Notice of Rulemaking Hearing

Department of Commerce and Insurance
Insurance Division

There will be a hearing before the Insurance Division of the Department of Commerce and Insurance ("Division") to consider the promulgation of rules. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Conference Room A of the Davy Crockett Tower located at 500 James Robertson Parkway, Nashville, Tennessee 37243 at 11:00 a.m. CST on the 15^{h} day of July, 2008.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division to discuss any auxiliary aids of services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date, to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the Division's ADA Coordinator at Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 and (615) 741-6500.

For a copy of this notice of rulemaking hearing contact: LaCosta Nicole Wix, Assistant General Counsel, Office of Legal Counsel, Davy Crockett Tower, Twelfth Floor, Nashville, Tennessee 37243, Department of Commerce and Insurance, and (615) 741-2199.

Substance of Proposed Rules
Of
Department of Commerce and Insurance
Division of Insurance

Chapter 0780-01-17
Rules and Regulations Covering the Sale, Issuance and Delivery of
Both Individual and Group Variable Annuity Contracts
and Variable Life Contracts

Amendments

0780-01-17 Rules and Regulations Covering the Sale, Issuance and Delivery of Both Individual and Group Variable Annuity Contracts and Variable Life Contracts is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

Chapter 0780-01-17
Variable Annuities

Table of Contents

0780-01-17-.01 Authority.

Pursuant to authority given by T.C.A. §56-2-301, the 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 0780-01-17-.02(6), pursuant to T.C.A. § 56-3-508.

Authority: T.C.A. §§ 56-1-701, 56-2-301, 56-3-508, 56-6-107, and 56-6-124.

0780-01-17-.02 Definitions.

As used in this Chapter, unless the context otherwise requires:

(1) "Producer" means a person, corporation, partnership or other legal entity that under the laws of this state is licensed as a life insurance producer, solicitor, general producer or life insurance broker.

(2) "Commissioner" means the Commissioner of the Tennessee Department of Commerce and Insurance;

(3) "Department" means the Tennessee Department of Commerce and Insurance;

(4) "NAIC" means the National Association of Insurance Commissioners;

(5) "Person" means any natural or artificial person including, but not limited to, an individual, partnership, association trust or corporation;

(6) "Variable annuity" 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 T.C.A. § 56-3-501.

Authority: T.C.A. §§ 56-1-701, 56-2-301, 56-3-501, 56-3-508, 56-6-107, and 56-6-124.

0780-01-17-.03 Qualification of Insurers to Issue Variable Annuities.

(1) An insurer 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:

(a) The history and financial condition of the insurer;

(b) The character, responsibility and fitness of the officers and directors of the insurer; and

(c) The law and regulation under which the insurer is authorized in the state of domicile to issue variable annuities.

(2) If the insurer is a subsidiary of an admitted life insurer, or affiliated with a company by common management or ownership, it may be deemed by the commissioner to have satisfied the provisions of Paragraph (1)(b) of this Rule if either it or the admitted life insurer satisfies the provisions of Paragraph (1)(b) of this Rule. Insurers 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 Paragraph (1)(b) above.

(3) Before any insurer shall deliver or issue for delivery variable annuities within this state it shall submit to the commissioner:

(a) A general description of the kinds of variable annuities it intends to issue;

(b) 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

(c) If requested by the commissioner, biographical data with respect to officers and directors of the insurer on the NAIC uniform biographical data forms.

Authority: T.C.A. §§ 56-1-701, 56-2-105, 56-2-201, 56-2-203, 56-2-301, 56-3-507, 56-3-508, 56-6-107, 56-6-124 .

0780-01-17-.04 Separate Accounts.

(1) A domestic insurer issuing variable annuities shall establish one (1) or more separate accounts pursuant to T.C.A. § 56-3-501, subject to the following provisions:

(a) Except as may be provided with respect to reserves for guaranteed benefits and funds referred to in Subparagraph (b) of this Paragraph:

1. 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 insurers; and

2. The investments in the separate account or account shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the insurer.

(b) 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 insurers. That portion of the assets also shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the insurer.

(c) With respect to seventy-five percent (75%) of the market value of the total assets in a separate account an insurer 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 in writing 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.

(d) 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 insurer 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,

(e) The limitations provided in Subparagraphs (c) and (d) of this Paragraph 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 Subparagraphs (c) and (d).

(2) 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 insurer's reserve liability with regard to the benefits and funds referred to in Subparagraph (b)(1) shall be valued in accordance with the rules otherwise applicable to the insurer's assets.

(3) 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 insurer may conduct.

(4) (a) Notwithstanding any other provisions of law, an insurer may:

1. 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

2. 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.

(a) An insurer, 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 insurer's policyholders in this state.

(5) (a) No sale, exchange or other transfer of assets may be made by an insurer 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:

1. By a transfer of cash; or

2. 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.

(a) The commissioner may authorize other transfers among such accounts, if, in his or her opinion, such transfers would not be inequitable.

(6) 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.

(7) Rules under any provision of the insurance laws of this state or any regulation applicable to the officers and directors of insurers 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 insurer 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.

Authority: T.C.A. §§ 56-1-701, 56-2-301, 56-3-508, 56-6-107, and 56-6-124.

0780-01-17-.05 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 0780-01-17-.09.

Authority: T.C.A. §§ 56-1-701, 56-2-301, 56-3-508, 56-6-107, 56-6-124, 56-7-2310, and 56-7-2311.

0780-01-17-.06 Variable Annuity Contracts.

(1) 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 insurer 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.

(2) 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.

(3) 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:

(a) 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

(b) A provision that, at any time within three (3) 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.

(4) (a) A variable annuity contact 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.

1. 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.

2. 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.

