

## **CHAPTER 45-04-02 VARIABLE CONTRACTS**

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### **45-04-02-01. Applicability.**

This chapter is applicable to insurance companies, including any fraternal benefit society which operates on a legal reserve basis, delivering or issuing for delivery in this state variable contracts or policies, as defined in subsections 16 and 18 of section 45-04-02-02.

**General Authority:** NDCC 26.1-33-17, 26.1-34-11

**Law Implemented:** NDCC 26.1-33-13, 26.1-34-11

### **45-04-02-02. Definitions.**

1. "Affiliate" of an insurer means any person, directly or indirectly, controlling, controlled by, or under common control with such insurer; any person who regularly furnishes investment advice to such insurer with respect to its variable life insurance separate accounts for which a specific fee or commission is charged; or any director, officer, partner, or employee of any such insurer, controlling or controlled person, or person providing investment advice or any member of the immediate family of such person.
2. "Agent" means any person who under the laws of this state is licensed as an insurance agent, solicitor, general agent, or broker, with respect to the sale or solicitation for the sale of life insurance and annuities.
3. "Assumed investment rate" means the rate of investment return which would be required to be credited to a variable life insurance policy, after deduction of charges for taxes, investment expenses, and mortality and expense guarantees, to maintain the variable death benefit equal at all times to the amount of death benefit, other than incidental insurance benefits, which would be payable under the plan of insurance if the death benefit did not vary according to the investment experience of the separate account.
4. "Benefit base" means the amount, not less than the amount determined under the specifications of subdivision b of subsection 2 of section 45-04-02-12, in accordance with the terms of the variable life insurance policy, to which the difference between the net investment

return and the assumed investment rate is applied in determining the variable benefits of the policy.

5. "Commissioner" means the commissioner of insurance, unless otherwise specified.
6. "Control" (including the terms "controlling", "controlled by", and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing more than ten percent of the voting securities of any other person. This presumption may be rebutted by a showing made to the satisfaction of the commissioner that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.
7. "General account" means all assets of the insurer other than assets in separate accounts established pursuant to North Dakota Century Code sections 26.1-33-13 and 26.1-34-11, whether or not for variable life insurance.
8. "Incidental insurance benefit" means all insurance benefits in a variable life insurance policy, other than the variable death benefit and the minimum death benefit, including but not limited to accidental death and dismemberment benefits, disability income benefits, guaranteed insurability options, family income, or fixed benefit term riders.
9. "May" is permissive.
10. "Minimum death benefit" means the amount of the guaranteed death benefit, other than incidental insurance benefits, payable under a variable life insurance policy regardless of the investment performance of the separate account.
11. "Net investment return" means the rate of investment return actually credited to a variable life insurance policy, after deduction of charges for taxes, investment expenses, and mortality and expense guarantees in accordance with the terms of the policy.
12. "Person" means an individual, corporation, partnership, association, trust, or fund.
13. "Regulations" means rules and regulations.
14. "Separate account" means a separate account established under North Dakota Century Code sections 26.1-33-13 and 26.1-34-11.
15. "Shall" is mandatory.
16. "Variable annuity contract" means any policy or contract which provides for annuity benefits that 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 North Dakota Century Code sections 26.1-33-13 and 26.1-34-11.
17. "Variable death benefit" means the amount of the death benefit, other than incidental insurance benefits, payable under a variable life insurance policy dependent on the investment performance of the separate account, which the insurer would have to pay in the absence of the minimum death benefit.

18. "Variable life insurance policy" means any individual policy which provides for life insurance which varies according to the investment experience of any separate account or accounts established and maintained by the insurer as to such policy, as provided for in North Dakota Century Code sections 26.1-33-13 and 26.1-34-11.

