

INSURANCE CODE

TITLE 7. LIFE INSURANCE AND ANNUITIES

SUBTITLE C. SPECIALIZED COVERAGES

CHAPTER 1152. SEPARATE ACCOUNTS, VARIABLE CONTRACTS, AND RELATED PRODUCTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1152.001. APPLICABILITY OF CODE. (a) Except as provided by Subsection (b), this code applies to separate accounts described by this chapter and contracts relating to those accounts.

(b) The following sections do not apply to the separate accounts and contracts:

- (1) Sections 882.303 and 882.703;
- (2) Subchapters H and J, Chapter 882;
- (3) Sections 1101.002(b), 1101.005, 1101.009, 1101.012, 1101.052, 1101.055, and 1101.152-1101.156;
- (4) Chapter 1105; and
- (5) Section 1131.103.

(c) A separate account established under former Article 3.39 Part III, 3.72, or 3.73 is considered to be established under this chapter. A policy or other agreement issued before September 1, 1984, under one of those articles remains subject to the article, as the article existed immediately before September 1, 1984.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.002. RULES. The commissioner may adopt rules that are fair, reasonable, and appropriate to augment and implement this chapter, including rules establishing requirements for:

- (1) agent licensing;
- (2) standard policy provisions; and
- (3) disclosure.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER B. SEPARATE ACCOUNTS

Sec. 1152.051. ESTABLISHMENT OF SEPARATE ACCOUNTS. A

domestic life insurance company may establish separate accounts under this subchapter and may allocate to each account amounts, including proceeds applied under optional modes of settlement or under dividend options, to:

(1) provide for life insurance, an annuity, or a benefit incidental to the insurance or annuity, payable in a fixed amount, a variable amount, or both a fixed amount and a variable amount; or

(2) fund a benefit for a pension, retirement, or profit sharing plan payable in a fixed amount, a variable amount, or both a fixed amount and a variable amount.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.052. OWNERSHIP OF AMOUNTS IN SEPARATE ACCOUNT.

(a) An insurance company owns an amount allocated to a separate account under this subchapter.

(b) The company is not and may not represent itself as a trustee regarding an amount allocated to a separate account under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.053. TRANSFER OF ASSETS BETWEEN SEPARATE ACCOUNTS. (a) Except as provided by Subsection (b), an insurance company may not sell, exchange, or otherwise transfer an asset between the company's separate accounts or between any other investment account and a separate account unless:

(1) in case of a transfer into a separate account, the transfer is made solely to establish the account or to support the operation of a contract regarding the separate account to which the transfer was made; and

(2) the transfer, whether into or from a separate account, is made:

(A) by a transfer of cash; or

(B) by a transfer of securities if the securities have a readily determinable market value and the commissioner approves the transfer.

(b) The commissioner may approve a transfer between

accounts other than a transfer described by Subsection (a) if, in the commissioner's opinion, the transfer would not be inequitable. Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.054. COMPLIANCE WITH FEDERAL OR STATE LAW FOR SEPARATE ACCOUNT. (a) To comply with a federal or state law, an insurance company with respect to any separate account, including a separate account that is a management investment company or a unit investment trust, may, to the extent the company considers it necessary, provide:

(1) for appropriate voting and other rights for persons who have an interest in the account; and

(2) special rights and procedures to conduct the business of the account, including rights and procedures related to:

(A) investment policy;

(B) investment advisory services;

(C) selection of independent public accountants;

and

(D) selection of a committee to manage the business of the account.

