CHAPTER 2751
DEPARTMENT OF COMMERCE
MODIFIED GUARANTEED ANNUITIES

2751.0100 PURPOSE.

This chapter regulates modified guaranteed annuities, a new form of variable annuity, the assets of which are placed in a separate account.

Statutory Authority: *MS s 45.023; 61A.20*

History: *14 SR 2052*

2751.0200 AUTHORITY.

This chapter is adopted pursuant to the authority granted to the commissioner of the Department of Commerce in Minnesota Statutes, section 61A.20.

Statutory Authority: *MS s 45.023; 61A.20*

History: *14 SR 2052*

2751.0300 APPLICABILITY AND SCOPE.

This chapter applies to:

A. the qualifications of agents to be authorized to sell modified guaranteed annuity contracts in this state;

B. the qualification of insurers to be authorized to issue these contracts;

C. the required contract form and provisions for issuance of this coverage in this state; and

D. the manner in which separate account assets, supporting these contracts, are to be maintained and reported.

Statutory Authority: *MS s 45.023; 61A.20*

History: *14 SR 2052*

2751.0400 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of this chapter, the terms defined in this part have the meanings given them.

Subp. 2. **Commissioner.** "Commissioner" means the commissioner of the Department of Commerce of the state of Minnesota.

Subp. 3. **Interest credits.** "Interest credits" means all interest that is credited to the contract.

Subp. 4. **Modified guaranteed annuity.** "Modified guaranteed annuity" is a deferred annuity contract, the underlying assets of which are held in a separate account, and the values of which are guaranteed if held for specified periods. The annuity contains nonforfeiture values based upon a market-value adjustment formula if held for shorter periods. This formula may, or may not, reflect the value of assets held in a separate account during the period, or periods, when the contract holder can surrender the contract.

Subp. 5. **NAIC.** "NAIC" means the National Association of Insurance Commissioners.

Subp. 6. **Separate account.** "Separate account" means a separate account established pursuant to Minnesota Statutes, sections 61A.13 to 61A.21 or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

Statutory Authority: *MS s 45.023; 61A.20*

History: *14 SR 2052*

2751.0500 AUTHORITY OF INSURERS.

Subpart 1. **Application.** The following requirements in this part apply to all insurers seeking authority to issue modified guaranteed annuities in this state.

Subp. 2. **Licensing and approval to do business.** No company shall deliver or issue for delivery modified guaranteed annuities within this state unless it is licensed or organized to do a life insurance or annuity business in their state pursuant to Minnesota Statutes, section 60A.07, and the commissioner is satisfied that its condition or method of operation in connection with the issuance of these 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 the history and financial condition of the company; the character, responsibility, and fitness of the officers and directors of the company; and the law and regulation under which the company is authorized in the state of domicile to issue these annuities.

If the company is a subsidiary of an admitted life insurance company, or affiliated with the company by common management or ownership, it may be considered by the commissioner to have satisfied the requirements of this subpart, if either it or the admitted life company satisfies the requirements of this subpart. Companies licensed and having a satisfactory record of doing business in this state for a period of at least three years may be considered by the commissioner to have satisfied the requirements of this subpart.

Before any company delivers or issues for delivery modified guaranteed annuities within this state, it shall submit to the commissioner a general description of the kinds of these annuities it intends to issue; if requested by the commissioner, a copy of the statutes and regulations of its state of domicile under which it is authorized to issue these annuities; and if requested by the commissioner, biographical data with respect to officers and directors of the company on the NAIC uniform biographical data form.

Subp. 3. **Use of sales materials.** An insurer authorized to transact modified guaranteed annuity business in this state shall not use any sales material, advertising material, or descriptive literature or other materials of any kind in connection with its modified guaranteed annuity business in this state that is false, misleading, deceptive, or inaccurate.

Illustrations of benefits payable under any modified guaranteed annuity shall not include projections of past investment experience into the future or attempted predictions of future investment experience. Hypothetical assumed interest credits may be used to illustrate possible levels of benefits.

