

Part 2 Chapter 4: (LA&H 78-2) Variable Contract Regulations.

Rule 4.01: Authority

Senate Bill 2407 of the 1978 Legislative Session became effective July 1, 1978. This Act permits the sale and issuance of Variable Life Insurance Contracts by life insurance companies in addition to Variable Annuity Contracts. It further eliminates the dual jurisdiction over variable contracts by removing such jurisdiction now in the Secretary of State; vests the Insurance Commissioner with sole jurisdiction thereof; repeals Section 83-7-47, Mississippi Code of 1972, which requires the registration of Separate Funds with the Secretary of State; and authorizes the Insurance Commissioner to issue such reasonable rules and regulations as may be appropriate to carry out the purposes and provisions of said Act.

These regulations become effective July 1, 1978 and replace the Variable Contract Regulations dated February 1, 1969.

Source: Miss. Code Ann. §§ 83-7-45 (Rev. 2011); 25-43-3.113 (Rev. 2010)

Rule 4.02: Definitions

- A. The term “contract on a variable basis” or “variable contract” when used in this Regulation, shall mean any policy or contract which provides for insurance or annuity benefits which may vary according to the investment experience of any separate account or accounts maintained by the insurer as to such policy or contract, as provided for in Senate Bill 2407.
- B. “Agent”, when used in this Regulation, shall mean any person, who under the laws of this state is licensed as a life insurance agent.
- C. “Variable contract agent”, when used in this Regulation, shall mean an agent who shall sell or offer to sell any contract on a variable basis.

Source: *Miss. Code Ann.* § 83-7-45 (Rev. 2011)

Rule 4.03: Qualifications of Insurance Companies to Issue “Variable Contracts”

- A. No company shall deliver or issue for delivery variable contracts within this state unless
 - (1) it is licensed or organized to do a life insurance or annuity business in this state; and
 - (2) the Commissioner is satisfied that its condition or method 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:

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.
- B. 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 clause (2) of Paragraph 1 hereof if either it or such admitted life company satisfies the aforementioned provision; provided, further, that companies licensed and having a satisfactory record of doing business in this state for a period of at least 3 years may be deemed to have satisfied the Commissioner with respect to Clause (2) of Paragraph 1 above.
- C. Before any company shall deliver or issue for delivery variable contracts within this state it shall submit to the Commissioner (a) a general description of the kinds of variable contracts 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 contracts and (c) if requested by the Commissioner, biographical data with respect to officers and directors of the company on the uniform NAIC biographical data form.
- D. Before any company shall deliver or issue for delivery variable contracts within this state, it shall have assets in excess of \$20,000,000 and in addition thereto, have and maintain an amount of capital and surplus, if a stock company, or an amount of surplus, if a mutual company, of at least \$3,000,000. This provision may be waived if the Commissioner is satisfied that the condition of such company and its method of operation in the issuance of variable contracts otherwise affords adequate protection to contractholders; provided, however, any waiver shall be granted only to a company that restricts their variable contracts to those regulated by the Securities and Exchange Commissioner.

Source: Miss. Code Ann. §83-7-45 (Rev. 2011)

Rule 4.04: Separate Account or Separate Accounts

A. A domestic company issuing variable contracts shall establish one or more separate accounts pursuant to Senate Bill 2407 subject to the following provisions of this Article:

1. Except as hereinafter provided, amounts allocated to any separate account and accumulation 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 (i) benefits guaranteed as to dollar amount and duration, and (ii) funds guaranteed as to principal amount or 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 of such separate account in such security taken at market, would exceed 10% of the market value of the assets of said separate account; provided, however, that the Commissioner may waive such limitation if, in his opinion, such waiver will not render the operation of such separate account hazardous to the public or the policyholders in this state.
3. No company shall, whether for its separate accounts or otherwise, invest in the voting securities of a single issuer in an amount in excess of 10% of the total issued and outstanding voting securities of such issuer 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 interests in such accounts.
4. The limitations provided in subparagraphs (b) and (c) above 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 with subparagraphs (b) and (c) hereof.

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 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 clause (i) and (ii) of Paragraph 1(a), if any, shall be valued in accordance with the rules otherwise applicable to the company's assets.

- C. 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 shall not be chargeable with liabilities arising out of any other business the company may conduct.
- D. Notwithstanding any other provision 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 Commissioner 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 interests 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. 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 (a) by a transfer of cash, or (b) 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. 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. Rules under any provision of the Insurance Law 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 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.

Source: Miss. Code Ann. § 83-7-45 (Rev. 2011)

Rule 4.05: Filing Of Contracts

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, to the extent appropriate.

