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INSURANCE CODE - INS

DIVISION 2. CLASSES OF INSURANCE [1880 - 12880.8] (*Division 2 enacted by Stats. 1935, Ch. 145.*)

PART 2. LIFE AND DISABILITY INSURANCE [10110 - 11549] (*Part 2 enacted by Stats. 1935, Ch. 145.*)

CHAPTER 5. General Regulation of Life Insurers [10430 - 10509.946] (*Chapter 5 enacted by Stats. 1935, Ch. 145.*)

ARTICLE 5. Pension Funds, Separate Accounts [10506 - 10506.5] (*Article 5 added by Stats. 1963, Ch. 743.*)

10506. (a) Any domestic life insurance company may, after adoption of a resolution by its board of directors, allocate to one or more separate accounts, in accordance with the terms of a written agreement, any amounts which are paid to the company in connection with a pension, retirement, retirement medical benefits, or profit-sharing plan, or program for one or more persons, or with an individual or group variable life insurance policy, and which are to be, or may be, applied in payment or in making provision for payment of proceeds or benefits under the company's policies, contracts, or agreements of retirement benefits, and other benefits incidental thereto, in fixed or variable dollar amounts, or both. The income, if any, and gains or losses, realized or unrealized, on each account shall be credited to or charged against the amount allocated to the account in accordance with the agreement, without regard to the other income, gains or losses of the company. The amounts allocated to the accounts and accumulations thereon, by any life insurance company shall be invested and reinvested as specified in the policy, contract, or agreement without regard to any requirements or limitations prescribed by the laws of this state governing the investments of insurance companies, provided that the amounts allocated to separate accounts for which the insurer has issued guarantees of benefits as to dollar amount and duration or of funds as to all or part of the principal amount thereof or stated rate of interest, and the accumulations thereon pursuant to Section 10506.4, shall be invested in the types of investments permitted to life insurance companies for investments held in the insurer's general account as described in Article 3 (commencing with Section 1170), Article 4 (commencing with Section 1190), and Article 4.6 (commencing with Section 1211) of Chapter 2 of Part 2 of Division 1 (excluding Section 1212 thereof), except that the approved method of operations and applicable policy, contract, or agreement provisions shall govern the amount of these investments held in the separate account. However, with regard to variable life insurance separate accounts and accumulations thereon, the separate accounts shall have sufficient net investment income and readily marketable assets to meet anticipated obligations under policies funded by the account. The limitations contained in Sections 1192.4 and 1198 are not applicable to these investments. These investments shall not be included in determining the propriety of other investments of the company. The liability of the company with respect thereto, but only to the extent prescribed in the agreement, shall be shown on the statement of the company in the manner prescribed by the commissioner. Amounts allocated by an insurance company to separate accounts in the exercise of the power granted by this section shall be owned by the company, but shall not be chargeable with liabilities arising out of any other business the company may conduct except and to the extent provided in the policy, contract, or agreement. The company shall not hold itself out to be a trustee in respect to these amounts.

(b) In addition to amounts otherwise allocated to separate accounts, a domestic life insurer may allocate to the account or accounts amounts which otherwise would be subject to investment in accordance with Article 4 (commencing with Section 1190) of Chapter 2 of Part 2 of Division 1. The aggregate of these additional amounts shall not, however, exceed 1 percent of its admitted assets as of the preceding December 31, or 5 percent of the excess of its admitted assets over its liabilities and required reserves as of the preceding December 31, whichever is the smaller. The company shall be entitled to withdraw at any time, in whole or in part, its participation in any separate account to which funds have been allocated as provided in this subdivision and to receive, upon withdrawal, its proportionate share of the value of the assets of the separate account at the time of withdrawal.

(c) In addition to the allocations to separate accounts provided for in subdivision (a), a domestic insurer may, at the request of a policyholder or contractholder or the beneficiary of a policy or contract, allocate to any separate account or accounts, death payments, proceeds of matured endowments, dividends, or surrender values.

(d) Except as otherwise provided in Section 10506.4, or with the approval of the commissioner, and under conditions as to investments and other matters as he or she may prescribe, which shall recognize the guaranteed nature of the benefits provided, reserves for (1) benefits guaranteed as to dollar amount and duration and (2) funds guaranteed as to principal amount or stated rate of interest shall not be maintained in a separate account that, as provided under applicable policy, contract, or agreement, is or is not chargeable with liabilities arising out of any other business the company may conduct.