Before any insurer delivers or issues for delivery any modified guaranteed annuity contract in this state, the commissioner may require the filing of a copy of any prospectus or other sales material to be used in connection with the marketing of that insurer's modified guaranty annuity contract. The sales material must clearly illustrate that there can be both upward and downward adjustments due to the application of the market value adjustment formula in determining nonforfeiture benefits.

Subp. 4. **Reports.** An insurer authorized to transact the business of modified guaranteed annuities in this state shall submit to the commissioner:

A. a separate account annual statement that includes the business of its modified guaranteed annuities; and

B. additional information concerning its modified guaranteed annuity operations or separate accounts the commissioner considers necessary.

Subp. 5. **Authority of commissioner to disapprove.** Any material required to be filed with and approved by the commissioner shall be disapproved by the commissioner if the commissioner finds that it does not comply with the standards established by this chapter.

Statutory Authority: *MS s 45.023; 61A.20*

History: *14 SR 2052*

2751.0600 FILING OF CONTRACTS.

The filing requirements applicable to modified guaranteed annuities are those filing requirements otherwise applicable under existing statutes and rules of this state with respect to individual and group life insurance and annuity contract form filings, to the extent appropriate. Filings shall include a demonstration in a form satisfactory to the commissioner that the nonforfeiture provisions of the contract comply with part 2751.0700, subpart 1.

Statutory Authority: *MS s 45.023; 61A.20*

History: *14 SR 2052*

2751.0700 CONTRACT REQUIREMENTS.

Subpart 1. **Mandatory contract benefit and design requirements.** The following benefit and design requirements apply to a modified guaranteed annuity contract delivered or issued for delivery in this state:

A. The contract must contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar amount of nonforfeiture benefits.

B. If the contract calls for the payment of periodic stipulated payments, it must contain in substance the following provisions:

(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 any payment received during the period of grace shall be applied to produce the values under the contract arising therefrom; and

(2) a provision that, at any time within one year 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 upon payment to the insurer of such overdue payments as required by contract, and of all indebtedness to the insurer on the contract, including interest. The contract may include a statement of the basis for determining the date as of which the amount to cover these overdue payments and indebtedness shall be applied to produce the values under the contract arising therefrom.

C. The market-value adjustment formula, used in determining nonforfeiture benefits, must be stated in the contract, and must be applicable for both upward and downward adjustments. When a contract is filed, it must be accompanied by an actuarial statement indicating the basis for the market-value adjustment formula and that the formula provides reasonable equity to both the contract holder and the insurance company.

D. If and to the extent so provided under the applicable contracts, that portion of the assets of any 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.

E. The application for a modified guaranteed annuity shall prominently set forth immediately preceding the signature line, language denoting that amounts payable under the contract are subject to a market value adjustment prior to a date or dates specified in the contract.

Subp. 2. **Nonforfeiture benefits.** The following nonforfeiture benefit requirements apply to a modified guaranteed annuity contract delivered or issued for delivery in this state:

A. This subpart does not apply to any:

(1) reinsurance;

(2) group annuity contract purchased in connection with one or more retirement plans or plans of deferred compensation established or maintained by or for one or more employers, including partnerships or sole proprietorships, employee organizations, or any combination thereof, other than plans providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code of 1986, as amended through December 31, 1988;

(3) premium deposit fund;

(4) deferred annuity contract after annuity payments have commenced;

(5) reversionary annuity; or

(6) contract which is to be delivered outside this state through an agent or other representative of the company issuing this contract.

B. The contract must contain in substance the provisions of subitems (1) and (2).

(1) Upon cessation of payment of considerations under a contract, the insurer will grant a paid-up annuity benefit on a plan described in the contract that complies with item E. The description will include a statement of the mortality table, if any, and guaranteed or assumed interest rates used in calculating annuity payments.

(2) If a contract provides for a lump sum settlement at maturity, or at any other time, upon surrender of the contract at or prior to the commencement of any annuity payments, the insurer will pay in lieu of any paid-up annuity benefit a cash surrender benefit as described in the contract that complies with item F. The contract may provide that the insurer may defer payment of the cash surrender benefit for a period of six months after demand.

