

NORTH CAROLINA GENERAL ASSEMBLY
1969 SESSION

CHAPTER 616
HOUSE BILL 259

1 AN ACT TO AMEND GENERAL STATUTE 58-72(2) AND GENERAL STATUTE 58-79.2
2 SO AS TO DEFINE VARIABLE ANNUITY CONTRACTS AND PROVIDE THAT
3 DOMESTIC LIFE INSURANCE COMPANIES MAY ESTABLISH SEPARATE
4 ACCOUNTS WITH RESPECT THERETO.

5
6 The General Assembly of North Carolina do enact:

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8 **Section 1.** Amend G.S. 58-72(2) as the same appears in the 1965 Replacement to
9 Volume 2B of the General Statutes of North Carolina by inserting immediately following the
10 words "periodical payments" at the end of line 1 thereof, the words ", whether in fixed or
11 variable dollar amounts, or both,".

12 **Sec. 2.** Amend G.S. 58-79.2 as the same appears in the 1967 Cumulative
13 Supplement to the General Statutes by rewriting the same to read as follows:

14 **"G.S. 58-79.2. Establishment of separate accounts by life insurance companies.** (a) When
15 used in this Act, 'variable annuity contract' shall mean any individual or group contract issued
16 by an insurance company providing for annuity benefits or contractual payments or values
17 which vary so as to reflect investment results of any segregated portfolio of investments or of a
18 designated separate account or accounts in which amounts received or retained in connection
19 with any of such contracts have been placed.

20 "(b) Any domestic life insurance company may, pursuant to resolution of its Board of
21 Directors, establish one or more separate accounts and may allocate to such account or
22 accounts amounts received or retained in connection with variable annuity contracts.

23 "(c) In addition to the amounts allocated under subsection (b), such company may
24 allocate from its general accounts to such separate account or accounts additional amounts,
25 which may include an initial allocation to establish such account; provided, that the aggregate
26 amount so allocated shall not exceed one per centum of its admitted assets as of the preceding
27 December 31, or one million dollars (\$1,000,000), whichever is less, and, provided further, that
28 such company shall be entitled to withdraw at any time, in whole or in part, its participation in
29 any separate account to which funds have been allocated as provided in this subsection (c), and
30 to receive, upon withdrawal, its proportionate share of the value of the assets of the separate
31 account at the time of withdrawal.

32 "(d) Except as hereinafter provided, the amounts allocated to any separate account and
33 accumulations thereon may be invested and reinvested without regard to any requirements or
34 limitations prescribed by the laws of this State governing the investments of life insurance
35 companies; provided, that to the extent that the company's reserve liability with regard to (1)
36 benefits guaranteed as to amount and duration, and (2) funds guaranteed as to principal amount
37 or stated rate of interest is maintained in any separate account, a portion of the assets of such
38 separate account at least equal to such reserve liability shall be, except as the Commissioner
39 may otherwise approve, invested in accordance with the laws of this State governing the
40 investments of life insurance companies. The investments in such separate account or accounts
41 shall not be taken into account in applying the investment limitations applicable to other
42 investments of the company.

"(e) With respect to seventy-five per cent (75%) of the market value of the total assets in a separate account no company shall purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal or interest by the United States, if immediately after such purchase or acquisition the market value of such investment, together with prior investments of such separate account in such security taken at market, would exceed ten per cent (10%) of the market value of the assets of said separate account; provided, however, that the Commissioner may waive such limitation if, in his opinion, such waiver will not render the operation of such separate account hazardous to the public or the policyholders in this State.

"(f) No separate account shall invest in the voting securities of a single issuer in an amount in excess often per cent (10%) of the total issued and outstanding voting securities of such issuer provided that the foregoing shall not apply with respect to securities held in separate accounts, the voting rights in which are exercisable only in accordance with instructions from persons having interests in such accounts.

"(g) The limitations provided in paragraphs (e) and (f) above shall not apply to the investment with respect to a separate account in the securities of an investment company registered under the Investment Company Act of 1940, provided that the investments of such investment company comply in substance with paragraphs (e) and (f) hereof.

"(h) The income, if any, and gains and losses, realized or unrealized, from assets allocated to each account shall be credited to or charged against the account without regard to other income, gains or losses of the company.

"(i) 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 that 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 subsection id' hereof, if any, shall be valued in accordance with the rules otherwise applicable to the company's assets. The reserve liability for variable annuity contracts shall be determined in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

"(j) 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.

"(k) The life insurance company shall have the power and the company's charter shall be deemed amended to authorize such company to do all things necessary under any applicable state or federal law in order that variable annuity contracts may be lawfully sold or offered for sale including, without limitation, the power to provide for management of a separate account by persons who may otherwise be unaffiliated with the life insurance company and the power to grant in connection with such contracts voting rights with respect to the management of and the investment and other policies of a separate account. This provision shall not affect existing laws pertaining to the voting rights of the life insurance company's policyholders.

"(l) 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, or hold itself out to be, a trustee with respect to such amounts.

"(m) The company 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 provision shall not require the company to follow uniform investment policies for its accounts.

"(n) 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 a 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.

"(o) Any variable annuity 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 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 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.

"(p) Any variable annuity contract providing benefits payable in variable amounts issued under this Section 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; such contracts will be deemed not to be contracts of life insurance and therefore not subject to the provisions of the Insurance Law governing life insurance contracts. Provision for any other benefit on death during the deferred period will be subject to such insurance provisions.

"(q) No domestic life insurance company and no other life insurance company shall deliver or issue for delivery within this State any contracts under this Act unless it is licensed or organized to do a life insurance or annuity business in this State, and the Commissioner of Insurance is satisfied that its financial condition and its methods 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 determining the qualification of a company requesting authority to deliver such contracts within this State, the Commissioner of Insurance shall consider, among other things:

"(1) The history and financial condition of the company;

"(2) The character, responsibility and general fitness of the officers and directors of the company; and

"(3) The law and regulations under which the company is authorized in the state of domicile to issue variable annuity contracts.

"An authorized life insurance company, whether domestic, foreign or alien, which issues variable annuity 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 may be deemed to have met the provisions of this subsection if either it or the parent or affiliated company meets the requirements hereof.

"(r) The Commissioner of Insurance shall have sole and exclusive authority to regulate the issuance by life insurance companies and the sale of such contracts and to issue such reasonable rules and regulations as may be necessary to carry out the purposes and provisions of this Section 58-79.2, and such contracts and the life insurance companies which issue them shall not be subject to the Securities Law of North Carolina nor to the jurisdiction of the Secretary of State thereunder; provided, however, that any person that offers for sale or sells such contracts shall be subject to the Securities Law of North Carolina.

"(s) Except as otherwise provided in this Section, all pertinent provisions of the insurance laws of this State shall apply to separate accounts and contracts issued in connection therewith."

1 **Sec. 3.** If any provisions of this Section or application thereof to any person or
2 circumstance is held invalid, such invalidity shall not affect other provisions or applications of
3 the section which can be given effect without the invalid provisions or application, and to this
4 end the provisions of this Section are declared to be severable.

5 **Sec. 4.** All laws and clauses of laws in conflict with this Act are hereby repealed.

6 **Sec. 5.** This Act shall be in full force and effect from and after July 1, 1970.

7 In the General Assembly read three times and ratified, this the 29th day of May,
8 1969.