Source: Miss. Code Ann. § 83-7-45 (Rev. 2011)

Rule 4.06: Contracts Providing For Variable Benefits

- A. Any variable 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 may vary to reflect investment experience 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 under any contract providing benefits payable in variable amounts shall not include projections of past investment experience into the future or attempted predictions of future investment experience; provided that nothing contained therein is intended to prohibit use of hypothetical assumed rates of return to illustrate possible levels of annuity payments.
- 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 provisions 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 or of one month, 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 and 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 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 by the contract, and of all indebtedness to the insurer on the contract 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 being determined by applying the value of the contract at the annuity commencement date in accordance with the terms of the contract.
- D. No individual variable life insurance policy 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 more favorable to the holders of such policies:
1. a provision that there shall be a period of grace of 30 days or of one month, within which payment of any premium after the first may be made, during which period of grace the policy shall continue in force, but if a claim arises under the policy shall continue in force, but if a claim arises under the policy during such period of grace before the overdue premiums or the deferred premiums of the current policy year, if any, are paid, the amount of such premiums, together with interest, may be deducted from any amount payable under the policy in settlement. The policy may contain a statement of the basis for determining any variation in benefits as a result of the payment of premium during the period of grace.
 2. a provision that the policy will be reinstated at any time within three (3) years from the date of default, unless the cash surrender value has been paid or unless the period of extended insurance has expired upon the application of the insured and the production of evidence of insurability, including good health, satisfactory to the insurer and the payment of an amount not exceeding the greater of 1. All overdue payments and the payment of any other indebtedness to the insurer upon said policy with interest, or 2. 110% of the increase in cash surrender value resulting from reinstatement.

3. a provision for cash surrender values and paid-up insurance benefits available as non-forfeiture options under the policy in the event of default in a premium payment after premiums have been paid for a specified period. If the policy does not include a table of figures for the options so available, the policy shall provide that the company will furnish at least once in each policy year a statement showing the cash value as of a date no earlier than the prior policy anniversary. The method of computation of cash value and other non-forfeiture benefits, as described either in the policy or in a statement filed with the Commissioner of the jurisdiction in which the policy is delivered, shall be accordance with actuarial procedures that recognize the variable nature of the policy. The method of computation must be such that, if the net investment return credited to the contract at all times from the date of issue should be equal to the assumed investment increment factor if the contract provided for such a factor, or 3½ % if not, with premiums and benefits determined accordingly under the terms of the policy, the resulting cash values and other non-forfeiture benefits would be at least equal to the minimum values required by Section 83-7-25, Mississippi Code of 1972, Annotated (Standard Non-Forfeiture Law), for a fixed dollar policy with such premiums and benefits. The method of computation may disregard incidental minimum guarantees as to the dollar amounts payable. Incidental minimum guarantees include, for example, but are not to be limited to, a guarantee under a policy which provides for an assumed investment increment factor that the amount payable at death or maturity shall be at least equal to the amount that otherwise would have been payable if the net investment to the contract at all times from the date of issue had been equal to such factor.
- E. Any variable annuity contract delivered or issued for a 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/or mortality results shall not adversely affect such dollar amounts. In the case of an individual variable annuity contract under which the expense and mortality results may adversely affect the dollar amount of benefits, the expense and mortality factors shall be stipulated in the contract. 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 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 Mortality Table for 1949, Ultimate, or any modifications of that table not having a lower life expectancy at any age, or, if approved by the Commissioner, from another table. "Expense", as used in this Paragraph, may exclude some or all taxes, as stipulated in the contract.

- F. Any individual variable life insurance policy 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 variable contractual payments or values thereunder and shall guarantee that expense and mortality results shall not adversely affect such dollar amounts.
- G. The reserve liability for variable contracts shall be established pursuant to the requirements of Section 83-7-23, Mississippi Code of 1972, Annotated, in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.
- H. A company issuing variable life insurance contracts with a stated amount of guaranteed minimum death benefit shall hold in a separate account assets at least equal to the entire reserve for the death benefit (such reserve being determined in accordance with paragraph (7) above), except that additional assets supporting the reserve described in (a) below shall be maintained in the company's general account.
1. The portion of the reserve in the general account is to provide for the contingency of death occurring when the guaranteed minimum death benefit that would have been paid in the absence of such guarantee. Such additional reserve shall be accumulated from amounts regularly allocated by the company for this purpose and shall be charged with any excess of the actual death benefits paid by the company on such variable life insurance contracts over the death benefits that would have been payable in the absence of the guaranteed minimum death benefit.
 2. In no event, however, may the portion of the reserve maintained in the general account be less than either of the two minimum reserves described in (3) and (4) below.
 3. The first minimum reserve equal the aggregate total of the term cost, if any, covering a period of one full year from the valuation date, of the guarantee on each such variable life insurance contract, assuming an immediate one-third depreciation in the current value of the assets of the separate account followed by a net investment return equal to the assumed investment increment factor.
 4. The second minimum reserve equals the aggregate total of the "attained age level" reserves on each such variable life insurance contract. The "attained age level" reserve on each such variable life insurance contract shall not be less than zero and shall equal the "residue", as described in (5) below, of the prior year's "attained age level" reserve on the contract, with any such "residue" increased or decreased by a payment computed on an attained age basis as described in (6) below.