C. The minimum values as specified in this part of any paid-up annuity, cash surrender, or death benefits available under a modified guaranteed annuity contract must be based upon nonforfeiture amounts meeting the requirements of this item.

The unadjusted minimum nonforfeiture amount on any data prior to the annuity commencement date must be an amount equal to the percentages of net considerations, as specified in item D, increased by the interest credits allocated to the percentage of net considerations, which shall be reduced to reflect the effect of the following:

(1) any partial withdrawals from or partial surrender of the contract;

(2) the amount of any indebtedness on the contract, including interest due and accrued;

(3) an annual contract charge not less than zero and equal to (a) the lesser of $30 and two percent of the end of year contract value less (b) the amount of any annual contract charge deducted from any gross considerations credited to the contract during the contract year; and

(4) a transaction charge of $10 for each transfer to another investment division within the same contract.

The minimum nonforfeiture amount shall be the unadjusted minimum nonforfeiture amount adjusted by the market-value adjustment formula contained in the contract.

The annual contract charge of $30 and the transaction charge of $10 referenced will be adjusted to reflect changes in the consumer price index for all urban consumers (CPI-U) in accordance with item D. The CPI-U is published by the Bureau of Labor Statistics, United States Department of Labor, and is incorporated by reference. It is subject to frequent change and is available from the Minitex interlibrary loan system.

Guaranteed interest credits in each year of any period of time for which interest credits are guaranteed shall be reasonably related to the average guaranteed interest credits over that period of time.

D. The percentages of net considerations used to define the minimum nonforfeiture amount in item C must meet the requirements of this item.

(1) With respect to contracts providing for periodic considerations, the net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of $30 and less a collection charge of $1.25 per consideration credited to the contract during that contract year and less any charges for premium taxes. The percentages of net considerations shall be 65 percent for the first contract year and 87.5 percent for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be 65 percent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was 65 percent.

(2) With respect to contracts providing for a single consideration, the net consideration used to define the minimum nonforfeiture amount shall be the gross consideration less a contract charge of $75 and less any charge for premium taxes. The percentage of the net consideration shall be 90 percent.

The annual contract charge of $30, the collection charge of $1.25 per collection, and the single consideration contract charge of $75 referred to in this subitem, will be adjusted to reflect changes in the CPI-U in accordance with item 3.

(3) The above contract charges shall be multiplied by the ratio of (a) the CPI-U for June of the calendar year preceding the date of filing, to (b) the CPI-U for June 1979.

E. Any paid-up annuity benefit available under a modified guaranteed annuity contract shall be that its present value on the annuity commencement date is at least equal to the minimum nonforfeiture amount on that date. The present value shall be computed using the mortality table, if any, and the guaranteed or assumed interest rates used in calculating the annuity payments.

F. For modified guaranteed annuity contracts that provide cash surrender benefits, the cash surrender benefit at any time prior to the annuity commencement date shall not be less than the minimum nonforfeiture amount next computed after the request for surrender is received by the insurer. The death benefit under the contracts shall be at least equal to the cash surrender benefit.

G. Any modified guaranteed annuity contract that does not provide cash surrender benefits, or does not provide death benefits at least equal to the minimum nonforfeiture amount, prior to the annuity commencement date shall include a statement in a prominent place in the contract that these benefits are not provided.

H. Notwithstanding the requirements of this part, a modified guaranteed annuity contract may provide under the situations specified below that the insurer, at its option, may cancel the annuity and pay the contract holder the larger of the unadjusted minimum nonforfeiture amount and the minimum nonforfeiture amount, and by this payment be released of any further obligation under the contract:

(1) if at the time the annuity becomes payable, the larger of the unadjusted minimum nonforfeiture amount and the minimum nonforfeiture amount is less than $2,000, or would provide an income the initial amount of which is less than $20 per month; or

(2) if before the time the annuity becomes payable under a periodic payment contract no considerations have been received under the contract for a period of two full years and both (a) the total considerations paid before the period, reduced to reflect any partial withdrawals from or partial surrenders of the contract, and (b) the

larger of the unadjusted minimum nonforfeiture amount and the minimum nonforfeiture amount is less than $2,000.

