

No. 313

AN ACT

SB 605

Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An act relating to insurance; amending, revising, and consolidating the law providing for the incorporation of insurance companies, and the regulation, supervision, and protection of home and foreign insurance companies, Lloyds associations, reciprocal and inter-insurance exchanges, and fire insurance rating bureaus, and the regulation and supervision of insurance carried by such companies, associations, and exchanges, including insurance carried by the State Workmen's Insurance Fund; providing penalties; and repealing existing laws," further regulating the establishment and maintenance of separate accounts by life insurance companies and providing for the issuance of variable life insurance, and further regulating the writing of certain kinds of insurance by life insurance companies.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Clause (1) of subsection (a) of section 202, act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921," amended November 27, 1968 (P.L.1118, No.349), is amended to read:

Section 202. Purposes for Which Companies May Be Incorporated; Underwriting Powers.—(a) Stock or mutual life insurance companies may be incorporated for any or all of the following purposes:

(1) To insure the lives of persons, and every insurance appertaining thereto; to grant and dispose of annuities; including *variable life insurance contracts and* variable annuity contracts under which values or payments or both vary in relation to the investment experience of the issuer or a separate account or accounts maintained by the issuer and to insure against personal injury, disablement, or death resulting from traveling or general accidents, and against disablement resulting from sickness, and every insurance appertaining thereto, when written as a part of a policy of life insurance.

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Section 2. The first paragraph of subsection (a) of section 405.1 of the act, added August 27, 1963 (P.L.1390, No.537), and amended January 19, 1968 (P.L.1020, No.447), is amended to read:

Section 405.1. Acquisition and Retention of Subsidiary Life Insurance Companies by Life Insurance and Limited Life Insurance Companies Organized Under the Laws of This Commonwealth.—(a) In addition to investments in subsidiaries to the extent if any permissible under the provisions of section four hundred six point one, (g), (1) and (2), any surplus funds and the balance of the reserves of any life insurance company or limited life insurance company organized under the laws of this Commonwealth, may, subject to all other provisions of this section, be used to invest in, acquire and retain the stock (whether

acquired before or after the enactment of this section) including voting trust certificates, interim receipts and other similar instruments representing such stock of one or more solvent life insurance companies transacting like classes of business or, *including* companies **[authorized to grant and dispose of variable annuity contracts]** *which grant and dispose of variable life insurance contracts or variable annuity contracts, or both.*

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Section 3. Section 406.2 of the act, added August 24, 1963 (P.L.1194, No.501), amended December 22, 1965 (P.L.1151, No.447), January 19, 1968 (P.L.1020, No.447), and July 23, 1970 (P.L.586, No.196), is amended to read:

Section 406.2. Separate Accounts.—(a) Any life insurance company organized under the laws of this Commonwealth may establish one or more separate accounts and **[(i)]** may allocate thereto any amounts **[paid to the insurer which are to be or may be applied to the purchase of an individual or group contract providing annuity benefits which may include other benefits incidental thereto payable in fixed or variable dollar amounts or any amounts which are received by such company in accordance with agreements in connection with pension, retirement or profit sharing plans and which are to be applied to purchase or provide retirement or other benefits under any individual group or other policies or contracts of such company; and (ii) in addition to amounts allocated under (i) may allocate to such account or accounts amounts which otherwise would be subject to investment in accordance with sections 404, 405 and 406.1: Provided, That the aggregate amount so allocated under this clause (ii) shall not exceed five hundred thousand dollars (\$500,000), one per centum (1%) of its admitted assets as of the preceding December 31, or five per centum (5%) of its surplus to policyholders as of the preceding December 31, whichever is the greater: Provided further, That such company shall be entitled to withdraw at any time in whole or in part, its participation in any separate account to which funds have been allocated as provided in this clause (ii) and to receive, upon withdrawal, its proportionate share of the value of the assets of the separate account at the time of withdrawal.**

(b) Any income and gains or losses realized or unrealized on each such separate account shall in accordance with applicable contracts be credited to or charged against the amount allocated to such separate account without regard to the other income, gains or losses of such company or of any other separate account established by such company. The assets and liabilities of each such separate account shall be clearly identifiable and distinguishable from the assets and liabilities of the company and of any other separate account established by such company. That portion of the assets held in 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 including any other separate account established by such company. If pursuant to the terms of an annuity contract or class of annuity contracts issued by such company, amounts allocated to a separate account pursuant to subsection (a) hereof are to be invested in shares of a specified regulated investment company, which shares are to be held for the exclusive benefit of applicable contracts, such shares shall be deemed to be a separate account pursuant to subsection (a).

(c) The amounts allocated to such separate accounts and any accumulations thereon may be invested and reinvested in any investments determined by such company in accordance with its agreements notwithstanding any restrictions on the investment of other funds by the company. Sections 404, 405 and 406.1 shall not be applicable to such investments: Provided, That investment of funds in any separate account to which funds of the company have been allocated under subsection (a) (ii) of this section shall be invested in classes of investment stated in sections 404 or 405 except for subsection 405 (g).

(d) Investments allocated to separate accounts shall be disregarded in determining the application of sections 404, 405 and 406.1 to investments not so allocated.

(e) Funds allocated to separate accounts shall not be held by such company as trustee, but it shall hold such funds and make such reports thereof as may be required by the agreements establishing such accounts.

(f) Section 406.2 shall not apply to any reserves for benefits payable after funds held in a separate account are applied to purchase or provide fixed retirement or other fixed benefits.

(h) Assets allocated to a separate account shall be valued at fair market price at time of valuation, or if there is no readily available market, then as may be provided in the agreement establishing the separate account.