(e) Unless otherwise approved by the commissioner, assets allocated to a separate account shall be valued at their market value, or at amortized cost if it approximates market value within the limits and constraints imposed by the United States Securities and Exchange Commission, 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 of any of the assets of the separate account equal to the company's reserve liability, with regard to the guaranteed benefits and funds referred to in subdivision (d), shall be valued in accordance with the rules otherwise applicable to the company's assets.

(f) (1) Except as provided in paragraph (2) of subdivision (f), a sale, exchange, or other transfer of assets may not be made by a company between any of its separate accounts, or between any other of its investment accounts 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 (1) by a transfer of cash, or (2) by a transfer of securities having a readily determinable market value, and the transfer of securities is approved by the commissioner. The commissioner may approve other transfers among the accounts if, in his or her opinion, the transfer would not be inequitable.

(2) Transfers from an insurer's general account to one or more of its separate accounts to establish and maintain reserves for the guarantees authorized by Section 10506.4 shall only be made in cash in accordance with methods of operations approved pursuant to subdivision (c) of Section 10506.4. A transfer shall not operate to increase the amounts permitted to be allocated by an insurer to the separate accounts pursuant to this subdivision or by subdivision (b) of Section 10506, and the provisions of that subdivision shall not limit these transfers.

(g) Any domestic life insurance company which establishes one or more separate accounts pursuant to this section may provide for special voting rights and procedures for participants in the separate account relating to investment policy, investment advisory services, and selection of certified public accountants in relation to the administration of the assets in any separate account. The voting rights shall be in addition to, and shall not affect, voting rights of mutual insurers.

(h) The purpose and intent of this section is to permit the issuance and delivery of policies or contracts, in connection with a pension, retirement, retirement medical benefits, or profit-sharing plan, or program for one or more persons, or policies of variable life insurance, providing for the payment of benefits in fixed or variable amounts, or both, and the establishment of separate accounts by domestic companies for the administration of and investments under these agreements. To protect the public and policyholders located in this state from hazardous operation by domestic and foreign companies, and to further the purpose and provision of this section, no domestic or foreign life insurance company shall undertake the issuance of any contract providing for variable benefits until the company has satisfied the commissioner that its condition or method of operation in connection with the issuance of these contracts shall not be such as would render its operation hazardous to the public or its policyholders in this state and, in the case of a foreign or alien insurer, that it meets the conditions prescribed in Section 716, for the issuance of a certificate of authority. In determining the qualification of a company requesting authority to issue contracts providing for variable benefits within this state, the commissioner shall consider among other things, (1) the history of the company; (2) the character, responsibility, and general fitness of the officers and directors of the company; (3) the regulation of a foreign company by its state of domicile; (4) the adequacy of the investment management which the company is providing; and (5) the company's arrangements for the supervision of the marketing of the contracts. Subsequent to an insurer initially satisfying the commissioner that its condition or method of operation would not render its operation hazardous to the public or its policyholders, the insurer shall notify the commissioner at any time it implements a material change respecting the mutual funds underlying the variable contract separate account available or to be available with a policy or contract providing variable benefits. The notification shall prominently disclose the sales charges, management and other fees payable to the insurer under the contract, and whether one or more of the mutual funds underlying the variable contract separate account are issued by an affiliated company and the names of those mutual funds. The notification shall be accompanied by a certification signed by an executive officer having responsibility for contracts providing variable benefits stating that the change complies with relevant statutes and regulations. The commissioner may review the notification to ensure the continued qualification of the insurer to issue and deliver those policies and contracts. The commissioner may make reasonable rules and regulations as he or she considers necessary, proper, and advisable concerning the issuance and delivery of these policies and contracts and the payment of benefits thereunder and the manner in which the separate accounts shall be administered and which types of policies and contracts, if any, shall be subject to his or her approval prior to issue. Notification of any material change shall not be subject to the commissioner's approval or acknowledgment prior to implementation. The commissioner shall promulgate on an emergency basis, and in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), a regulation superseding Insurance Department Bulletin 97-2 that shall become effective January 1, 2003. Until promulgation of the regulation, the commissioner and insurers may continue to rely upon Insurance Department Bulletin 97-2, except that the commissioner's approval or acknowledgment prior to implementation of a change to a mutual fund underlying a variable contract separate account shall not be required on or after January 1, 2003.

