

31A-5-217 Separate accounts for variable contracts.

- (1) Separate accounts under this section may be designated by any appropriate name the corporation wishes to use, except that the commissioner may by rule provide guidelines for the naming of separate accounts.
- (2) With the approval of the commissioner, any corporation may establish, or at the direction of the commissioner shall establish, one or more separate accounts and allocate to them any amounts paid or remitted to, or held by, the corporation under designated contracts or classes of contracts. These amounts are to be applied to provide benefits payable partly or wholly in variable dollar amounts, and to provide benefits in fixed and guaranteed dollar amounts and other incidental benefits.
- (3) To the extent necessary to comply with the federal Investment Company Act of 1940, 15 U.S.C. Sec. 80a-1 et seq., or its interpretive rules, the corporation may:
 - (a) adopt special procedures for the conduct of the business and affairs of a separate account; and
 - (b) for persons having beneficial interests in a separate account, provide special voting and other rights, including special rights and procedures relating to investment policy, investment advisory services, selection of certified public accountants, and selection of a committee, the members of which need not be otherwise affiliated with the corporation, to manage the business and affairs of the account.
- (4) The commissioner may specify in the certificate of authority of a newly organized corporation the minimum required capital or the minimum required permanent surplus to be provided for each separate account. If a separate account is established after a certificate of authority has been issued, the commissioner shall require the corporation to allocate an adequate amount of capital and surplus to the separate account. An insurer may not be required to allocate more capital and surplus to a separate account than would be required of a separate insurer under Section 31A-5-211 and Chapter 17, Part 6, Risk-Based Capital.
- (5) The income and assets attributable to a separate account shall always remain identified with the particular account, but unless the commissioner so orders, the assets need not be kept physically separate from other assets of the corporation. The income and gains and losses, whether or not realized, from assets attributable to a separate account shall be credited to or charged against the account without regard to other income, gains, or losses of the corporation.
- (6) Except as provided in Subsection (7), liabilities arising out of any other business of the corporation are not to be allocated to a separate account, nor are any liabilities arising out of a separate account to be allocated to any other account of the corporation, except as provided in Subsection (11).
- (7)
 - (a) Each separate account shall be considered as an insurer within the meaning of Subsection 31A-27a-102(23).
 - (b) A liquidation order under Section 31A-27a-401 for the general account or for any separate account shall have effect as a rehabilitation order under Section 31A-27a-301 for all other accounts of the corporation. Claims remaining unpaid after completion of the liquidation under Chapter 27a, Insurer Receivership Act, shall be liens on the interests of shareholders, if any, but not on any other interests, in all of the corporation's assets that are not liquidated. The rehabilitator may transform these liens into ownership interests under Section 31A-27a-302.
- (8) Assets in excess of the liabilities allocated to separate accounts are the property of the corporation.

- (9) A corporation may own a particular asset in determinate proportions for separate accounts, for its general account, or as a trustee when acting as such within its legal powers.
- (10) The corporation may by an identifiable act transfer assets among the separate accounts, the general account, and any trust accounts of the corporation, for fair consideration as defined in Section 31A-27a-102.
- (11) The general account of the corporation, or any separate account, may, for a fair consideration as defined in Section 31A-27a-102, provide guarantees in connection with, perform services for, or reinsure other accounts, subject to rules adopted by the commissioner. The determination of a fair consideration shall be made by applying generally accepted accounting principles and realistic actuarial tables.
- (12) Section 31A-18-102 deals with separate account investments. Section 31A-20-106 requires the commissioner's approval before delivery of certain variable contracts. Section 31A-22-411 and Subsection 31A-21-301(1)(d) deal with policy provisions in separate account contracts.

Amended by Chapter 309, 2007 General Session