities is approved by the Commissioner. The Commissioner may authorize other transfers among such accounts if, in his opinion, such transfers would not be inequitable.

**(f) Separate account assets value equal to reserves.** 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 such account, except as may otherwise be approved by the Commissioner.

**(g) Conflicts of interest.** 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 conflicts of interest shall also apply to members of any separate account's committee, board or other similar body. No officer or director of such company nor any 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 such separate account.

#### **365:10-9-14. Filing of contracts**

**(a) Filing requirements.** The filing requirements applicable to variable contracts 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.

**(b) Approval of filings.** No variable annuity contract, including a group variable annuity contract, and any certificate issued thereunder, shall be delivered or issued for delivery in this state by an insurance company until a copy of the form of such contract, certificate and the application for same, as well as the

sales material to be used in conjunction therewith, shall have been filed with the Insurance Commissioner in duplicate. At the expiration of 60 days the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the Insurance Commissioner.

**(c) Disapproval.**

(1) The Commissioner shall disapprove or withdraw approval of any such contract form, application of certificate if:

(A) such contract, application or certificate contains provisions which are ambiguous, misleading or deceptive or are likely to result in misrepresentation, or are otherwise contrary to law;

(B) sales of such contracts are being solicited by any means of advertising, communication or dissemination of information which is false, misleading, deceptive or inadequate.

(2) The Commissioner, in event of disapproval, shall promptly notify the company, specifying the particulars of his disapproval. It shall be unlawful for such company thereafter to issue any contract or certificate thereunder or use any application in the form so disapproved. Such order of the Commissioner shall be subject to review in accordance with 75 O.S. §306 and §318.

**365:10-9-15. Contracts providing for variable benefits**

**(a) Statement of essential features.** Any variable annuity 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 such variable benefits. Any such contract, including a group contract and any certificate issued thereunder, shall state that such dollar amount will vary to reflect investment experience and may decrease or increase, and shall contain on its first page a clear statement to the effect that the benefits thereunder are on a variable basis.

**(b) Illustrations of benefits payable.** Illustrations of benefits payable under any variable annuity contract providing benefits payable in variable amounts shall not include projections of past experience into the future or attempted predictions of future investment experience.

**(c) Individual variable annuity contract provisions.** No individual variable annuity contract calling for the payment of periodic stipulated payments to the insurer 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 such contracts:

(1) a provision that there shall be a period of grace of 30 days, within which any stipulated payment to the insurer falling due after the first may be made, during which period of grace the contract shall continue in force. The contract may include a statement of the basis for determining the date as of which any such payment received during the period of grace shall be applied to produce the values under the contract arising therefrom;

(2) a provision that, at any time within one year 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 such overdue payments as required by the 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 such overdue payments and indebtedness shall be applied to produce the values under the contract arising therefrom;

(3) a provision specifying the options available in the event of default in a periodic stipulated payment. Such options may include an option to surrender the contract for a cash value as determined by the contract, and shall include an option to receive a paid-up annuity if the contract is not surrendered for cash, the amount of such paid-up annuity commencement date in accordance with the terms of the contract.

**(d) Investment increment factor.** Any individual variable annuity contract delivered or issued for delivery in this state shall stipulate the investment increment factor to be used in computing the dollar amount of variable benefits or other contractual payments or values thereunder, and may guarantee that expense and/or mortality results shall not adversely affect such dollar amounts. If not guaranteed, the expense and mortality factors shall also be stipulated in the contract.

(1) 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 5%, except with the approval of the Commissioner;

(B) To the extent that the level of benefits may be affected by mortality results, the mortality factor shall be determined from the Annuity Mortality Table for 1949, Ultimate, or any modification of that table not having a higher mortality rate of any age, or, if approved by the Commissioner, from another table.

(2) "Expense", as used in this subsection, may exclude some or all taxes, as stipulated in the contract.

**(e) Reserve liability for variable annuities.** The reserve liability for variable annuities shall be computed on the basis of the 1937 Standard Annuity Mortality Table, the Annuity Mortality Table for 1949, Ultimate, the Group Annuity Mortality Table for 1951 or any modification of such tables approved by the Commissioner and in accordance with actuarial procedures that recognize the variable nature of the benefits provided.

**(f) Incidental benefit provision.** Variable annuity contracts may include as an incidental benefit provision for payment on death during the deferred period of an amount not in excess of the greater of the sum of the premiums or stipulated payments paid under the contract or the value of the contract at time of death. Any such provision shall not be deemed to be life insurance and therefore not subject to the provisions of the insurance law governing life insurance contracts. Provision for any other benefit on death during the deferred period will be subject to such insurance provisions.

### **365:10-9-16. Required reports**

(a) **Annual report of investments to contractholders.** Any company issuing individual variable annuity contracts providing benefits in variable amount, shall mail to the contract holder, at least once in each contract year, after the first, at his last address known to the company, a statement or statements reporting the investments held in the separate account and, in the case of contracts under which payments have not yet commenced, a statement reporting as of a date not more than four months previous to the date of mailing:

(1) the number of accumulation units credited to such contracts and the dollar value of a unit, or

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

(b) **Annual statement of business to Commissioner.** The company shall submit annually to the Insurance Commissioner a statement of the business of its separate account or accounts in such form as may be prescribed by the National Association of Insurance Commissioners.

### **365:10-9-17. Reporting actions taken against variable annuity licenses**

Any person licensed in this state as a variable annuity contract agent, and his appointing Company, shall immediately report to the Commissioner:

(1) any suspension or revocation of his variable annuity contract agent's license or life insurance 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 or denial of registration) imposed upon him by any national securities exchange, or national securities association, or any Federal, or State or Territorial agency with jurisdiction over securities or contracts on a variable basis,

(3) any judgment or injunction entered against him on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or violation of any insurance or securities law or regulation.

[Source: Amended at 11 Ok Reg 1853\_, eff 5-15-94]

### **365:10-9-18. Severability provisions**

If any provision of this section or application thereof to any person or circumstance is held invalid, the remainder of the provisions and the application of such provision to other persons or circumstances shall not be affected thereby.