However, no company may provide variable benefits in its contracts unless it is an admitted insurer having and maintaining a combined capital and surplus of at least ten million dollars (\$10,000,000).

For purposes of this section, "affiliated company" has the same meaning given in paragraph (1) of subsection (g) of Section 6701 of Title 15 of the United States Code.

(i) (1) Any contract providing benefits payable in variable amounts delivered or issued for delivery in this state on or after the effective date of the amendments to this section enacted at the 1971 Regular Session of the Legislature shall contain a statement of the essential features of the procedures to be followed by an insurance company in determining the dollar amount of these 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 shall so vary, and shall contain on its first page a statement to the effect that the benefits thereunder are on a variable basis. Except for Article 3a (commencing with Section 10159.1) of Chapter 1 of Part 2 of Division 2, in the case of a variable life insurance policy, and except as otherwise provided in this section, all pertinent provisions of this code shall apply to separate accounts and contracts relating thereto. Any variable life insurance contract, delivered or issued for delivery in this state on or after the effective date of the amendments to this section enacted at the 1992 Regular Session of the Legislature, shall contain such nonforfeiture provisions as are appropriate to such a contract.

(2) The reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

(j) No insurer shall issue anywhere any group variable life insurance policy for which the master contractholder or any covered party is an individual residing in this state or is a corporation, association, trust, or other legal entity that is either domiciled in or has its principal place of business in this state, unless the insurer has become qualified to issue variable life insurance policies and its group master policy form together with all forms of certificates or notices thereunder have been approved by the commissioner. Group variable life insurance policies shall be issued only to groups referred to in Chapter 2 (commencing with Section 10200) of Part 2 of Division 2.

(Amended by Stats. 2002, Ch. 347, Sec. 3. Effective January 1, 2003.)

10506.1. The commissioner shall require the payment of two thousand eight hundred twenty-three dollars (\$2,823), as a fee for the determination of qualification required by Section 10506. Upon completion of the determination of qualification, and, whether authorization to issue contracts providing variable benefits is granted or denied, the commissioner shall require the payment by domestic insurers of those additional amounts from the requesting domestic insurer as may be necessary to defray all administrative costs in excess of eight hundred forty-nine dollars (\$849) incurred by the commissioner in making that determination.

(Amended by Stats. 2017, Ch. 534, Sec. 62. (AB 1699) Effective January 1, 2018.)

10506.2. (a) The commissioner shall require the payment in advance of two thousand eight hundred twenty-three dollars (\$2,823), as a fee for the examination and analysis of documents required by law to be filed with the commissioner by domestic or foreign insurers in connection with changes to an application and qualification to write variable contracts.

(b) The commissioner shall require the payment in advance of seven hundred twenty-six dollars (\$726), as a fee for the review, examination, and analysis of documents required to be filed by insurers issuing variable life insurance policies.

(c) The commissioner shall require the payment in advance of three thousand six hundred eighteen dollars (\$3,618), as a fee for the examination and analysis involved in approving transfers of assets pursuant to subdivision (f) of Section 10506.

(Amended by Stats. 2017, Ch. 534, Sec. 63. (AB 1699) Effective January 1, 2018.)

10506.3. (a) The commissioner shall adopt appropriate administrative regulations governing modified guaranteed annuities. Modified guaranteed annuities shall be subject to Article 3b (commencing with Section 10168) of Chapter 1 of Part 2 of Division 2 with regard to nonforfeiture values computed under the terms of the annuity but excluding from the computation the effect of market-value adjustment factors.

(b) Group annuities exempted under Section 10168 are also exempted from any modified guaranteed annuity regulations.

(c) Subdivision (b) shall be retroactive to January 1, 1987, to the extent the assets underlying such group contracts have not been maintained in a separate account.

(d) The commissioner shall issue a bulletin, on or before July 1, 1987, setting forth conditions under which variable life insurance may be issued, or issued for delivery, in this state as permitted by Chapter 731 of the Statutes of 1984.