(b) The members of a committee selected under Subsection (a)(2)(D) are not required to be affiliated with the company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.055. GUARANTEED BENEFITS AND MONEY RESTRICTION FOR SEPARATE ACCOUNTS. An insurance company may not maintain a reserve for a benefit guaranteed as to dollar amount and duration or funds guaranteed as to principal amount or stated rate of interest in a separate account except with the commissioner's approval and under conditions for investments, and other matters, that recognize the guaranteed nature of the benefits provided and that are prescribed by the department.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.056. INVESTMENT LIMITS NOT APPLICABLE TO SEPARATE ACCOUNT. Except as provided by Section [1152.055](#):

(1) an amount allocated to a separate account, including an accumulation on that amount, may be invested without regard to a law of this state governing a life insurance company investment; and

(2) an investment in a separate account may not be considered in applying an investment limit otherwise applicable to the insurance company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.057. ALLOCATION OF INCOME, GAINS, OR LOSSES ON SEPARATE ACCOUNT. An insurance company shall credit to or charge against a separate account the income, gain, or loss, realized or unrealized, from an asset allocated to the account without regard to other income, gains, or losses of the insurance company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.058. ASSET VALUATION IN SEPARATE ACCOUNT. An asset allocated to a separate account is valued:

(1) at its market value on the date of valuation;

(2) as provided under a contract, rule, or other written agreement applicable to the separate account, if a readily available market does not exist;

(3) as provided by the rules otherwise applicable to the insurance company's assets for any portion of the assets that is equal to the company's reserve liability with regard to the guaranteed benefits and funds under Section [1152.055](#); or

(4) under any other method approved by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.059. SEPARATE ACCOUNT NOT CHARGEABLE WITH OTHER LIABILITIES. To the extent provided under the applicable contracts, the portion of a separate account's assets equal to the reserves and other contract liabilities regarding that account is not chargeable with a liability arising out of any other business of the insurance company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER C. VARIABLE CONTRACTS

Sec. 1152.101. SOLE AUTHORITY TO REGULATE VARIABLE CONTRACTS. The commissioner has sole authority to regulate the issuance and sale of a variable contract under:

- (1) this chapter; and
- (2) rules adopted under Section [1152.002](#).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.102. AUTHORIZATION REQUIRED FOR VARIABLE CONTRACTS. (a) An insurance company may not deliver or issue for delivery a variable contract in this state unless authorized by the commissioner under this section.

(b) If the commissioner finds, after notice and hearing, that the company is qualified to issue, deliver, and use a variable contract under this chapter and rules adopted under Section [1152.002](#), the commissioner shall issue an order relating to the company's authority to issue, deliver, and use a variable contract in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.103. CONSIDERATION OF COMPANY'S CONDITION OR METHOD OF OPERATION. (a) For purposes of this section, the domicile of an alien company is its state of entry.

(b) In considering a company's condition or method of operation, the factors the commissioner shall consider must include:

- (1) the company's history and financial condition;
- (2) the character, responsibility, and fitness of the company's officers and directors;
- (3) the law, including rules, under which the company is authorized to do business in the state of domicile to issue a variable contract; and
- (4) whether the condition or method of operation in connection with the issuance of a variable contract will make the company's operation hazardous to the public or the company's

policyholders in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.104. AUTHORIZATION FOR SUBSIDIARY OR AFFILIATE OF AUTHORIZED LIFE INSURANCE COMPANY. The commissioner may determine, after notice and hearing, that a company that is a subsidiary of or affiliated with an authorized life insurance company through common management or ownership meets the requirements of this subchapter if either the company or the parent or affiliated company meets the requirements of this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.105. WAIVER OF HEARING REQUIREMENT. (a) If a company, its parent, or a commonly controlled affiliate is an authorized life insurance company, the company may apply to the commissioner for a waiver of the hearing requirements under Section [1152.102](#) or [1152.104](#).

(b) The commissioner may waive the hearing requirement if the commissioner determines that a hearing is not necessary to find the company qualified under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.106. RESERVE LIABILITY FOR VARIABLE CONTRACT. The reserve liability for a variable contract must be established under actuarial procedures that recognize:

- (1) the variable nature of the benefits provided; and
- (2) any mortality guarantees.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.107. SEPARATE ANNUAL STATEMENT REQUIRED. (a) An insurance company authorized under this subchapter to issue, deliver, or use a variable annuity contract or variable life contract shall file with the department a separate annual statement of its separate variable contract accounts.

(b) The company shall file the statement:

- (1) on a form prescribed or approved by the department; and

(2) simultaneously with the annual statement required by Sections 841.255 and 882.003.

