

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1977

—•—
ENROLLED

SENATE BILL NO. 369

(By Mr. Brotherton, Mr. President & Mr. Nealey)

—•—
PASSED April 6, 1977

In Effect ninty days from Passage
②

ENROLLED

Senate Bill No. 369

(By MR. BROTHERTON, MR. PRESIDENT, and MR. NEELEY)

[Passed April 6, 1977; in effect ninety days from passage.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirteen-a, relating to variable life insurance policies and variable annuity contracts; the establishment of separate accounts by domestic life insurers to provide life insurance or annuity benefits payable in fixed or variable dollar amounts, or both; features and benefits of variable contracts; qualification of companies, subsidiaries and affiliates to deliver or issue for delivery within this state variable contracts; supervisory powers of the insurance commissioner; application of other insurance laws and valuation of reserves.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirteen-a, to read as follows:

ARTICLE 13A. VARIABLE CONTRACTS.

§33-13A-1. Establishment of separate accounts.

1 A domestic life insurer may establish one or more
2 separate accounts, and may allocate thereto amounts,
3 including without limitation proceeds applied under op-
4 tional modes of settlement or under dividend options, to
5 provide for life insurance or annuities and benefits inci-
6 dental thereto, payable in fixed or variable amounts or
7 both, subject to the following:

8 (a) The income, gains and losses, realized or unrealized,
9 from assets allocated to a separate account shall be
10 credited to or charged against the account, without regard
11 to other income, gains or losses of the company.

12 (b) Except as may be provided with respect to reserves
13 for guaranteed benefits and funds referred to in section one

14 (c), (i) amounts allocated to any separate account and
15 accumulations thereon may be invested and reinvested
16 without regard to any requirements or limitations pre-
17 scribed by the laws of this state governing the invest-
18 ments of life insurance companies and (ii) the invest-
19 ments in such separate account or accounts shall not be
20 taken into account in applying the investment limitations
21 otherwise applicable to the investments of the company.

22 (c) Except with the approval of the commissioner and
23 under such conditions as to investments and other mat-
24 ters as he may prescribe, which shall recognize the
25 guaranteed nature of the benefits provided, reserves for
26 (i) benefits guaranteed as to dollar amount and duration
27 and (ii) funds guaranteed as to principal amount or
28 stated rate of interest shall not be maintained in a
29 separate account.

30 (d) Unless otherwise approved by the commissioner,
31 assets allocated to a separate account shall be valued at
32 their market value on the date of valuation, or if there is
33 no readily available market, then as provided under the
34 terms of the contract or the rules or other written
35 agreement applicable to such separate account: *Provided,*
36 That unless otherwise approved by the commissioner, the
37 portion if any of the assets of such separate account equal
38 to the company's reserve liability with regard to the
39 guaranteed benefits and funds referred to in section one
40 (c) shall be valued in accordance with the rules other-
41 wise applicable to the company's assets.

42 (e) Amounts allocated to a separate account in the
43 exercise of the power granted by this article shall be
44 owned by the company, and the company shall not be,
45 nor hold itself out to be, a trustee with respect to such
46 amounts. If and to the extent so provided under the
47 applicable contracts, that portion of the assets of any

48 such separate account equal to the reserves and other
49 contract liabilities with respect to such account shall not
50 be chargeable with liabilities arising out of any other
51 business the company may conduct.

52 (f) No sale, exchange or other transfer of assets may
53 be made by a company between any of its separate ac-
54 counts or between any other investment account and
55 one or more of its separate accounts unless, in case of a
56 transfer into a separate account, such transfer is made
57 solely to establish the account or to support the operation
58 of the contracts with respect to the separate account to
59 which the transfer is made, and unless such transfer,
60 whether into or from a separate account, is made (i) by
61 a transfer of cash, or (ii) by a transfer of securities having
62 a readily determinable market value, provided that such
63 transfer of securities is approved by the commissioner.
64 The commissioner may approve other transfers among
65 such accounts if, in his opinion, such transfers would not
66 be inequitable.