I. For any modified guaranteed annuity contract that provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of item B, additional benefits payable:

(a) in the event of total and permanent disability;

(b) as reversionary annuity or deferred reversionary annuity benefits; or

(c) as other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits that may be required by this part. The inclusion of additional benefits is not required in any paid-up benefits, unless additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits.

Statutory Authority: *MS s 45.023; 61A.20*

History: *14 SR 2052*

2751.0800 RESERVE LIABILITIES.

Reserve liabilities for modified guaranteed annuities shall be established in accordance with actuarial procedures that recognize:

A. that assets of the separate account are based on market values;

B. the variable nature of benefits provided; and

C. any mortality guarantees.

As a minimum, the separate account liability will equal the surrender value based upon the market-value adjustment formula contained in the contract. If that liability is greater than the market value of the assets, a transfer of assets will be made into the separate account so that the market value of the assets at least equals that of the liabilities. Also, any additional reserve that is needed to cover future guaranteed benefits will also be set up by the valuation actuary.

The market-value adjustment formula, the interest guarantee, and the degree to which projected cash flow of assets and liabilities are matched must also be considered. Each year, the valuation actuary must provide an opinion on whether the assets in the separate account are adequate to provide all future benefits that are guaranteed.

Statutory Authority: *MS s 45.023; 61A.20*

History: *14 SR 2052*

2751.0900 SEPARATE ACCOUNTS.

Subpart 1. **Establishment and administration.** Any domestic insurer issuing modified guaranteed annuities shall establish one or more separate accounts pursuant to Minnesota Statutes, section 61A.14.

Subp. 2. **Amounts.** The insurer shall maintain in each separate account assets with a market or other value meeting the standards set out in Minnesota Statutes, section 61A.14, at least equal to the valuation reserves and other contract liabilities respecting such account.

Subp. 3. **Valuation of assets.** Investments of the separate account shall be valued at their market value on the date of valuation, or at amortized cost if it approximates market value, or pursuant to standards contained in Minnesota Statutes, section 61A.14.

Subp. 4. **Applicability of other laws.** Unless otherwise approved by the commissioner, separate accounts relating to modified guaranteed annuities will be subject to investment laws applicable to the insurer's general asset account.

Statutory Authority: *MS s 45.023; 61A.20*

History: *14 SR 2052*

2751.1000 REPORTS TO POLICYHOLDERS.

Companies shall annually provide their contract holders with a report showing both the account value and the cash surrender value. The report must clearly indicate that the account value is prior to the application of any surrender charges or market value adjustment formula. It must also specify the surrender charge and market value adjustment used to determine the cash surrender value.

Statutory Authority: *MS s 45.023; 61A.20*

History: *14 SR 2052*

2751.1100 FOREIGN COMPANIES.

If the law or regulation in the place of domicile of a foreign company provides a degree of protection to the policyholders and the public which is substantially similar to that provided by this chapter, the commissioner to the extent the commissioner considers appropriate may consider compliance with that law or regulation as compliance with this chapter.

Statutory Authority: *MS s 45.023; 61A.20*

History: *14 SR 2052*

2751.1200 AUTHORIZATION OF AGENTS.

No person, corporation, partnership, or other legal entity may sell or offer for sale in this state any modified guaranteed annuity contract unless licensed to sell variable annuities under the insurance laws of this state.

Statutory Authority: *MS s 45.023; 61A.20*

History: *14 SR 2052*

2751.1300 RESTRICTION ON ISSUANCE.

Notwithstanding parts 2751.0100 to part 2751.1200, no modified guaranteed annuity shall be issued to any Minnesota resident. The commissioner may by order authorize the sale of modified guaranteed annuities to Minnesota residents if the commissioner determines that the order is in the public interest.

Statutory Authority: *MS s 45.023; 61A.20*

History: *14 SR 2052*