(i) Any domestic life insurance company which establishes one or more separate accounts pursuant to section 406.2 may amend its charter to provide for special voting rights and procedures for the owners of variable annuities under separate account relating to investment policy, investment advisory services and selection of certified public accountants in relation to the administration of the assets in any such separate account.

(j) Annuities authorized by section 406.2 shall not be subject to the act of June 24, 1939 (P.L.748, No.347), as amended, known as "The Pennsylvania Securities Act," or to regulation by the Pennsylvania Securities Commission.] *(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, in accordance with applicable contracts, be credited to or charged against such account, without regard to other income, gains or losses of the company.

(2) Except as may be provided with respect to reserves for guarantee benefits and funds referred to in clause (3) of this subsection (a), (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 Commonwealth 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.

(3) Except with the approval of the Insurance 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.

(4) Unless otherwise approved by the Insurance 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 Insurance 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 clause (3) of this subsection (a) shall be valued in accordance with the rules otherwise applicable to the company's assets.

(5) Amounts allocated to a separate account 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.

(6) If pursuant to the terms of the applicable contracts amounts allocated to a separate account are to be invested in shares of a specified investment company registered under the Investment Company Act of 1940, as amended, which shares are to be held for the exclusive benefit of the applicable contracts, such shares shall, if and to the extent provided

in the applicable contracts, be deemed to be a separate account pursuant to the provisions of section 406.2.

(7) 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 (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 Insurance Commissioner. The Insurance Commissioner may approve other transfers among such accounts if, in his opinion, such transfers would not be inequitable.

(8) To the extent the 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) Any contract providing benefits payable in variable amounts delivered or issued for delivery in this Commonwealth 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 under which the benefits vary to reflect investment experience, including a group contract and any certificate in evidence of variable benefits issued thereunder, shall state that such dollar amount will so vary and shall contain on its first page a statement to the effect that the benefits thereunder are on a variable basis.

(c) No company shall deliver or issue for delivery within this Commonwealth variable contracts unless it is licensed or organized to do a life insurance business in this Commonwealth, and the Insurance Commissioner is satisfied that its condition or method of operation, including investment policy, in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this Commonwealth. In this connection, the Insurance Commissioner 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 or trustees of the company, and whether such individuals command the public confidence and warrant the belief that the business of the company will be honestly and efficiently conducted in accordance with the intent and purpose of this act; and

(3) 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 Insurance Commissioner to have met the provisions of this section if either it or the parent or the affiliated company meets the requirements hereof.

(d) Notwithstanding any other provision of law, the Insurance Commissioner shall have sole authority to regulate the issuance and sale of variable contracts, including the approval or disapproval of provisions of the contracts under section 354 of this act, and, further including annual statements furnished to contract holders, and to issue such reasonable rules and regulations as may be appropriate to carry out the purposes and provisions of section 406.2 in the public interest, including that the premiums to be charged shall not be excessive, inadequate or unfairly discriminatory, and the prevention of excessive management, administrative and sales charges. Variable contracts, and agents or other persons who sell variable contracts, shall not be subject to the act of December 5, 1972 (P.L.1280, No.284), known as the "Pennsylvania Securities Act of 1972," or to regulation by the Pennsylvania Securities Commission.

(e) Under no circumstances shall premiums payable, by a person who meets standard underwriting requirements, for a variable life insurance contract issued in this Commonwealth, exclusive of that portion allocable to any incidental insurance benefit, exceed the following:

(1) Either one hundred twenty-five per centum (125%) of the premiums payable for an equivalent plan of fixed benefit life insurance for the same initial face amount issued by the same insurance company or its affiliate; or

(2) When an equivalent plan of fixed benefit life insurance for the same initial face amount issued by the same insurance company or its affiliate is not available the maximum premium for that contract shall be fixed under the rules and regulations promulgated by the Insurance Commissioner.

(f) Except for sections 410(b), 410(h), 410(i), 410(j), 410(k) and 410A of The Insurance Company Law of 1921 and section 6 (1) of the act of May 11, 1949 (P.L.1210, No.367), entitled "An act relating to group life insurance; describing permitted policies and restrictions thereon, the

premium basis thereof and rights thereunder; limiting the amount of such insurance; prescribing standard policy provisions; and requiring notice of conversion privileges," in the case of variable life insurance contract and sections 410B(a), 410B(f), 410B(g) and 410B(3) of The Insurance Company Law of 1921 in the case of a variable annuity contract and except as otherwise provided in section 406.2, all pertinent provisions of the insurance laws shall apply to separate accounts and contracts relating thereto. Any individual variable life insurance or variable annuity contract, delivered or issued for delivery in this Commonwealth shall contain grace, reinstatement and nonforfeiture provisions appropriate to such contract; and any group variable life insurance contract, delivered or issued for delivery in this Commonwealth shall contain a grace provision appropriate for such contract.

The reserve liability for variable contracts shall be established in accordance with actuarial procedures acceptable to the Insurance Commissioner that recognize the variable nature of the benefits provided and any mortality guarantees.

Section 4. This act shall take effect immediately except that no variable life insurance contracts shall be issued in this Commonwealth until the rules and regulations mandated by section 406.2 (d) of The Insurance Company Law of 1921 have been promulgated by the Insurance Commissioner in accordance with law.

APPROVED—The 13th day of December, A. D. 1974.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 313.

A handwritten signature in black ink, reading "C. McLaughlin Tucker". The signature is written in a cursive, flowing style.

Secretary of the Commonwealth.