

§2537. Separate accounts

1. Any domestic insurer may establish one or more separate accounts, including that type known as a unit investment trust, as defined by the Investment Company Act of 1940, Stat. 789, 15 U.S.C. § 80a, et seq., as amended, and may allocate to such separate accounts, in accordance with the terms of a written contract or agreement or annuity or pension, profitsharing or retirement plan, whether or not qualified under the applicable provisions of the Internal Revenue Code, 68A Stat. 1, 26 U.S.C. § 1, et seq., as amended, with any individual or any group, any amounts, including without limitation proceeds applied under optional modes of settlement or under dividend options, paid or remitted to or held by the insurer which are to be applied to provide for life insurance or annuities and benefits incidental thereto, payable in fixed and guaranteed or variable dollar amounts, or both.

[PL 1973, c. 560, §3 (AMD).]

2. The amounts allocated to each account of that type and accumulations thereon may be invested and reinvested as provided in section 1159 (special investments: separate accounts). Amounts allocated to a separate account in the exercise of the power granted by this section shall be owned by the insurer, and the insurer shall not be, nor hold itself out to be, a trustee with respect to those amounts.

[PL 1987, c. 399, §15 (AMD).]

3. The income, gains and losses, realized or unrealized, from assets allocated to a separate account shall be credited to or charged against the separate account, without regard to other income, gains or losses of the insurer. If and to the extent so provided under the applicable contracts, that portion of the assets of any such 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 insurer may conduct.

[PL 1973, c. 560, §5 (AMD).]

4. Unless otherwise approved by the superintendent, assets allocated to a separate account shall be valued at their market value on the date of that valuation, or if there is no readily available market, then in accordance with the terms of the contract or the rules or other written agreement applicable to that separate account; except that, unless otherwise approved by the superintendent, the portion of the assets of that separate account at least equal to the insurer's reserve liability with regard to the guaranteed benefits and funds referred to in section 1159, if any, shall be valued in accordance with rules otherwise applicable to the insurer's assets.

[PL 1987, c. 399, §16 (AMD).]

5. If the contract or agreement provides for payment of benefits in variable amounts, it shall contain a statement of the essential features of the procedure to be followed by the insurer in determining the dollar amount of such variable benefits. Any such contract or agreement, under which the benefits vary to reflect investment experience, including a group agreement and any certificate in evidence of variable benefits issued thereunder, shall state that such dollar amount will so vary and shall contain on its first page a statement that the benefits thereunder are on a variable basis.

[PL 1973, c. 560, §7 (AMD).]

6. No insurer shall deliver or issue for delivery within this State any contract or agreement providing benefits in variable amounts under this section unless it is duly authorized to conduct a life insurance or annuity business within this State and has satisfied the superintendent that its condition or methods of operation in connection with the issuance of such contracts or agreements will not render its operation hazardous to the public or its policyholders in this State. In determining the qualification of an insurer requesting such authority, the superintendent shall consider, among other things:

A. The history and financial condition of the insurer; [PL 1969, c. 132, §1 (NEW).]

B. The character, responsibility and general fitness of the officers and directors of the insurer; and [PL 1969, c. 132, §1 (NEW).]

C. The law and regulation under which the insurer is authorized in the state of domicile to issue variable contracts. [PL 1973, c. 560, §8 (RPR).]

An insurer which issues variable contracts and which is a subsidiary of, or affiliated through common management or ownership with, another life insurer authorized to transact business in this State may be deemed by the superintendent to have met the provisions of this subsection, if either it or the parent or affiliated insurer meets the requirements hereof.

[PL 1973, c. 560, §§8, 9 (AMD); PL 1973, c. 585, §12 (AMD).]

7. Any insurer which establishes one or more separate accounts pursuant to subsection 1, to the extent it deems necessary to comply with the Investment Company Act of 1940, 54 Stat. 789, 15 U.S.C. § 80a, et seq., as amended, may amend its charter to provide, with respect to any separate account or any portion thereof, for the benefit of persons having beneficial interests therein, special voting and other rights and special procedures for the conduct of the business and affairs of such separate account or portion thereof, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and selection of a committee, the members of which need not be otherwise affiliated with the insurer, to manage the business and affairs of such separate account or portion thereof. In addition, the insurer may make such other provisions in respect to the separate account, as the insurer may deem appropriate to facilitate compliance with any requirements of, or pursuant to, any federal or state law, now or hereafter in effect. However, this subsection shall not in any manner affect existing laws pertaining to the voting rights of the policyholders of the insurer.

[PL 1969, c. 132, §1 (NEW).]

8. No sale, exchange or other transfer of assets may be made by an insurer between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in case of a transfer into a separate account, such 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 such transfer, whether into or from a separate account is made,

A. By a transfer of cash, or [PL 1969, c. 132, §1 (NEW).]

B. By a transfer of securities having a readily determinable market value, as long as such transfer of securities is approved by the superintendent. The superintendent may approve other transfers among such accounts if, in the superintendent's opinion, such transfers would not be inequitable.

[RR 2021, c. 1, Pt. B, §226 (COR).]

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9. The insurer shall not, in connection with the allocation of investments or expenses, or in any other respect, discriminate unfairly between separate accounts or between separate and other accounts, but this subsection shall not require the insurer to follow uniform investment policies for its accounts.

[PL 1969, c. 132, §1 (NEW).]

10. A variable annuity contract delivered or issued for delivery in this State may include as an incidental benefit a provision for payment on death during the deferred period of an amount equal to either the value of the contract at the time of death or the sum of the premiums less adjusted withdrawals from the policy, whichever is greater. The beneficiary under the contract may not be paid any other amount. A variable annuity contract that includes such incidental benefit may not be deemed to be life insurance and therefore is not subject to the provisions of this Title governing life insurance contracts. A variable annuity contract with a provision for any other benefit on death during the deferred period is subject to the provisions of this Title governing life insurance contracts. A payment on death pursuant to a variable annuity contract under this subsection must be made in accordance with section 2436. This subsection applies to variable annuity contracts delivered or issued for delivery in this State on or after January 1, 2009.

[PL 2011, c. 163, §1 (AMD).]

11. Notwithstanding any other provision of law, the superintendent shall have sole authority to regulate the issuance and sale of variable contracts and to promulgate such rules and regulations as may be necessary for the effectuation of this section.

[PL 1969, c. 132, §1 (NEW); PL 1973, c. 585, §12 (AMD).]

12. Except for sections 2505, 2510, 2511, 2512, 2528 to 2534 and 2614, in the case of a variable life insurance policy and except as otherwise provided in this section, all pertinent provisions of this Title shall apply to separate accounts and contracts relating thereto. Any individual variable life insurance contract, delivered or issued for delivery in this State, shall contain grace, reinstatement and nonforfeiture provisions appropriate to such a contract. Any individual variable annuity contract, delivered or issued for delivery in this State, shall contain grace and reinstatement provisions appropriate to such a contract. Any group variable life insurance contract, delivered or issued for delivery in this State, shall contain grace provisions appropriate to such a contract. 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.

[PL 1973, c. 560, §11 (RPR).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1969, c. 177, §40 (AMD). PL 1973, c. 560, §§3-11,14 (AMD). PL 1973, c. 585, §12 (AMD). PL 1987, c. 399, §§15,16 (AMD). PL 2007, c. 544, §1 (AMD). PL 2011, c. 163, §1 (AMD). RR 2021, c. 1, Pt. B, §226 (COR).

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