**General Authority:** NDCC 26.1-33-17, 26.1-34-11

**Law Implemented:** NDCC 26.1-33, 26.1-34

**45-04-02-03. Qualification of insurance companies to issue variable annuity contracts.**

1. No company shall deliver or issue for delivery variable annuity contracts within this state unless:
  - a. It is licensed or organized to do a life insurance and annuity business in this state;
  - b. The commissioner is satisfied that neither its condition nor its method of operation in connection with the issuance of such contracts will render its operation hazardous to its policyholders or the public in this state. In this connection, the commissioner shall consider among other things:
    - (1) The history and financial condition of the company.
    - (2) The characters, responsibility, and fitness of the officers and directors of the company.
    - (3) The laws and regulations under which the company is authorized in the state of domicile to issue variable contracts.
    - (4) The adequacy of the company's program for the thorough training in variable contracts of all agents who shall be selling or soliciting for the sale of variable annuity contracts in this state.
2. 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 subdivision b of subsection 1 if either it or such admitted life company satisfied those provisions; provided, further, that a company 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 subdivision b of subsection 1.
3. Before any company shall deliver or issue for delivery variable annuity contracts within this state it shall submit to the commissioner:
  - a. A general description of the kinds of variable annuity contracts it intends to issue.
  - b. If requested by the commissioner, copies of the statutes and regulations of its state of domicile under which it is authorized to issue variable annuity contracts.
  - c. If requested by the commissioner, biographical data with respect to officers and directors of the company on the uniform biographical data forms as prescribed by the national association of insurance commissioners.

**General Authority:** NDCC 26.1-33-17, 26.1-34-11

**Law Implemented:** NDCC 26.1-33, 26.1-34

**45-04-02-04. Separate accounts for variable annuity contracts.**

A domestic company issuing variable annuity contracts shall establish one or more separate accounts pursuant to North Dakota Century Code sections 26.1-33-13 and 26.1-34-11, subject to the following provisions:

1. Except as may be provided with respect to reserves for guaranteed benefits and funds referred to in subsection 2, 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 and the investments in such separate account or accounts shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the company.
2. 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 such separate account at least equal to such reserve liability is invested in accordance with the laws and regulations of this state governing the investments of life insurance companies. Such portion of the assets shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the company.
3. 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 value, would exceed ten percent of the market value of the total assets of said separate account. However, the commissioner may waive such limitation if, in the commissioner's opinion, such waiver will not render the operation of such separate account hazardous to the policyholders or the public in this state.
4. Unless otherwise permitted by law or approved by the commissioner, no company shall purchase or otherwise acquire for its separate accounts the voting securities of any issuer if as a result of such acquisition the insurance company and its separate accounts, in the aggregate, would own more than ten percent 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.
5. The limitations provided in subsections 3 and 4 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, as amended [15 U.S.C. 80a-1 through 80a-52], provided the investments of such investment company comply in substance with subsections 3 and 4. In determining the percentage of voting securities of any issuer owned by the company and its separate accounts for purposes of subsection 4, the voting securities of such issuer owned indirectly through investment in an investment company shall be added to any such voting securities owned directly by the company and its separate accounts.
6. 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 of other written agreement applicable to such separate account; provided, that unless otherwise approved by the commissioner, the portion, if any, of the assets of such separate account equal to the company's reserve liability with regard to the benefits and funds referred to in subsection 2 shall be valued in accordance with the rules otherwise applicable to the company's assets.
7. If provided, 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.

8. Notwithstanding any other provisions of law, a company may:

- a. 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 Act of 1940, as amended [15 U.S.C. 80a-1 through 80a-52], and held in such separate account, in accordance with instructions from persons having interests in such account ratably as determined by the company; or
- b. 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 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 assets.

A company, committee, board, or other body may establish 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 being hazardous to the policyholders or the public in this state.

9. 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 market place; provided, that such transfer of securities is approved by the commissioner. The commissioner may authorize other transfers among such accounts, if, in the commissioner's opinion, such transfers would not be inequitable.
10. 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.
11. The laws and regulations of this state applicable to officers and directors of insurance companies with respect to conflicts of interest shall apply to members of the committee, board, or other body of any separate account. No officer or director of such company and no member of the committee, board, or other body of a separate account shall receive directly or indirectly any commission or other compensation with respect to the purchase or sale of assets of such separate account.

**General Authority:** NDCC 26.1-33-17, 26.1-34-11

**Law Implemented:** NDCC 26.1-33-13, 26.1-34-11

#### **45-04-02-05. Filing of variable annuity contracts.**

The filing requirements applicable to variable annuity contracts shall, to the extent appropriate, be those filing requirements otherwise applicable under existing laws and regulations of this state with respect to the filing of annuity contract forms, both individual and group.

**General Authority:** NDCC 26.1-33-17, 26.1-34-11

**Law Implemented:** NDCC 26.1-33, 26.1-34

#### **45-04-02-06. Variable benefits under variable annuity contracts.**

1. 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 company in determining the dollar amount of such variable benefits. Any such contract, including a group contract and any certificate in evidence of variable benefits issued thereunder, shall state that such dollar amount will 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.
2. Illustrations of benefits payable under any variable annuity contract shall not include projections of past investment experience into the future or attempted predictions of future investment experience; provided, that nothing contained herein is intended to prohibit use of hypothetical assumed rates of return to illustrate possible levels of benefits.
3. Any variable annuity contract delivered or issued for delivery in this state shall define 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 or mortality results shall not adversely affect such dollar amounts. In the case of an individual variable annuity contract under which expense or mortality results may adversely affect the dollar amount of benefits, the expense or mortality factors to be used (as aforesaid for the investment increment factors) shall be defined in the contract.

