WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1977

ENROLLED

SENATE BILL NO. 369

(By Mr. G. Hunter, President)

PASSED April 6, 1977

In Effect __________ 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 separate accounts, and may allocate thereto amounts, including without limitation proceeds applied under optional modes of settlement or under dividend options, to provide for life insurance or annuities and benefits incidental thereto, payable in fixed or variable amounts or both, subject to the following:
(a) The income, gains and losses, realized or unrealized, from assets allocated to a separate account shall be credited to or charged against the account, without regard to other income, gains or losses of the company.

(b) Except as may be provided with respect to reserves for guaranteed benefits and funds referred to in section one (c), (i) amounts allocated to any separate account and accumulations thereon may be invested and reinvested without regard to any requirements or limitations prescribed by the laws of this state governing the investments of life insurance companies and (ii) the investments in such separate account or accounts shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the company.

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

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

(e) Amounts allocated to a separate account in the exercise of the power granted by this article shall be owned by the company, and the company shall not be, nor hold itself out to be, a trustee with respect to such amounts. 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 company may conduct.

(f) No sale, exchange or other transfer of assets may
be made by a company between any of its separate ac-
counts 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 (i) by
a transfer of cash, or (ii) by a transfer of securities having
a readily determinable market value, provided that such
transfer of securities is approved by the commissioner.
The commissioner may approve other transfers among
such accounts if, in his opinion, such transfers would not
be inequitable.

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

§33-13A-2. Features and benefits.

1 Any contract providing benefits payable in variable
amounts delivered or issued for delivery in this state shall
contain a statement of the essential features of the pro-
cedures to be followed by the insurance company in
determining the dollar amount of such variable benefits.
2 Any such contract under which the benefits vary to reflect
§33-13A-3. Qualification of companies, subsidiaries and affiliates.

No company shall deliver or issue for delivery within this state variable contracts unless it is licensed or organized to do a life insurance or annuity business in this state, and the commissioner is satisfied that its condition or method of operation in connection with the issuance of such 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:

(a) The history and financial condition of the company;
(b) The character, responsibility and fitness of the officers and directors of the company; and
(c) The law and regulation under which the company is authorized in the state of domicile to issue variable contracts. The state of entry of an alien company shall be deemed its place of domicile for this purpose.

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

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

Notwithstanding any other provision of law, the commissioner shall have sole authority to regulate the issuance and sale of variable contracts, and to issue such reasonable rules and regulations as may be appropriate to carry out the purposes and provisions of this article.

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

Except for sections eighteen, twenty-three, thirty-(a) and twenty-four of article thirteen of this chapter and
section twenty-three of article fourteen of this chapter in
the case of a variable annuity contract and sections three,
eight to twelve inclusive, and thirty of article thirteen of
this chapter and section nine of article fourteen of this
chapter in the case of a variable life insurance policy and
except as otherwise provided in this article, all pertinent
provisions of this chapter shall apply to separate accounts
and contracts relating thereto. Any individual variable
life insurance or annuity contract, delivered or issued for
delivery in this state shall contain grace, reinstatement
and nonforfeiture provisions appropriate to such a con-
tact. 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 or annuity contract,
delivered or issued for delivery in this state shall contain
a grace provision 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Clarence A. Preston
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

J. Pillow, Jr.
Clerk of the Senate

R.A. Bankenship
Clerk of the House of Delegates

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

Donald L. Wopp
Speaker House of Delegates

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

Governor
APPROVED AND SIGNED BY THE GOVERNOR

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

RECEIVED
Apr 9 2:57 P.M. '77
OFFICE OF THE GOVERNOR