

40-436. Establishment of separate accounts; investment and handling; contracts for benefits in variable amounts; limitation and regulation of issuance; authority of commissioner; rules and regulations. (a) Any domestic life insurance company may after adoption of a resolution by its board of directors, establish one or more separate accounts, and may allocate to such separate account or accounts any amounts, including without limitation proceeds applied under optional modes of settlement or under dividend options, paid to the company which are to be applied under the terms of an individual or group life or annuity contract, funding agreement or guaranteed investment contract, issued in connection therewith to provide benefits payable in fixed or in variable amounts, or in both, and such contracts may provide other benefits.

(b) The amounts allocated to each such account and accumulations thereon may be invested and reinvested in any class of investments which may be authorized in the contracts without regard to any requirements or limitations prescribed by the laws of this state governing the investments of life insurance companies. To the extent that the company's reserve liability with regard to (1) benefits guaranteed as to amount and duration, and (2) funds guaranteed as to principal amount or stated rate of interest is maintained in any separate account, a portion of the assets of such separate account at least equal to such reserve liability shall be invested in accordance with the laws of this state governing the investments of life insurance companies. The investments in such separate account or accounts shall not be taken into account in applying the investment limitations applicable to other investments of the company.

(c) The income, if any, and gains and losses, realized or unrealized, on each account shall be credited to or charged against the amounts allocated to the account in accordance with the contracts, without regard to other income, gains or losses of the company.

(d) 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 in accordance with the terms of the contracts. The portion of the assets of such separate account at least equal to the company's reserve liability with regard to the guaranteed benefits and funds referred to in subsection (b) hereof, if any, 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 act 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 liability arising out of any other business the company may conduct.

(f) The company shall maintain in each such separate account assets with a value at least equal to the reserves and other contract liabilities with respect to such account, except as may otherwise be approved by the commissioner of insurance. No sale, exchange or other transfer of assets may be made by a company 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 (1) by a transfer of cash, or (2) 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) If any contract 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 company in determining the dollar amount of such variable benefits. Any such contract, including a group contract, and any certificate issued thereunder shall state that such dollar amount may decrease or increase and shall contain on its first page a statement that the benefits thereunder are on a variable basis.

(h) A foreign or alien life insurance company authorized to do business in this state may be authorized to issue or deliver contracts in this state providing for payments which vary directly according to investment experience only if authorized to issue such contracts under the laws of its domicile.

(i) No domestic life insurance company shall be authorized to issue such contracts, and no foreign or alien life insurance company shall be authorized to issue or deliver such contracts in this state, until such company has satisfied the commissioner that its condition and methods of operation in connection with the issuance of such contracts will not be such as to render its operation hazardous to the public or to its policyholders in this state. In determining the qualification of a company to issue or deliver such contracts in this state, the commissioner shall consider, among other things, the history and financial condition of the company; the character, responsibility, and general fitness of the officers and directors of the company; and in the case of a foreign or alien company, whether the regulation provided by the laws of its domicile provides a degree of protection to policyholders and the public substantially equal to that provided by this section and the rules and regulations issued by the commissioner pursuant thereto. The state of entry of an alien company shall be deemed its place of domicile for this purpose.

(j) Every life insurance company which issues or delivers such contracts in this state shall file with the commissioner, in addition to the annual statement required by K.S.A. 40-225, and amendments thereto, such other periodic or special reports as the commissioner may prescribe.

(k) Any domestic life insurance company which establishes one or more separate accounts pursuant to this section, may amend its charter or bylaws to provide for special voting rights and procedures for the owners of contracts under such separate account relating to investment policy, investment advisory services and selection of independent public accountants, in relation to the administration of the assets in any such separate account and such other matters as the company deems necessary in the management of the assets in any such separate account. This provision shall not in any way affect existing laws pertaining to the voting rights of the company's policyholders.

(l) The commissioner shall have the sole and exclusive jurisdiction and authority to regulate the issuance and sale of such contracts and to promulgate such reasonable rules and regulations as may be necessary to carry out the purposes and provisions of this act, and such contracts, the companies which issue them, and the agents or other persons who sell them, shall not be subject to the provisions of article 12 of chapter 17 of the Kansas Statutes Annotated, and amendments thereto, nor to the jurisdiction of the securities commissioner of this state.

History: L. 1967, ch. 259, § 1; L. 1968, ch. 382, § 1; L. 1972, ch. 182, § 1; L. 2005, ch. 42, § 2; July 1.