

ACT 53

S.B. NO. 1359

A Bill for an Act Relating to Insurance.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431-563, Hawaii Revised Statutes, is amended to read as follows:

“§431-563 Variable [annuity] contracts. (a) A domestic life insurance company may, by or pursuant to resolution of its board of directors, 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:

- (1) 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.

- (2) Except as hereinafter provided, 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; provided, that to the extent that the company's reserve liability with regard to (A) benefits guaranteed as to amount and duration, and (B) funds guaranteed as to principal amount or stated rate of interest is maintained in any separate accounts, a portion of the assets of such separate account at least equal to such reserve liability shall be, except as the commissioner may otherwise approve, 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 otherwise applicable to the investments of the company.
- (3) 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, a portion 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 clauses (A) and (B) of subsection (a) (2) of this section, if any, shall be valued in accordance with the rules otherwise applicable to the company's assets.
- (4) Amounts allocated to a separate account in the exercise of the power granted by this section 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. That portion 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.
- (5) 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 (A) by transfer of cash, or (B) 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.
- (6) 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, selection of independent public accountants, and the selection of a committee, the members of which need not be otherwise affiliated with such company, to manage the business of such account.

- (b) (1) Any variable 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 procedures to be followed by the insurance company in determining the dollar amount of such variable benefits. Any such contract, including a group contract and any certificate in evidence of variable benefits issued thereunder, shall state that such dollar amount will vary to reflect investment experience and shall contain on its first page a statement to the effect that the benefits thereunder are on a variable basis.
- (2) Variable [annuity] contracts delivered or issued for delivery in this State may include as an incidental benefit provision for payment on death during the deferred period of an amount not in excess of the greater of the sum of the premiums or stipulated payments paid under the contract or the value of the contract at time of death. Any such provision shall not be deemed to be life insurance and therefore not subject to the provisions of this chapter governing life insurance carriers. A provision for any other benefit on death during the deferred period shall be subject to such insurance provisions.

(c) No company shall deliver or issue for delivery within this State contracts under this section 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:

- (1) The history and financial condition of the company;
- (2) The character, responsibility and fitness of the officers and directors of the company; and
- (3) The law and regulation under which the company is authorized in the state of domicile to issue variable contracts.

A company which issues variable contracts and which is a subsidiary of, or affiliated through common management or ownership with, another life insurance company authorized to do business in this State shall be deemed to have met the provisions of this subsection of either it or the parent or affiliated company meets the requirements hereof.

(d) Notwithstanding any other provision of law, the commissioner shall have sole and exclusive authority to regulate the issuance and sale of variable contracts and to provide for licensing of persons selling such contracts, and to issue such reasonable rules and regulations as may be appropriate to carry out the purpose and provisions of this section.

(e) The provisions of sections [431-543] 431-531 through 431-552 shall be inapplicable to variable contracts, nor shall any provision in chapter 431 requiring

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contracts to be participating be deemed applicable to variable contracts. The commissioner, by regulation, may require that any individual variable [annuity] contract, delivered or issued for delivery in this State, contain provisions as to grace period, reinstatement or nonforfeiture which are appropriate to a variable [annuity] contract. Except as otherwise provided in this section, all pertinent provisions of this chapter shall apply to separate accounts and contracts relating thereto. The reserve liability for variable [annuities] contracts shall be established in accordance with actuarial procedures that recognized the variable nature of the benefits provided and any mortality guarantees.”

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 26, 1981.)