

**State of Utah**  
**Administrative Rule Analysis**  
Revised November 2021

<b>NOTICE OF PROPOSED RULE</b>		
<b>TYPE OF RULE:</b> New ___; Amendment ___; Repeal ___; Repeal and Reenact <u>x</u>		
<b>Title No. - Rule No. - Section No.</b>		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R590-133</b>	<b>Filing ID (Office Use Only)</b>
<b>Changed to Admin. Code Ref. (R no.):</b>	<b>R</b>	

**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	Suite 2300	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S. 2700 W.	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R590-133. Variable Contracts
<b>3. Purpose of the new rule or reason for the change</b> (Why is the agency submitting this filing?):
The rule is being changed in compliance with Executive Order 2021-12. During the review of this rule, the department discovered a number of minor issues that needed to be amended.
<b>4. Summary of the new rule or change</b> (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
The majority of the changes are being done to fix style issues to bring the rule text more in line with current rulewriting standards. Other changes make the language of the rule more clear, update the Severability section to use the department's current language, and remove the Penalties section because penalties are already provided for in statute. The changes do not add, remove, or change any regulations or requirements.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the department functions.
<b>B) Local governments:</b>
There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature, and will not affect non-small businesses.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses. — Jonathan T. Pike, Insurance Commissioner

**6. A) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**B) Department head approval of regulatory impact analysis:**

The Commissioner of Insurance, Jonathan T. Pike, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 31A-2-201	Section 31A-20-106	

**Incorporations by Reference Information**

(If this rule incorporates more than two items by reference, please include additional tables.)

**8. A) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	<b>First Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Date Issued</b>	

<b>Issue, or version</b>	
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**B) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	<b>Second Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Date Issued</b>	
<b>Issue, or version</b>	

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until** (mm/dd/yyyy): 05/02/2022

**B) A public hearing (optional) will be held:**

<b>On</b> (mm/dd/yyyy):	<b>At</b> (hh:mm AM/PM):	<b>At</b> (place):

**10. This rule change MAY become effective on** (mm/dd/yyyy): 05/09/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

**To the agency:** Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin* and delaying the first possible effective date.

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date</b> (mm/dd/yyyy):	03/09/2022
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**R590. Insurance, Administration.**

**R590-133. Variable Contracts.**

**~~R590-133-1. Authority.~~**

~~This rule is adopted pursuant to Subsection 31A-2-201(3) which authorizes rules to implement Title 31A and Subsection 31A-20-106(1)(b)(ii) that gives the commissioner authority to regulate by rulemaking the issuance and sale of variable contracts.~~

**~~R590-133-2. Definition.~~**

~~In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purposes of this rule:~~

~~A. "Variable contract," means a policy or contract that provides life insurance or annuity benefits that may vary according to the investment experience of any separate account or accounts maintained by the insurer as to the policy or contract, as provided for in Sections 31A-5-217 and 31A-18-102.~~

~~B. "Variable contract producer," means a licensed producer with a variable contracts line of authority.~~

**~~R590-133-3. Qualification of Insurers to Issue Variable Contracts.~~**

~~No insurer may deliver or issue for delivery a variable contract within this state unless the insurer is licensed to do a variable life, annuity, or both, business in this state in accordance with Section 31A-20-106.~~

**~~R590-133-4. Governance of Separate Accounts.~~**

~~All separate accounts shall be governed specifically by Sections 31A-5-217; 31A-5-217.5; 31A-18-102; 31A-20-106; 31A-21-301 and 31A-22-411 and this rule. They shall be governed generally by the provisions of the code applicable to life insurance companies not explicitly exempted by the code.~~

#### **R590-133-5. Required Reports.**

\_\_\_\_\_ A. An insurer issuing an individual variable contract providing benefits in variable amounts shall mail to the contract holder at least once in each contract year after the first at the last address known to the insurer, a statement or statements reporting the investments held in the separate account.

\_\_\_\_\_ B. The insurer shall submit annually to the commissioner a statement of the business of its separate account or accounts in a form as may be prescribed by the National Association of Insurance Commissioners.

\_\_\_\_\_ C. An insurer issuing an individual variable contract shall mail to the contract holder, at least once in each contract year after the first, at the last address known to the insurer, a statement reporting as of a date not more than four months previous to the date of mailing:

\_\_\_\_\_ (1) in the case of an annuity contract under which payments have not yet commenced:

\_\_\_\_\_ (a) the number of accumulation units credited to the contract and the dollar value of a unit; or

\_\_\_\_\_ (b) the value of the contract holder's account; and

\_\_\_\_\_ (2) in the case of a life insurance policy, the dollar amount of the death benefit.