Upon issuance of the bulletin, regulations regarding variable life insurance contained in Article 11.1 (commencing with Section 2534) of Title 10 of the California Code of Regulations shall be of no force and effect as long as the bulletin is effective. The bulletin authorized by this section shall have the same force and effect, and may be enforced by the commissioner to the same extent and degree, as the regulations superseded by it until the time that the commissioner may make additional or amended regulations as provided by subdivision (h) of Section 10506.

On or before July 1, 1993, the commissioner may amend the existing bulletin to include reasonable provisions relating to requirements for group variable life insurance. Notwithstanding the foregoing authority to issue a bulletin and prior to its issuance, the commissioner shall approve group master policy forms and certificates and notices related thereto that reasonably comply with the general provisions set forth in Sections 10506 to 10506.2, inclusive, and any other applicable statutes or regulations.

(Amended by Stats. 1994, Ch. 984, Sec. 5. Effective September 29, 1994.)

10506.4. (a) An admitted life insurer that is financially qualified pursuant to subdivision (b) and complies with the provisions of this section and those of Section 10506 that expressly refer to this section or are not inconsistent with it, may guarantee, pursuant to an approved policy, contract, or agreement, the value of the assets allocated to a separate account, which as provided under the applicable policy, contract, or agreement is not chargeable with liabilities arising out of any other business the company may conduct, or the investment results thereof, or the income thereon, or the benefits payable pursuant to the approved policy, contract, or agreement, and may transfer to the separate account cash to maintain its reserves for those guarantees pursuant to paragraph (2) of subdivision (f) of Section 10506. The general account of the insurer shall be paid reasonable and sufficient compensation not less frequently than quarterly, for risks and other expenses incurred, from any separate account that receives a guarantee authorized by this section.

(b) For the purposes of this section "approved policy, contract, or agreement" means a policy, contract, or agreement, the form of which has been approved by the commissioner, for issue or marketing in this state, and which in addition to meeting the requirements of all pertinent provisions of this code, meets the requirements of one of the following paragraphs:

(1) A policy, contract, or agreement meets the requirements of this paragraph if it satisfies and is expected to satisfy over the full life of the policy, contract, or agreement all of the following conditions:

(A) The weighted asset valuation reserve factor for the assets held in the separate account pursuant to the terms of the policy, contract, or agreement shall not exceed 2 percent.

(B) Guarantees of interest that extend beyond 14 months at any time shall be no greater than 3 percent per annum.

(C) Any reserves required because the contract value is less than the reserves required for the policy, contract, or agreement shall be maintained in a separate identified segment of the insurer's general account or otherwise segregated within the general account, or be held in a separate account all of the assets of which shall also be chargeable with liabilities arising out of other business of the insurer.

(D) In the event the policy, contract, or agreement provides for withdrawals (other than those resulting from an election by a participant under a pension, retirement, retirement medical benefit, or profit-sharing plan) of amounts other than on the conversion date or guarantee effective date, if any, the withdrawals shall be made in either of the following manners:

(i) In a lump sum in an amount not to exceed the market value.

(ii) In one or more contract value installments the present value of which is equal to or less than the market value of the aggregate withdrawal.

(2) A policy, contract, or agreement meets the requirements of this paragraph if it satisfies and is expected to satisfy over the full life of the policy, contract, or agreement all of the following conditions:

(A) The weighted asset valuation reserve factor for the assets held in the separate account pursuant to the terms of the policy, contract, or agreement shall not exceed 4 percent.

(B) The market value of the assets held in the separate account plus any reserves described in subparagraph (C) shall exceed the current aggregate liabilities determined by discounting the guaranteed benefit liability cashflows at the rate of 105 percent of the then current yields as quoted on United States Government issued securities having substantially similar maturities by at least the following applicable amount:

(i) For assets consisting of debt instruments, an amount equal to the asset valuation reserve "maximum reserve factor," provided, however, that the factor shall be reduced by 50 percent for the purpose of this calculation if the difference in durations of the assets and liabilities (as confirmed in the actuarial statement referred to in subparagraph (B) of paragraph (1) of subdivision (d)) are one year or less.

