

17:35A-9

August 14, 1969

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Legislative Notes on R.S. 17:35A-9
(Group investment (non-variable) - commingled accounts)
(1969 amendment)

L. 1969, Chapter 106 - A302
Introduced Jan. 27, 1969 by Hurley and others.
Statement was made. (Copy enclosed)
Not amended *during passage*.

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ASSEMBLY, No. 302

STATE OF NEW JERSEY

INTRODUCED JANUARY 27, 1969

By Assemblymen HURLEY, MORAITES, PFALTZ and PARKER

Referred to Committee on Banking and Insurance

AN ACT to authorize the operation of a commingled separate account solely for group contracts that do not provide variable benefits to individuals based on the investment results of such account and amending section 9 of chapter 123 of the laws of 1959 (C. 17:35A-9).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. P. L. 1959, chapter 123, section 9 (C. 17:35A-9) is amended
2 to read as follows:

3 9. Investment of assets; eligibility; definition. (a) The assets
4 held in a variable contract account, or any part thereof, may be
5 invested in

6 (i) Common stock or shares of any investment company
7 specified in the contract or contracts participating in such
8 variable contract account, and registered under the Invest-
9 ment Company Act of 1940, whether or not such stock or
10 shares satisfy the dividend or earnings history requirements
11 now or hereafter contained in the provisions of Title 17 of
12 the Revised Statutes that regulate investments by domestic
13 life insurance companies; provided that, at the time of the
14 first purchase of such stock or shares of any such investment
15 company, the life insurance company which maintains such
16 account, or a subsidiary or affiliate of such insurance com-
17 pany, shall be the investment manager or investment adviser
18 of such investment company and, as long as such life insurance
19 company which maintains such account, or any subsidiary or
20 affiliate of such life insurance company, shall continue as such
21 investment manager or investment adviser **[of]**, the invest-
22 ments acquired by such investment company shall be such as
23 would be eligible for investment of variable contract account

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

24 assets by domestic life insurance companies under the provi-
25 sions of this section **[4]** excluding this clause (i);

26 (ii) Other investments made eligible for investment by
27 domestic life insurance companies by the provisions of Title
28 17 of the Revised Statutes that regulate investments by domes-
29 tic life insurance companies, except for investments made
30 eligible by the provision of chapter 24 of said Title which
31 permits a domestic life insurance company to make loans or
32 investments not otherwise expressly qualified or permitted up
33 to 2% of total admitted assets, as such provision may be
34 amended from time to time, or any similar or superseding
35 provision corresponding in substance thereto; and

36 (iii) Investments authorized, specifically or by classes or
37 otherwise by the commissioner as appropriate to the nature
38 and purpose of such variable contract account;

39 provided that (A) any common stock or shares, other than common
40 stock or shares referred to in clause (i) of this subsection issued
41 by an open-end investment company, shall be (1) common stock
42 or shares which are listed or admitted to trading on a securities
43 exchange in the United States of America or Canada, or (2) com-
44 mon stock or shares which are included on the National Associa-
45 tion of Securities Dealers' national price listings of "over-the-
46 counter" securities, or (3) other common stock or shares which
47 the commissioner shall have determined are publicly held and
48 traded and as to which market quotations shall be available; (B)
49 the quantitative investment limitations now or hereafter contained
50 in Title 17 of the Revised Statutes regulating investments by
51 domestic life insurance companies shall not be applicable to vari-
52 able contract account investments, subject to the qualification that
53 the provision contained in said Title limiting the percentage of
54 voting stock of any one corporation that may be purchased or
55 acquired by a domestic life insurance company, as such provision
56 may be amended from time to time, or any similar or superseding
57 provision corresponding in substance thereto, shall apply (subject
58 to the provisions of section 3 of chapter 24 of said Title as such
59 provisions may be amended from time to time, or any similar or
60 superseding provisions corresponding in substance thereto), with
61 respect to the aggregate of the voting stock of any one corpora-
62 tion held in all accounts of such life insurance company except
63 for all such stock that may be voted **[only]** at the direction of
64 a person or persons, other than such life insurance company or
65 any subsidiary or affiliate of such life insurance company; and
66 provided further that, subject to the next succeeding paragraph

67 of this subsection, no domestic life insurance company shall pur-
68 chase for any variable contract account any security (other than
69 common stock or shares referred to in clause (i) of this subsection
70 issued by an open-end investment company) of any corporation, if
71 after such purchase more than 10% of the market value of the
72 assets of such variable contract account would be invested in the
73 securities of such corporation.