#### **R590-133-6. Foreign Insurers.**

\_\_\_\_\_ If the law or rule in the place of domicile of a foreign insurer provides a degree of protection to the contract holders and the public that is substantially equal to that provided by this rule, the commissioner, to the extent deemed appropriate in the commissioner's discretion, may consider compliance with the law or rule as compliance with this rule.

#### **R590-133-7. Licensing of Variable Contract Producers.**

\_\_\_\_\_ A. No producer is eligible to sell, offer for sale, or make a recommendation to purchase or terminate a variable contract unless licensed as a variable contract producer prior to making a solicitation, sale, or recommendation.

\_\_\_\_\_ B. The licensing as a variable contract producer may not become effective until satisfactorily completing the following requirements:

\_\_\_\_\_ (1) be licensed in the line of life insurance;

\_\_\_\_\_ (2) evidence that the applicant has previously passed Financial Industry Regulatory Authority examinations series six or seven and 63. Approval of registration to take the examinations is not acceptable;

\_\_\_\_\_ (3) evidence of being Utah approved from the Financial Industry Regulatory Authority, Central Registration Depository;

\_\_\_\_\_ (4) if the applicant is a non-resident, requirements of the state of domicile may be acceptable; and

\_\_\_\_\_ (5) every application for a license as a variable contract producer shall be accompanied by the appropriate fee designated in the fee schedule adopted by the legislature.

#### **R590-133-8. Additional Provisions Applicable to Variable Contract Producers.**

\_\_\_\_\_ A. A person licensed in this state as a variable contract producer shall immediately report to the commissioner:

\_\_\_\_\_ (1) any suspension or revocation of the variable contract producer's license or life insurance producer's license in any other state or territory of the United States;

\_\_\_\_\_ (2) the imposition of any disciplinary sanction imposed upon the producer by any national securities exchange, or national securities association, or any federal, or state or territorial agency with jurisdiction over securities or contracts on a variable basis;

\_\_\_\_\_ (3) any judgment or injunction entered against the producer on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or violation of any insurance or securities law or rule.

\_\_\_\_\_ B. The commissioner may reject any application or suspend or revoke or refuse to renew any variable contract producer's license upon any ground that would bar the application or the producer from being licensed to sell life insurance contracts in this state. The statutes governing any proceeding relating to the suspension or revocation of a life insurance producer's license shall also govern any proceeding for suspension or revocation of a variable contract producer's license.

\_\_\_\_\_ C. Renewal of a variable contract producer's license shall follow the same procedure established for renewal of a life insurance producer's license.

#### **R590-133-9. Disclosure.**

\_\_\_\_\_ A. The following information shall be furnished to an applicant for a variable contract prior to execution of the application:

\_\_\_\_\_ (1) a summary description of the insurer and its principal activities;

\_\_\_\_\_ (2) a summary explanation in non-technical terms of the principal variable features of the contract and of the manner in which any variable benefits reflect the investment experience of a separate account;

\_\_\_\_\_ (3) a brief description of the investment policy for the separate account with respect to the contract;

\_\_\_\_\_ (4) a list of investments in the separate account as of a date not earlier than the end of the last year for which an annual statement has been filed with the commissioner of the state of domicile; and

\_\_\_\_\_ (5) summary financial statements of the insurer and the separate account based upon the last annual statement filed with the commissioner, except that for a period of four months after the filing of any annual statement, the summary required may be based upon the annual statement immediately preceding the last annual statement filed with the commissioner.

\_\_\_\_\_ B. The insurer may include additional information as the insurer deems appropriate.

#### **R590-133-10. Penalties.**

\_\_\_\_\_ A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

**R590-133-11. Severability.**

~~\_\_\_\_\_ If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provisions may not be affected.]~~

**R590-133-1. Authority.**

~~\_\_\_\_\_ This rule is promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-20-106.~~

**R590-133-2. Purpose and Scope.**

~~\_\_\_\_\_ (1) The purpose of this rule is to regulate the issuance and sale of a variable contract.~~

~~\_\_\_\_\_ (2) This rule applies to an insurer or producer offering variable life and annuity insurance business in this state.~~

**R590-133-3. Definitions.**

~~\_\_\_\_\_ Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:~~

~~\_\_\_\_\_ (1) "Variable contract" means a life insurance policy or an annuity contract that provides a benefit that may vary according to the investment experience of any separate account the insurer establishes and maintains under Sections 31A-5-217 and 31A-18-102.~~

~~\_\_\_\_\_ (2) "Variable contract producer" means a licensed producer with a variable contracts line of authority.~~

**R590-133-4. Governance of Separate Accounts.**

~~\_\_\_\_\_ Each separate account is governed by Sections 31A-5-217, 31A-5-217.5, 31A-18-102, 31A-20-106, 31A-21-301, 31A-22-411, and this rule.~~