(ii) For assets that are not debt instruments, 20 percent.

(C) Any reserves required because the contract value is less than the reserves required for the policy, contract, or agreement shall be maintained in a separate identified segment of the insurer's general account or otherwise segregated within the general account, or be held in a separate account all of the assets of which shall also be chargeable with liabilities arising out of other business of the insurer.

(D) In the event the policy, contract, or agreement provides for withdrawals (other than those resulting from an election by a participant under a pension, retirement, retirement medical benefit, or profit-sharing plan) of amounts other than on the conversion date or guarantee effective date, if any, the withdrawals shall be made in either of the following manners:

(i) In a lump sum in an amount not to exceed the market value.

(ii) In one or more contract value installments the present value of which is equal to or less than the market value of the aggregate withdrawal.

(3) A policy, contract, or agreement meets the requirements of this paragraph if it satisfies and is expected to satisfy over the full life of the policy, contract, or agreement all of the following conditions:

(A) The guarantees contained in the policy, contract, or agreement applicable to the value of the assets held in the separate account by the insurer shall be based upon a publicly available interest rate series or an index of the aggregate market value of a group of publicly traded financial instruments, the interest rate series or index to be specified in the policy, contract, or agreement.

(B) Assets held in the separate account and the accumulations thereon shall be invested in accordance with the requirements of subdivision (a) of Section 10506 applicable to policies, contracts, or agreements governed by this section and shall comply with all of the following:

(i) Interest-bearing bonds, notes, or other obligations shall be publicly traded or meet applicable requirements of the United States Securities and Exchange Commission enabling the securities to be publicly traded.

(ii) Investments in capital stock shall be traded on an exchange regulated by the United States Securities and Exchange Commission, and investments in any futures contracts with respect thereto shall be traded on an exchange regulated under the Commodities Exchange Act (Title 7, United States Code).

(iii) Issuers of interest-bearing obligations held in the separate account must be rated by an independent nationally recognized financial rating agency approved by the commissioner or by the Securities Valuation Office of the National Association of Insurance Commissioners.

(iv) With respect to any investments in shares of investment companies registered under the federal Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.) the assets of the entity must qualify as investments directly allowed for separate accounts pursuant to the requirements of subdivision (a) of Section 10506 applicable to policies, contracts, or agreements governed by this section.

(v) The type, quality, industry diversification, prepayment characteristics, expected duration, and other factors pertaining to investments shall be set forth in the approved method of operations which shall contain a demonstration satisfactory to the commissioner that the investments are likely to achieve the performance of the applicable index or interest rate series.

(C) The period between the commencement date of the guaranty of the value of the assets held in the separate account and the conversion date, if any, shall not exceed five years.

(D) Any reserves required because the contract value is less than the reserves required for the policy, contract, or agreement shall be maintained in a separate identified segment of the insurer's general account or otherwise segregated within the general account, or be held in a separate account all of the assets of which shall also be chargeable with liabilities arising out of other business of the insurer.

(E) In the event the policy, contract, or agreement provides for withdrawals (other than those resulting from an election by a participant under a pension, retirement, retirement medical benefit, or profit-sharing plan) of amounts other than on the conversion date or guarantee effective date, if any, the withdrawals shall be made in either of the following manners:

(i) In a lump sum in an amount not to exceed the market value.

(ii) In one or more contract value installments the present value of which is equal to or less than the market value of the aggregate withdrawal.

(4) For the purposes of this section, "conversion date" means the date, if any, specified in the policy, contract, or agreement upon which the assets held pursuant to it shall be converted or applied to the purchase of annuities or returned to the owner of the

policy, contract, or agreement, or its designee.

(5) For the purposes of this section, the "asset valuation reserve factor" for each asset will be determined by the application of the asset valuation reserve factor, "maximum reserve factor," as contained in the National Association of Insurance Commissioners (NAIC) Life, Accident and Health Annual Statement Instructions (Instructions) and Valuation of Securities Manual, or if not contained therein, an asset valuation reserve factor of 20 percent shall be assigned. To determine the weighted asset valuation reserve factor, the asset valuation reserve factor shall be applied to the market value of each asset.