(c) The statement must:

(1) include details as to all income, disbursements, assets, and liability items associated with the separate variable contract accounts; and

(2) be under oath of two company officers.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.108. GRACE, REINSTATEMENT, AND NONFORFEITURE PROVISIONS REQUIRED. (a) An individual variable life insurance or individual variable annuity contract delivered or issued for delivery in this state must contain grace, reinstatement, and nonforfeiture provisions appropriate to the contract.

(b) A group variable contract delivered or issued for delivery in this state must contain a grace period provision appropriate to the contract.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.109. VARIABLE BENEFITS PROVISIONS. (a) A contract providing benefits payable in variable amounts that is delivered or issued for delivery in this state must state the essential features of the procedures the insurance company will follow in determining the dollar amount of the variable benefits.

(b) A contract under which the benefits vary to reflect investment experience, including a group contract and any certificate in evidence of variable benefits issued under that group contract, must state:

(1) on its first page, that the benefits under the contract are on a variable basis; and

(2) that the dollar amount will vary.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.110. PRIVATE PLACEMENT CONTRACTS. (a) In this section, "private placement contract" means a variable annuity contract or variable life insurance policy that is:

(1) issued exclusively to an accredited investor or

qualified purchaser, as those terms are defined by the Securities Act of 1933 (15 U.S.C. Section 77a et seq.), the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), or the regulations promulgated under either of those acts; and

(2) offered for sale and sold in a transaction that is exempt from registration under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.).

(b) A private placement contract may provide that the insurer issuing the contract may defer payments or advances for loans, cash surrender values, or death benefits until the separate account assets, or any portion of the separate account assets, comprising rights to loans, cash surrender values, or death benefits can be converted to cash under any applicable terms.

(c) Section 1103.104 does not apply to the computation of the interest on the proceeds of a private placement contract. Added by Acts 2007, 80th Leg., R.S., Ch. 737 (H.B. 2765), Sec. 1, eff. September 1, 2007.

SUBCHAPTER D. VARIABLE CONTRACT AGENTS

Sec. 1152.151. AGENT'S LICENSE REQUIRED. (a) A person may not sell or offer for sale in this state a variable contract, or act to negotiate, make, or consummate a variable contract for another, unless the department has licensed the person under Chapter 4054 as a general life, accident, and health agent or a life agent.

(b) The licensing and regulation of a person acting as a variable contract agent is subject to the same provisions applicable to the licensing and regulation of other agents under Title 13.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.303(b), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.11, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2F.009, eff. April 1, 2009.

SUBCHAPTER E. MODIFIED GUARANTEED CONTRACTS

Sec. 1152.201. DEFINITION. In this subchapter, "modified guaranteed contract" means an individual life insurance policy or deferred annuity contract as to which:

(1) the underlying assets are held in a separate account; and

(2) the values are guaranteed if the policy or contract is held for a specified period.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.202. APPLICABILITY OF LAWS GOVERNING LIFE INSURANCE COMPANIES. Unless otherwise approved by the commissioner, the laws of this state governing the investments of life insurance companies apply to an asset held in a separate account that relates to a modified guaranteed contract that provides for nonforfeiture values that may vary based on a market-value adjustment formula.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.203. RULES. In addition to any rules adopted under Section [1152.002](#), the commissioner may adopt reasonable rules that apply only to a modified guaranteed contract, to appropriately regulate:

(1) a modified guaranteed contract under this chapter; and

(2) the separate account maintained in relation to a modified guaranteed contract.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.204. NONFORFEITURE VALUES. (a) A modified guaranteed contract must contain nonforfeiture values that are based on a market-value adjustment formula if the contract is held for a period shorter than the period specified in the contract. The formula may or may not reflect the value of assets held in the separate account.

(b) A modified guaranteed contract must prominently state on its first page that the nonforfeiture values may increase or decrease based on the market-value formula specified in the contract.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.205. SEPARATE ACCOUNT STATEMENT. An insurance company that files a separate account statement under Section [1152.107](#) shall include in that statement a statement for each separate account that relates to a modified guaranteed contract.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.