5. The “residue” of the prior year’s “attained age level” reserve on each such variable life insurance contract shall not be less than zero and shall be determined by adding interest at the valuation interest rate to such prior year’s reserve, deducting the tabular claims based on the “excess”, if any, of the guaranteed minimum death benefit, over the death benefit that would be payable in the absence of such guarantee, and dividing the net result by a tabular probability of survival. The “excess” referred to in the preceding sentence shall be based on the actual level of death benefits that would have been in effect during the preceding year in the absence of the guarantee, taking appropriate account of the reserve assumptions regarding the distribution of death claims payments over the year.
6. The payment referred to in (4) above shall be computed so that the present value of a level payment of that amount each year over the future premium paying period of the contract is equal to (i) minus (ii) minus (iii), where (i) is the present value of the future guaranteed minimum death benefits, (ii) is the present value of the future death benefits that would be payable in the absence of such guarantee and (iii) is any “residue” as described in (e) above, of the prior year’s “attained age level” reserve on such variable life insurance contract. If the contract is paid-up, the payment shall equal (i) minus (ii) minus (iii). The amounts of future death benefits referred to in (ii) shall be computed assuming a net investment return of the separate account which may differ from the assumed investment increment factor and/or the valuation interest rate but in no event may exceed the maximum interest rate permitted for the valuation of life insurance contracts.
7. The valuation interest rate and mortality table used in computing the two minimum reserves described in (3) and (4) above shall conform to permissible standards for the valuation of life insurance contracts. In determining such minimum reserves, the company may employ suitable approximations and estimates, including but not limited to groupings and averages.

Source: Miss. Code Ann. § 83-7-45 (Rev. 2011)

Rule 4.07: Required Reports

- A. Any company issuing variable contracts providing benefits in variable amounts shall mail to the contractholder 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, (a) the number of accumulation units credited to such contracts and the dollar value of a unit, or (b) the value of the contractholder’s account.

- B. 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.

Source: Miss. Code Ann. §§ 83-5-55; 83-7-45 (Rev. 2011)

Rule 4.08: Foreign Companies

If the law or regulation in the place of domicile of a foreign company provided a degree of protection to the policyholders and the public which is substantially equal to that provided by these regulations, the Commissioner, to the extent deemed appropriate by him in his discretion, may consider compliance with such law or regulation as compliance with these regulations.

Source: Miss. Code Ann. § 83-7-45 (Rev. 2011)

Rule 4.09: Qualification and Examination of Agents

A. Variable contract agents

1. No agent shall be eligible to sell or offer for sale a variable contract unless prior to making any solicitation or sale of such contract, he also is licensed as a variable contract agent. However, any agent who is licensed as a variable contract agent on the effective date of this rule shall continue to be licensed as a variable contract agent.
 2. Any agent who participated only in the sale or offering for sale of variable contracts that are not registered under the Federal Securities Act of 1933 need not be licensed as a variable contract agent.
- B. Any agent applying for a license as a variable contract agent shall do so by filing with this Department his application. All such applications shall be in writing on uniform forms prescribed by the Department. The applicant shall, upon oath, answer such interrogatories as the Commissioner may require in such application, and the application shall be certified by an authorized representative of an insurance company lawfully authorized in the state to write variable contracts.
- C. There shall not be a written examination for a variable contract agent; however, as a prerequisite to be so licensed as a variable contract agent, the following requirements shall be met:

1. The applicant shall be a duly life insurance agent at the time he files his application for a variable contract license.
 2. He shall be duly qualified by examination under The National Association of Securities Dealers, Inc. Examination for Principals, or Examination for Qualification as a Registered Representative.
- D. Except as modified by this Rule, state statutes and Rules of this Department governing the licensing of life insurance agents shall apply hereto.
- E. Each variable contract agent shall be required to hold a Certificate of Authority with any insurer for which he is to place a contract of insurance.
- F. Any person licensed in this State as a variable contract agent shall immediately report to the Commissioner (a) any suspension or revocation of his variable contract agent's license or life insurance agent's license in any other State or Territory of the United State, (b) the imposition of any disciplinary sanction (including suspension or expulsion from membership, suspension or revocation of 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, (c) 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.
- G. The Commissioner may reject any application or suspend or revoke or refuse to renew any variable contract agent's license upon any ground that would bar such applicant or such agent from being licensed to sell life insurance contracts in this State. The rules governing any proceedings relating to the suspension or revocation of a life insurance agent's license shall also govern any proceeding for suspension or revocation of a variable contract agent's license.
- H. A non-resident applicant may qualify for a variable contract license only if he holds a like license in his state of domicile and that such other state has a reciprocal agreement for the purpose of licensing variable contract agents.

These Rules and Regulations shall become effective July 1, 1978.

Promulgated and Adopted, this the 1st day of July 1, 1978.

Source: Miss. Code Ann. § 83-7-45 (Rev. 2011)