(6) For the purposes of this section, "market value" means the policy, contract, or agreement's proportionate share of the actual market value of the separate account at the time of withdrawal or if the determination of market value is by formula, the formula shall be set forth in the policy, contract, or agreement and shall be designed to closely match actual market value.

(7) For the purposes of this section, "guarantee effective date" means the date guarantees authorized by this section may result in payments from the general account to the separate account.

(c) No admitted life insurer may issue or market in this state, nor may any domestic life insurer issue or market anywhere, a policy, contract, or agreement, or coverage thereunder by certificate or otherwise, which contains the guarantees referred to in subdivision (a) unless both of the following apply:

(1) It has received from the commissioner authority to issue policies or contracts providing for the payment of variable benefits pursuant to subdivision (h) of Section 10506.

(2) The commissioner has determined after application by the insurer in the form and content as the commissioner may require, review of the insurer's applicable proposed method of operations relating to policies, contracts, or agreements containing the guarantees authorized by subdivision (a), payment of fees specified in Section 736 and consideration of the matters set forth in subdivision (h) of Section 10506, that the insurer is financially qualified to issue policies, contracts, or agreements that contain the guarantees referred to in subdivision (a) including by meeting or exceeding the financial standards in subdivision (d).

(d) (1) No admitted life insurer that has been financially qualified pursuant to subdivision (c) may issue or market or continue to issue or market in this state, nor may any domestic life insurer issue or market anywhere or continue to issue or market anywhere, policies, contracts, or agreements, or coverage thereunder by certificate or otherwise, providing the guarantees referred to in subdivision (a) unless all of the following apply:

(A) It has at least one billion dollars (\$1,000,000,000) of admitted assets or at least one hundred million dollars (\$100,000,000) of aggregate capital and surplus.

(B) It annually complies with the requirement to furnish an actuarial statement as a part of or in addition to the statement required by Section 10489.15, provided the actuarial statement is in form and substance satisfactory to the commissioner. This actuarial statement shall meet all the following requirements:

(i) The statement shall state that, after taking into account risk charges payable from the assets of the separate account with respect to the guarantee, the assets of the separate account, together with any reserves in excess of the account value, make good and sufficient provision for the liabilities of the insurer with respect thereto.

(ii) The statement shall provide an opinion of the reasonableness and sufficiency of the pricing of any general account guarantees and any other fees for administration paid to the general account from the separate account.

(iii) The statement shall be supported by a memorandum by a qualified actuary, also in form and substance satisfactory to the commissioner, that describes the calculations made in support of the actuarial statement and includes the assumptions used in the calculations.

(C) Its ratio of aggregate capital and surplus to its aggregate liabilities is not lower than 75 percent of that ratio as of the December 31 prior to its receiving financial qualification from the commissioner except as allowed under paragraph (4) of subdivision (d).

For the purposes of this section, "capital and surplus" includes capital and surplus plus the asset valuation reserve and one-half of the liability for dividends, all as reflected on the most recent financial statement on file with the commissioner. "Liabilities" means the total liabilities as reflected on the financial statement excluding therefrom liabilities for policies, contracts, and agreements issued in connection with separate accounts, liabilities in connection with contracts issued pursuant to this section and excluding both of the following:

(i) The liability for any asset valuation reserve.

(ii) One-half the liability for dividends.

(2) If the commissioner, following notice to the insurer and a hearing, determines that an insurer that has received financial qualification pursuant to subdivision (c) no longer maintains the financial strength needed to initially receive the qualification, the commissioner may issue an order requiring the insurer to cease issuing new policies, contracts, or agreements providing for guarantees contemplated by subdivision (a).

(3) In the event an insurer that has received financial qualification pursuant to subdivision (c) determines that it does not meet the requirements of subdivision (d), it shall promptly comply with paragraph (2) as if an order had been issued by the commissioner after notice and hearing, and within 45 days, notify the commissioner in writing at the place designated by the commissioner that it has ceased to meet the requirements specified in the written notice.