In computing the dollar amount of the first annuity payment, payable on the annuity commencement date, under an individual variable annuity contract:

- a. The net annual investment increment assumption shall not exceed five percent per year, except with the approval of the commissioner; and
- b. With respect to a contract under which the level of benefits may be adversely affected by future mortality results, the mortality assumption shall be based upon the Annuity Mortality Table for 1949, Ultimate, or any modification of such table not having a lower life expectancy at any age, or, if approved by the commissioner, some other table.

"Expense" as used in this subsection may exclude some or all taxes, as specified in the contract.

4. The reserve liability for variable annuity contracts shall be established pursuant to the requirements of North Dakota Century Code chapter 26.1-35, in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

**General Authority:** NDCC 26.1-33-17, 26.1-34-11

**Law Implemented:** NDCC 26.1-33-15, 26.1-34-11

#### **45-04-02-07. Required report for variable annuity contracts.**

1. Any company issuing individual variable annuity contracts shall mail to the contract holder at least once in each contract year after the first at the contract holder's 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 the business of its separate account or accounts in such form as may be prescribed by the national association of insurance commissioners.
2. Any company issuing individual variable annuity contracts shall mail to the contract holder at least once in each contract year after the first at the contract holder's last address known to the company a statement reporting as of a date not more than four months previous to the

date of mailing, in the case of an annuity contract under which payments have not yet commenced, (a) the number of accumulation units credited to such contract and the dollar value of each unit, or (b) the value of the contract holder's account.

**General Authority:** NDCC 26.1-33-17, 26.1-34-11

**Law Implemented:** NDCC 26.1-33, 26.1-34

**45-04-02-08. Eligibility of agents to sell or solicit variable annuity contracts.**

1. No person shall be eligible to sell or to solicit for the sale of variable annuity contracts unless, prior to making any such sale or solicitation, the person shall have become licensed as a life insurance agent and shall have become licensed as a securities salesman under North Dakota law.
2. Any person, having been licensed as a securities salesman and being associated with the variable contract business, shall immediately report to the commissioner of insurance and the commissioner of securities (a) any suspension or revocation of the person's variable annuity contract agent's license or life insurance agent's license in any other jurisdiction, or (b) the imposition of any disciplinary action (including suspension of or expulsion from membership, denial or suspension or revocation of registration, or other adverse order or directive) upon the person by any self-regulatory securities association, securities exchange, or any governmental agency with jurisdiction over securities or contracts of a variable nature, or (c) any judgment or injunction entered against the person on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or violation of any insurance or securities law or regulation.

**General Authority:** NDCC 26.1-33-17, 26.1-34-11

**Law Implemented:** NDCC 26.1-33, 26.1-34

**45-04-02-09. Qualification of insurer to issue variable life insurance.**

Repealed effective May 1, 1997.

**45-04-02-10. Policy requirements for variable life insurance.**

Repealed effective May 1, 1997.

**45-04-02-11. Reserve liabilities for variable life insurance.**

Repealed effective May 1, 1997.

**45-04-02-12. Separate accounts for variable life insurance.**

Repealed effective May 1, 1997.

**45-04-02-13. Information furnished to applicants for variable life insurance.**

Repealed effective May 1, 1997.

**45-04-02-14. Applications for variable life insurance.**

Repealed effective May 1, 1997.

**45-04-02-15. Reports to variable life insurance policyholders.**

Repealed effective May 1, 1997.

**45-04-02-16. Qualification of agents for the sale of variable life insurance.**

Repealed effective May 1, 1997.

**45-04-02-17. Separability.**

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

**General Authority:** NDCC 26.1-33-17, 26.1-34-11

**Law Implemented:** NDCC 26.1-33-17, 26.1-34-11

**45-04-02-18. Foreign and alien companies.**

If the laws and regulations in the place of domicile of a foreign or alien company provide a degree of protection to the policyholders and the public which is substantially equal to that provided by this chapter, the commissioner, to the extent deemed appropriate by the commissioner in the commissioner's discretion, may consider compliance with such laws and regulations as compliance with this chapter.

**General Authority:** NDCC 26.1-33, 26.1-34

**Law Implemented:** NDCC 26.1-33-17, 26.1-34-11