(b) In computing the dollar amount of variable benefits or other contractual payments or values under an individual variable annuity contract:

1. The annual net investment increment assumption shall not exceed five percent (5%) except with the approval of the commissioner.

2. 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.

(c) “Expense” as used in this subsection, may exclude some or all taxes, as stipulated in the contract.

(5) The reserve liability for variable annuities shall be established pursuant to the requirements of T.C.A. § 56-7-401 in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

Authority: T.C.A. §§ 56-1-701, 56-2-301, 56-3-508, 56-3-509, 56-6-107, 56-6-124, 56-7-2310, and 56-7-2311.

0780-01-17-.07 Nonforfeiture Benefits.

(1) This Rule shall not apply to any:

(a) Reinsurance;

(b) 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;

(c) Premium deposit fund;

(d) Investment annuity;

(e) Immediate annuity;

(f) Deferred annuity contract after annuity payments have commenced;

(g) Reversionary annuity; or

(h) To any contract which is to be delivered outside this state through a producer or other representative of the company issuing the contract.

(2) 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 T.C.A. § 56-7-401 and shall not otherwise be subject to this Rule.

(3) In the case of a contract issued on or after the effective date of this Rule, no variable annuity contract, except as stated in Paragraphs (1) or (2) of this Rule, 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:

(a) 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 Paragraph (7) of this Rule. The description will include a statement of the mortality table, if any, and guaranteed or assumed interest rates used in calculating annuity payments.

(b) 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 Paragraph (8) of this Rule. 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.

(c) 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.

(4) (a) The minimum values as specified in this Rule 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 Paragraph.

(b) 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 Paragraph 5) paid prior to that time, decreased by the sum of Subsections 1. through 4. below:

1. Any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest equal to the net investment return;

2. An annual contract charge of $50, accumulated at rates of interest equal to the net investment return;

3. Any premium tax paid by the company for the contract, accumulated at rates of interest equal to the net investment return; and

4. The amount of any indebtedness to the company on the contract, including interest due and accrued.

(c) “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.

(a) The annual contract charge of $30 and the transaction charge of $10 referred to above will be adjusted to reflect changes in the Consumer Price Index in accordance with Paragraph (6) of this Rule.

(5) 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.

(6) Demonstration that a contract's nonforfeiture amounts comply with this Rule shall be based on the following assumptions:

(a) Values should be tested at the end of each of the first twenty (20) contract years;

(b) A net investment return of seven percent (7%) per year should be used;

(c) 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;

(d) In determining the state premium tax applicable to the contract, the state of residence should be assumed to equal the state of delivery;

(e) With respect to contracts providing for periodic considerations, monthly considerations of $100 should be assumed for each of the first 240 months;

(f) With respect to contracts providing for a single consideration, a $10,000 single consideration should be assumed; and

(7) 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.

(8) 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.

(9) 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.

(10) Notwithstanding the requirements of this Rule, a variable annuity contract may provide under the situations specified in Subparagraph (a) or (b) of this Paragraph 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:

(a) 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

(b) 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.

(11) 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 Paragraph (4) of this Rule, 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 Rule. 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.

Authority: T.C.A. §§ 56-1-701, 56-2-301, 56-3-508, 56-6-107, and 56-6-124.

0780-01-17-.08 Required Reports.

(1) 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 commissioner a statement of business of its separate account or accounts in such form as may be prescribed by the NAIC.

(2) 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:

(a) The number of accumulation units credited to the contract and the dollar value of a unit; or

(b) The value of the contractholder's account.

Authority: T.C.A. §§ 56-1-701, 56-2-301, 56-3-508, 56-6-107, and 56-6-124.

0780-01-17-.09 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 this Chapter, the commissioner, to the extent deemed appropriate by the commissioner, may consider compliance with that law or regulation as compliance with this Chapter.

Authority: T.C.A. §§ 56-1-701, 56-2-301, 56-3-508, 56-6-107, and 56-6-124.

0780-01-17-.10 Qualifications of Producers for the Sale of Variable Annuities.

(1) (a) A person may not sell or offer for sale in this state any variable annuity contract unless the person is a producer 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.

(b) Any examination administered by the commissioner for the purpose of determining the eligibility of any person for licensing as a producer shall, after the effective date of this Chapter, include such questions concerning the history, purpose, regulation and sale of variable annuity contracts as the commissioner deems appropriate.

(2) A person qualified in this state under this Rule to sell or offer to sell variable annuity contracts shall immediately report to the commissioner:

(a) Any suspension or revocation of his or her producer's license in any other state or territory of the United States;

(b) 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;

(c) 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.

(3) The commissioner may reject an application or suspend or revoke or refuse to renew a producer's qualification under this Rule to sell or offer to sell variable annuity contracts upon any ground that would bar the applicant or producer from being licensed to sell other life insurance contracts in this state. The rules governing any proceeding relating to the suspension or revocation of a producer's license shall also govern any proceeding for suspension or revocation of a producer's qualification to sell or offer to sell variable annuity contracts.

Authority: T.C.A. §§ 56-1-701, 56-2-301, 56-3-508, 56-6-107, 56-6-112, and 56-6-124.

0780-01-16-.11 Severability.

If any provision of this Chapter or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of this Chapter which can be given effect without the invalid provisions or application. To this end all provisions of this Chapter are declared to be severable.

Authority: T.C.A. §§ 56-1-701, 56-2-301, 56-3-508, 56-6-107, and 56-6-124.

0780-01-17-.12 Effective Date.

The effective date of this Chapter or any amendments thereto shall be as set forth below; but this Chapter will not be enforced for an additional ninety (90) days after the effective date.

Authority: T.C.A. §§ 56-1-701, 56-2-301, 56-3-508, 56-6-107, and 56-6-124.

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of May, 2008. (FS 05-13-08; DBID 855)