67 (g) To the extent such company deems it necessary to
68 comply with any applicable federal or state laws, such
69 company, with respect to any separate account, including
70 without limitation any separate account which is a
71 management investment company or a unit investment
72 trust, may provide for persons having an interest therein
73 appropriate voting and other rights and special procedures
74 for the conduct of the business of such account, including
75 without limitation special rights and procedures relating
76 to investment policy, investment advisory services, selec-
77 tion of independent public accountants, and the selection
78 of a committee, the members of which need not be other-
79 wise affiliated with such company, to manage the business
80 of such account.

§33-13A-2. Features and benefits.

1 Any contract providing benefits payable in variable
2 amounts delivered or issued for delivery in this state shall
3 contain a statement of the essential features of the pro-
4 cedures to be followed by the insurance company in
5 determining the dollar amount of such variable benefits.
6 Any such contract under which the benefits vary to reflect

7 investment experience, including a group contract and any
8 certificate in evidence of variable benefits issued there-
9 under, shall state that such dollar amount will so vary
10 and shall contain on its first page a statement to the
11 effect that the benefits thereunder are on a variable basis.

§33-13A-3. Qualification of companies, subsidiaries and affiliates.

1 No company shall deliver or issue for delivery within
2 this state variable contracts unless it is licensed or orga-
3 nized to do a life insurance or annuity business in this
4 state, and the commissioner is satisfied that its condition
5 or method of operation in connection with the issuance of
6 such contracts will not render its operation hazardous to
7 the public or its policyholders in this state. In this connec-
8 tion, the commissioner shall consider among other
9 things:

10 (a) The history and financial condition of the company;

11 (b) The character, responsibility and fitness of the
12 officers and directors of the company; and

13 (c) The law and regulation under which the company is
14 authorized in the state of domicile to issue variable
15 contracts. The state of entry of an alien company shall be
16 deemed its place of domicile for this purpose.

17 If the company is a subsidiary of an admitted life
18 insurance company, or affiliated with such company
19 through common management or ownership, it may be
20 deemed by the commissioner to have met the provisions
21 of this section if either it or the parent or the affiliated
22 company meets the requirements hereof.

§33-13A-4. Supervisory powers of insurance commissioner.

1 Notwithstanding any other provision of law, the com-
2 missioner shall have sole authority to regulate the
3 issuance and sale of variable contracts, and to issue such
4 reasonable rules and regulations as may be appropriate to
5 carry out the purposes and provisions of this article.

§33-13A-5. Application of other insurance laws, valuation of reserves.

1 Except for sections eighteen, twenty-three, thirty-(a)
2 and twenty-four of article thirteen of this chapter and

3 section twenty-three of article fourteen of this chapter in
4 the case of a variable annuity contract and sections three,
5 eight to twelve inclusive, and thirty of article thirteen of
6 this chapter and section nine of article fourteen of this
7 chapter in the case of a variable life insurance policy and
8 except as otherwise provided in this article, all pertinent
9 provisions of this chapter shall apply to separate accounts
10 and contracts relating thereto. Any individual variable
11 life insurance or annuity contract, delivered or issued for
12 delivery in this state shall contain grace, reinstatement
13 and nonforfeiture provisions appropriate to such a con-
14 tract. Any individual variable annuity contract delivered
15 or issued for delivery in this state shall contain grace and
16 reinstatement provisions appropriate to such a contract.
17 Any group variable life insurance or annuity contract,
18 delivered or issued for delivery in this state shall contain
19 a grace provision appropriate to such a contract.

20 The reserve liability for variable contracts shall be
21 established in accordance with actuarial procedures that
22 recognize the variable nature of the benefits provided and
23 any mortality guarantees.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Clarence M. Thurston
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

J. S. Henson
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

W. T. Brathwaite, Jr.
President of the Senate

Donald L. Kopp
Speaker House of Delegates

The within is approved this the 15
day of April, 1977.

John D. Rohey
Governor



APPROVED AND SIGNED BY THE GOVERNOR

RECEIVED
APR 9 2 57 PM '77
OFFICE OF THE GOVERNOR

Date April 15, 1977
Time 4:15 p.m.

RECEIVED

77 APR 15 P 4: 37

OFFICE
SECY. OF STATE