(4) In the event the insurer thereafter meets or exceeds all of the requirements of subdivision (d), it may notify the commissioner at the place designated by the commissioner, in writing, and upon the passage of 45 days following receipt by the commissioner of the notice, may resume issuing policies, contracts, or agreements that provide for guarantees contemplated by subdivision (a) as long as it meets the requirements of subdivision (d). However, if the insurer believes that the resumption of the issuance of the policies, contracts, or agreements that provide for the guarantees contemplated by subdivision (a) would not be hazardous to its policyholders or the citizens of California, even though it does not meet the requirements specified in subparagraph (C) of paragraph (1), the insurer shall include in the notice a demonstration that the issuance of policies, contracts, or agreements containing the guarantees referred to in subdivision (a) is not hazardous to its policyholders or the citizens of California. Within the 45-day period, the commissioner may issue an order containing the requirements of paragraph (2) if, in the commissioner's opinion, any of the requirements of subdivision (d) are not met, or resumption would violate any provision of this code or, resumption may be hazardous to the insurer, policyholders, creditors, or the public. The failure to issue an order within 45 days shall not be deemed an approval of the activities. The order shall specify the grounds upon which the commissioner is basing the order. The insurer may, within 10 days of the order, request a hearing. The hearing shall be a private hearing and shall commence not less than 10 days, nor more than 20 days, after the request for hearing is served on the commissioner.

(e) Policies, contracts, and agreements referred to in subdivision (a), that are not otherwise subject to filing under applicable law and regulation, shall be filed, before being marketed or issued in this state, by the insurer with the commissioner. If the commissioner finds that the policies, contracts, or agreements submitted pursuant to subdivision (a) contemplate practices that are unfair or unreasonable or otherwise inconsistent with the provisions of this code, he or she may disapprove of the forms of policies, contracts, or agreements specifying in what regard the policies, contracts, or agreements are unfair or unreasonable or otherwise inconsistent with the provisions of this code.

(f) As an alternative to the filing and approval procedure set forth in subdivision (e), an insurer that satisfies eligibility criteria specified in the bulletin authorized by subdivision (g) may file with the commissioner the proposed form of the policy, contract, or agreement, together with an officer's certificate, accompanied by an actuarial certification and demonstration, and other supporting material, all in accordance with procedures set forth in the bulletin authorized by subdivision (g). An insurer may issue and deliver a policy, contract, or agreement the day following approval by the commissioner of a filing under this subdivision. Absent explicit approval, an insurer may, no sooner than 30 working days after the filing of the policy, contract, or agreement and all required supporting documentation, issue and deliver any policy, contract, or agreement that has been filed pursuant to this subdivision if the commissioner has not notified the insurer in writing that the filing lacks the required documentation or that he or she objects to the filing upon grounds sufficient to disapprove the policy, contract, or agreement. The bulletin shall set forth procedures providing the insurer an opportunity to respond to any objections. If the commissioner finds that the officer's certificate or the actuarial certification or demonstration filed in support of the policy, contract, or agreement is false or incorrect, the commissioner may, in addition to taking any other lawful measures, including suspension of authority to use the policy, contract, or agreement, declare the insurer ineligible to utilize the alternative procedure authorized by this subdivision for a period not to exceed three years from the date of the filing of the policy, contract, or agreement. The commissioner may summarily suspend the use of any policy, contract, or agreement used by the insurer pursuant to this subdivision on any grounds sufficient to disapprove the policy, contract, or agreement, or if the filing fails to include the required documents. This suspension may be prospective only. Suspension of use of a policy, contract, or agreement shall be in writing and shall specify the reasons for the suspension. Unless the commissioner in the suspension order or subsequent thereto specifies a later effective date for the suspension, any suspension shall be effective on the day following the receipt of the suspension order by the insurer. An insurer affected by any suspension, issued pursuant to this subdivision, of a policy, contract or agreement may refile the policy, contract, or agreement with the commissioner pursuant to subdivision (e). The commissioner may suspend or discontinue filings of policies, contracts, or agreements under this subdivision at any time upon notice to affected insurers. Any filing by an insurer of a policy, contract, or agreement under this subdivision that is not accepted by the commissioner may be filed by the insurer pursuant to subdivision (e).

(g) The commissioner may issue, and amend from time to time thereafter, as he or she deems appropriate, a bulletin setting forth reasonable requirements for insurers that issue policies, contracts, or agreements referred to in subdivision (a) relating to all of the following:

(1) The reserves to be maintained by insurers for those policies, contracts, or agreements.

