CHAPTER 67

Variable Contracts

**SECTION 38‑67‑10.** Domestic life insurers authorized to establish accounts.

A domestic life insurer may establish one or more separate accounts, and may allocate thereto amounts (including, without limitation, proceeds applied under optional modes of settlement or under dividend options) to provide for life insurance or annuities (and benefits incidental thereto), 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 must be credited to or charged against the account, without regard to other income, gains, or losses of the insurer.

(b) Except as may be provided with respect to reserves for guaranteed benefits and funds referred to in item (c) of this section, (i) 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 insurers and (ii) the investments in the separate account or accounts may not be taken into account in applying the investment limitations otherwise applicable to the investments of the insurer.

(c) Except with the approval of the director or his designee and under the conditions as to investments and other matters as he may prescribe, which shall recognize the guaranteed nature of the benefits provided, reserves for (i) benefits guaranteed as to dollar amount and duration and (ii) funds guaranteed as to principal amount or stated rate of interest may not be maintained in a separate account.

(d) Unless otherwise approved by the director or his designee, assets allocated to a separate account must 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. However, unless otherwise approved by the director or his designee, the portion of any of the assets of the separate account equal to the insurer’s reserve liability with regard to the guaranteed benefits and funds referred to in item (c) of this section must be valued in accordance with the rules otherwise applicable to the insurer’s assets.

(e) Amounts allocated to a separate account in the exercise of the power granted by this chapter must be owned by the insurer, and the insurer may not be, nor hold itself out to be, a trustee with respect to such 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 such account is not chargeable with liabilities arising out of any other business the insurer may conduct.

(f) 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 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 (i) by a transfer of cash, or (ii) by a transfer of securities having a readily determinable market value and the transfer of securities is approved by the director or his designee. The director or his designee may approve other transfers among such accounts if, in his opinion, the transfers would not be inequitable.

(g) To the extent the insurer considers it necessary to comply with any applicable federal or state laws, the insurer, with respect to any separate account, including, without limitation, any separate account which 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.

HISTORY: Former 1976 Code Section 38‑67‑10 [1985 Act No. 133, Section 1] recodified as Section 38‑51‑10 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑33‑10 [1962 Code Section 37‑331; 1968 (55) 2407; 1978 Act No. 441 Section 1] recodified as Section 38‑67‑10 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Sections 736‑738.

**SECTION 38‑67‑20.** Statement of essential features of procedures used in determining dollar amount of variable benefits.

Any 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 insurer in determining the dollar amount of the variable benefits. Any 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.

HISTORY: Former 1976 Code Section 38‑67‑20 [1985 Act No. 133, Section 2] recodified as Section 38‑51‑40 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑33‑20 [1962 Code Section 37‑332; 1968 (55) 2407; 1978 Act No. 441 Section 2] recodified as Section 38‑67‑20 by 1987 Act No. 155, Section 1.

**SECTION 38‑67‑30.** Qualifications of companies delivering or issuing variable contracts.

No company may deliver or issue for delivery within this State variable contracts unless it is licensed and organized to do a life insurance or annuity business in this State, and the director or his designee is satisfied that its condition or method of operation in connection with the issuance of variable contracts will not render its operation hazardous to the public or its policyholders in this State. In this connection, the director or his designee 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 contracts. The state of entry of an alien insurer is considered its place of domicile for this purpose.

If the insurer is a subsidiary of an admitted life insurer, or affiliated with an admitted life insurer through common management or ownership, it may be considered by the director or his designee to have met the provisions of this section if either it or the parent or the affiliated insurer meets the requirements hereof.

HISTORY: Former 1976 Code Section 38‑67‑30 [1985 Act No. 133, Section 3] recodified as Section 38‑51‑50 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑33‑30 [1962 Code Section 37‑333; 1968 (55) 2407; 1978 Act No. 441 Section 3] recodified as Section 38‑67‑50 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 739.

**SECTION 38‑67‑40.** Regulations.

Notwithstanding any other provision of law, the director or his designee has sole authority to regulate the issuance and sale of variable contracts, and the department has the sole authority to issue any regulations as may be appropriate to carry out the purposes and provisions of this chapter.

HISTORY: Former 1976 Code Section 38‑67‑40 [1985 Act No. 133, Section 4] recodified as Section 38‑51‑60 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑33‑40 [1962 Code Section 37‑334; 1968 (55) 2407; 1978 Act No. 441 Section 4] recodified as Section 38‑67‑40 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 740.

**SECTION 38‑67‑50.** Insurance laws applicable; grace, reinstatement, and nonforfeiture provisions; reserve liability for variable contracts.

Except as otherwise provided in this chapter, all pertinent provisions of the insurance laws of this State apply to separate accounts and contracts relating thereto. However, Article 5, Chapter 63 of this title does not apply to variable life insurance policies. 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. The reserve liability for variable contracts must be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

HISTORY: Former 1976 Code Section 38‑67‑50 [1985 Act No. 133, Section 5] recodified as Section 38‑51‑70 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑33‑50 [1962 Code Section 37‑335; 1968 (55) 2407; 1978 Act No. 441 Section 5] recodified as Section 38‑67‑50 by 1987 Act No. 155, Section 1.