74 Notwithstanding the foregoing provisions of this section or any
75 other provision of law, a domestic life insurance company may (i)
76 invest the assets, or any part thereof, held in a variable contract
77 account established and maintained solely for a single group con-
78 tract holder *or solely for group contracts that do not provide vari-*
79 *able benefits to individuals based on the investment results of such*
80 *account* in any investment or investments authorized by the con-
81 tract **[with such holder]** *or contracts participating in such account,*
82 subject only to clause (B) of the proviso in the next preceding para-
83 graph of this subsection relating to the percentage of voting stock
84 of any one corporation that may be purchased or acquired, and
85 (ii) vote any stock or shares held in such an account in accordance
86 with the instructions of such person or persons designated pur-
87 suant to such contract *or contracts participating in such account.*
88 *For the purpose of this paragraph, a single group contract holder*
89 *does not include, except with the consent of the commissioner, an*
90 *association of individuals, or the representative thereof, as the*
91 *holder of a contract in which individual participation is voluntary.*

92 Except as otherwise provided in this subsection, the investments
93 held in the variable contract accounts of any domestic life insur-
94 ance company shall be disregarded in determining whether the
95 other investments of such life insurance company comply with the
96 provisions of Title 17 of the Revised Statutes that regulate invest-
97 ments by domestic life insurance companies as such provisions may
98 be amended from time to time, or any similar or superseding pro-
99 visions corresponding in substance thereto.

100 (b) Notwithstanding any other provision of law, in order to
101 comply with the Investment Company Act of 1940, a domestic life
102 insurance company may, with respect to any variable contract
103 account or any portion thereof,

104 (i) Exercise any voting rights of any stock or shares in
105 accordance with instructions from the persons having the bene-
106 ficial interests in such account ratably according to their re-
107 spective interests in such account, or

108 (ii) Establish a committee for such account, the members of
109 which may be directors or officers or other employees of such
110 insurance company, or persons having no such relationship to
111 such insurance company, or any combination thereof, who may
112 be elected to such membership by the vote of the persons
113 having the beneficial interests in such account ratably accord-
114 ing to their respective interests in such account. Such com-
115 mittee may have the power, which may be exercisable alone or
116 in conjunction with others, or which may be delegated to such
117 insurance company or any other person, as investment man-
118 ager or investment adviser, to authorize purchases and sales
119 of investments for such account, provided that as long as such
120 life insurance company or any subsidiary or affiliate of such
121 life insurance company shall be the investment manager or
122 investment adviser of such account, the investments of such
123 account shall be eligible under the provisions of subsection (a)
124 of this section. If compliance with the Investment Company
125 Act of 1940 shall involve only a portion of a variable contract
126 account, such insurance company may establish such a com-
127 mittee for only such portion, and its members may be elected
128 by the vote of the persons having the beneficial interests in
129 such portion. Any such committee for only a portion of a
130 variable contract account may be given the further power to
131 require the subdivision of such account into 2 accounts so that
132 the portion of the account with respect to which such commit-
133 tee shall be acting shall constitute a separate variable contract
134 account. If such committee shall so require, the insurance
135 company shall segregate from the account being so subdivided
136 a portion of each asset held with respect to the reserve liabili-
137 ties of such account. Such portion shall be in the same pro-
138 portion to the total of such asset as the reserve liability for
139 the portion of the account with respect to which such commit-
140 tee is acting bears to the total reserve liability of such ac-
141 count; and notwithstanding any other provision of law, the
142 assets so segregated shall be transferred to a separate variable
143 contract account with respect to which such committee shall act.

144 (c) The investments and liabilities of a variable contract account
145 shall at all times be clearly identifiable and distinguishable from
146 the other investments and liabilities of the corporation. No sale,
147 transfer or exchange of investments may be made between a vari-
148 able contract account and any other investment account of the
149 corporation, except with the prior consent of the commissioner, and

150 no investments of a variable contract account shall be pledged or
151 transferred as collateral for a loan.

152 (d) The term "Investment Company Act of 1940" as used in
153 this section shall mean an Act of Congress approved August 22,
154 1940 entitled "Investment Company Act of 1940" as amended from
155 time to time, or any similar statute enacted in substitution therefor.

1 2. This act shall take effect immediately.

STATEMENT

The purpose of this amendment is to permit greater investment latitude for a separate account used solely for group contracts that do not provide variable benefits to individuals based on the investment results of such account, and to make minor clarifications in this section.