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Code: Section:

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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 6.5. Portfolio Indexing [10507.5- 10507.5.] (*Article 6.5 added by Stats. 1995, Ch. 419, Sec. 2.*)

10507.5. (a) An insurer may deliver or issue for delivery one or more policies, contracts, or agreements that establish the insurer's obligations under the policies, contracts, or agreements by reference to a portfolio of assets that is not owned by or possessed by the insurer, if the following requirements are met:

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

(2) The insurer has at least one billion dollars (\$1,000,000,000) in admitted assets or one hundred million dollars (\$100,000,000) in capital and surplus, as reflected by the most recent financial statements on file with the commissioner. 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.

(b) 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.

(c) As an alternative to the filing and approval procedure set forth in subdivision (b), if a bulletin is issued by the commissioner pursuant to subdivision (d), an insurer that satisfies eligibility criteria specified in that bulletin 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 (d). 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 authorized in subdivision (d) 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 (b). 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 (b).

(d) 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 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 (c).
- (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.

(e) Upon completion of the determination of qualification required by subdivision (a), and, whether authorization to issue policies, contracts, or agreements referred to in subdivision (a) is granted or denied, the commissioner shall require the payment of the fee specified in Section 736 for the determination of qualification.

(Amended by Stats. 2003, Ch. 352, Sec. 2. Effective January 1, 2004.)