**R590-133-5. Required Reports.**

~~\_\_\_\_\_ (1) An insurer issuing an individual variable contract shall deliver to the contract holder at least once in each contract year after the first contract year a report of the investments held in the separate account.~~

~~\_\_\_\_\_ (2) An insurer issuing an individual variable contract shall deliver to the contract holder at least once in each contract year after the first contract year a report of the following information as of a date no earlier than four months before the statement's delivery date:~~

~~\_\_\_\_\_ (i) for an annuity contract when payments have not started:~~

~~\_\_\_\_\_ (A) the number of accumulation units credited to the contract and the dollar value of a unit; or~~

~~\_\_\_\_\_ (B) the contract holder's account value; and~~

~~\_\_\_\_\_ (ii) for a life insurance policy, the death benefit dollar amount.~~

~~\_\_\_\_\_ (3) An insurer shall submit annually to the commissioner a statement regarding the business of the insurer's separate account by the date and in a form prescribed by the NAIC.~~

**R590-133-6. Foreign Insurers.**

~~\_\_\_\_\_ If the laws or rules of a foreign insurer's domicile protects contract holders and the public to a degree substantially equal to the protections in this rule, the commissioner may exercise discretion and allow the foreign insurer's compliance with the domicile's laws and rules as compliance with this rule.~~

**R590-133-7. Licensing of Variable Contract Producers.**

~~\_\_\_\_\_ (1) A producer is not eligible to sell, offer for sale, or make a recommendation to purchase or terminate a variable contract until the producer is licensed as a variable contract producer.~~

~~\_\_\_\_\_ (2) A producer's variable contract license is not effective until the producer:~~

~~\_\_\_\_\_ (a) obtains a life insurance line of authority;~~

~~\_\_\_\_\_ (b) provides evidence that the producer passed the Financial Industry Regulatory Authority examinations series six or seven and 63; and~~

~~\_\_\_\_\_ (c) provides evidence of being Utah approved from the Financial Industry Regulatory Authority, Central Registration Depository.~~

~~\_\_\_\_\_ (3) Notwithstanding Subsection (2), a nonresident producer may be licensed as a variable contract producer in this state upon providing evidence of being licensed as a variable contract producer in the resident state.~~

**R590-133-8. Additional Provisions Applicable to Variable Contract Producers.**

~~\_\_\_\_\_ (1) A person licensed in this state as a variable contract producer shall immediately report to the commissioner:~~

~~\_\_\_\_\_ (a) any suspension or revocation of the variable contract producer's license or life insurance producer's license in any other state or territory of the United States;~~

~~\_\_\_\_\_ (b) any disciplinary sanction imposed upon the producer by any:~~

~~\_\_\_\_\_ (i) national securities exchange;~~

~~\_\_\_\_\_ (ii) national securities organization; or~~

~~\_\_\_\_\_ (iii) federal, state, or territorial agency with jurisdiction over securities or variable contracts; and~~

~~\_\_\_\_\_ (c) any judgment, conviction, or injunction entered against the producer involving:~~

~~\_\_\_\_\_ (i) fraud;~~

~~\_\_\_\_\_ (ii) deceit;~~

~~\_\_\_\_\_ (iii) misrepresentation;~~

~~\_\_\_\_\_ (iv) violating an insurance or securities law; or~~

~~\_\_\_\_\_ (v) violating an insurance or securities rule.~~

(2) The commissioner may reject an application for a variable contract producer's license upon any ground that would bar the applicant from being licensed to sell life insurance contracts in this state.

(3) The commissioner may suspend, revoke, or refuse to renew any variable contract producer's license upon any ground that would bar the producer from being licensed to sell a life insurance policy or an annuity contract in this state.

(4) A variable contract producer shall renew a license by following the same license renewal procedure for a life insurance producer.

**R590-133-9. Disclosure.**

(1) The following information shall be furnished to a variable contract applicant before the applicant executes the application:

(a) a summary description of the insurer and the insurer's principal activities;

(b) a summary explanation of the following, in non-technical terms:

(i) the contract's principal variable features; and

(ii) how the variable benefits reflect the separate account's investment experience;

(c) a brief description of the investment policy for the separate account regarding the contract;

(d) a list of the separate account's investments beginning no earlier than the end of the last year that the insurer filed an annual statement with the commissioner of the insurer's domicile state; and

(e) a financial statement summary of the insurer and the separate account;

(i) based upon the last annual statement the insurer filed with the commissioner; or

(ii) for a period of four months after the insurer filed the last annual statement.

(2) The insurer may include additional information.

**R590-133-10. Severability.**

If any provision of this rule, Rule R590-133, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

**KEY: variable insurance**

**Date of Last Change: October 15, 2012**

**Notice of Continuation: December 8, 2021**

**Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-20-106**