(2) The accounting and reporting of funds credited under, assets held with respect to, and transfers to and from the insurer's general account and separate accounts pertaining to, those policies, contracts, or agreements.

(3) The disclosure of information to be given to holders and prospective holders of those policies, contracts, or agreements.

(4) The qualification of persons selling those policies, contracts, or agreements on behalf of the insurers.

(5) The filing of those policies, contracts, or agreements with the commissioner.

(6) The filing with the commissioner of specified sales and financial information pertaining to those policies, contracts and agreements.

(7) The eligibility criteria and procedure for filing under subdivision (f).

(8) Other matters relating to those policies, contracts, and agreements as the commissioner considers necessary, proper, and advisable that are not inconsistent with this section. This bulletin shall have the same force and effect, and may be enforced by the commissioner to the same extent and degree, as regulations issued by the commissioner until the time that the commissioner issues additional or amended regulations.

(h) The authority granted in this section is in addition to the authority granted to life insurers by other provisions of this code and the requirements of this section shall not contravene that authority. No policy, contract, or agreement that constitutes investment return assurance pursuant to Section 10203.10 or Section 10507 may be issued pursuant to this section.

(i) Guarantees authorized by this section may only be made in connection with policies, contracts, or agreements issued to an owner that is not a natural person, and is an "accredited investor" as defined in Regulation D-Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933, 17 Code of Federal Regulations Section 230.501 et seq., as promulgated by the United States Securities and Exchange Commission, in transactions where the aggregate single premium or deposit for all policies, contracts, or agreements (excluding certificates issued under a group or master policy) issued to the owner containing guarantees authorized by this section is at least one million dollars (\$1,000,000). Notwithstanding the foregoing, an insurer may issue policies, contracts, or agreements qualifying under paragraph (1) of subdivision (b) above, to a pension, retirement, or retirement medical benefit or profit-sharing plan reasonably expected to receive contributions in excess of two hundred fifty thousand dollars (\$250,000) within the first 12 months following issuance of the policy, contract, or agreement and that has more than 10 participants. Policies, contracts, or agreements providing coverage in this state, by certificate or otherwise, that contain guarantees authorized by this section issued on a group basis shall be issued only to groups referred to in Chapter 2 (commencing with Section 10200) of Part 2 of Division 2.

(Amended by Stats. 2003, Ch. 352, Sec. 1. Effective January 1, 2004.)

10506.5. (a) For the purposes of this section, "guaranteed living benefit" means a benefit in a variable annuity or a variable life insurance contract providing that one or more benefit amounts available to a living contractholder, under specified conditions, will be enhanced should it fall below a given level, in the absence of the guaranteed living benefit.

(b) An insurer may deliver or issue for delivery contracts containing, or riders to variable contracts providing, guaranteed living benefits if all the following requirements are met:

(1) The insurer is authorized to deliver, or issue for delivery, variable insurance products in this state.

(2) The insurer meets the requirements of paragraph (1) of subdivision (d) of Section 10506.4.

(3) The commissioner has issued a bulletin setting forth the terms and conditions under which variable contracts containing, or riders to variable contracts providing, guaranteed living benefits may be issued or delivered in this state.

(4) The variable contract or rider meets the terms and conditions for guaranteed living benefits established by the commissioner and set forth in the bulletin described in paragraph (3) and the insurer desiring to issue the variable contract or rider has satisfied the requirements set forth in Section 2529 of Title 10 of the California Code of Regulations.

(c) The bulletin described in paragraph (3) of subdivision (b) may include provisions covering requirements similar to those included in subdivision (f) of Section 10506.4. The bulletin shall have the same force and effect, and may be enforced by the commissioner to the same extent and degree as regulations issued by the commissioner until the time that the commissioner issues additional or amended regulations pertaining to guaranteed living benefits.

(d) An insurer may not deliver or issue for delivery variable contracts containing, or riders to variable contracts providing, guaranteed living benefits except pursuant to this section. No policy, contract, rider, or agreement that constitutes investment return assurance pursuant to Section 10203.10 or 10507, or guarantee pursuant to Section 10506.4, may be issued pursuant to this section.

(Amended by Stats. 2001, Ch. 159, Sec. 149. Effective January 1, 2002.)

