

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 1665**  
92ND GENERAL ASSEMBLY

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Reported from the Committee on Financial and Governmental Organization, Veterans' Affairs and Elections, May 6, 2004, with recommendation that the Senate Committee Substitute do pass.

4517S.05C

TERRY L. SPIELER, Secretary.

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**AN ACT**

To repeal section 376.309, RSMo, and to enact in lieu thereof one new section relating to investor protection.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

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Section A. Section 376.309, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 376.309, to read as follows:

376.309. 1. As used in this section, "separate account" means an account established by an insurance company, into which any amounts paid to or held by such company under applicable contracts are credited and the assets of which, subject to the provisions of this section, may be invested in such investments as shall be authorized by a resolution adopted by such company's board of directors. The income, if any, and gains and losses, realized or unrealized, on such account shall be credited to or charged against the amounts allocated to such account without regard to other income, gains or losses of the company. 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.

2. Any domestic life insurance company may, after adoption of a resolution by its board of directors, establish one or more separate accounts, and may allocate to such account or accounts any amounts paid to or held by it which are to be applied under the terms of an individual or group contract to provide benefits payable in fixed or in variable dollar amounts or in both.

3. To the extent it deems necessary to comply with any applicable federal or state act, the company may, with respect to any separate account or any portion thereof, provide for the benefit of persons having beneficial interests therein special voting and other rights and special procedures for the conduct of the business and affairs of such

21 separate account or portion thereof, including, without limitation, special rights and  
22 procedures relating to investment policy, investment advisory services, selection of public  
23 accountants, and selection of a committee, the members of which need not be otherwise  
24 affiliated with the company, to manage the business and affairs of such separate account  
25 or portion thereof; and the corporate charter of such company shall be deemed amended  
26 to authorize the company to do so. The provisions of this section shall not affect existing  
27 laws pertaining to the voting rights of such company's policyholders.

28         4. The amounts allocated to any separate account and the accumulations thereon  
29 may be invested and reinvested without regard to any requirements or limitations  
30 prescribed by the laws of this state governing the investments of life insurance  
31 companies, and the investments in such separate account or accounts shall not be taken  
32 into account in applying the investment limitations, including but not limited to  
33 quantitative restrictions, otherwise applicable to the investments of the company, except  
34 that to the extent that the company's reserve liability with regard to benefits guaranteed  
35 as to principal amount and duration, and funds guaranteed as to principal amount or  
36 stated rate of interest, is maintained in any separate account, a portion of the assets of  
37 such separate account at least equal to such reserve liability shall be, except as the  
38 director of insurance might otherwise approve, invested in accordance with the laws of  
39 this state governing the general investment account of any company. As used herein,  
40 the expression "general investment account" shall mean all of the funds, assets and  
41 investments of the company which are not allocated in a separate account. The  
42 provisions of section 376.170 relating to deposits for registered policies shall not be  
43 applicable to funds and investments allocated to separate accounts. No investment in  
44 the separate account or in the general investment account of a life insurance company  
45 shall be transferred by sale, exchange, substitution or otherwise from one account to  
46 another unless, in case of a transfer into a separate account, the transfer is made solely  
47 to establish the account or to support the operation of the contracts with respect to the  
48 separate account to which the transfer is made or unless the transfer, whether into or  
49 from a separate account, is made by a transfer of cash, or by a transfer of other assets  
50 having a readily determinable market value, provided that such transfer of other assets  
51 is approved by the director of insurance and is for assets of equivalent value. Such  
52 transfer shall be deemed approved to the extent the assets of a separate account so  
53 transferred have been paid to or are being held by the company in connection with a  
54 pension, retirement or profit-sharing plan subject to the provisions of the Internal  
55 Revenue Code, as amended, and the Employee Retirement Income Security Act of 1974,  
56 as amended. The director of insurance may withdraw such deemed approval by

57 providing written notice to the company that its financial condition or past practices  
58 require such withdrawal. The director of insurance may approve other transfers among  
59 such accounts if the director concludes that such transfers would be equitable.

60         5. Unless otherwise approved by the director of insurance, assets allocated to a  
61 separate account shall be valued at their market value on the date of valuation, or if  
62 there is no readily available market, then as provided under the terms of the contract  
63 or the rules or other written agreement applicable to such separate account; provided,  
64 that the portion of the assets of such separate account at least equal to the company's  
65 reserve liability with regard to the guaranteed benefits and funds referred to in  
66 subsection 4 of this section, if any, shall be valued in accordance with the rules otherwise  
67 applicable to the company's assets.

68         6. The director of insurance shall have the sole and exclusive **state** authority to  
69 regulate the issuance and sale of contracts under which amounts are to be allocated to  
70 one or more separate accounts as provided herein, and to issue such reasonable rules,  
71 regulations and licensing requirements as he shall deem necessary to carry out the  
72 purposes and provisions of this section; and such contracts, the companies which issue  
73 them and the agents or other persons who sell them shall not be subject to [sections  
74 409.101 to 409.419, RSMo, or amendments thereto, nor to the jurisdiction of]  
75 **registration with the commissioner of securities for the sale of these**  
76 **contracts. The department of insurance shall adopt by rule and regulation**  
77 **and enforce investor protection standards for investor suitability and agent**  
78 **supervision consistent with the Conduct Rules of the National Association of**  
79 **Securities Dealers for variable annuities.**

80         7. No domestic life insurance company, and no other life insurance company  
81 admitted to transact business in this state, shall be authorized to deliver within this  
82 state any contract under which amounts are to be allocated to one or more separate  
83 accounts as provided herein until said company has satisfied the director of insurance  
84 that its condition or methods of operation in connection with the issuance of such  
85 contracts will not render its operation hazardous to the public or its policyholders in this  
86 state. In determining the qualifications of a company requesting authority to deliver  
87 such contracts within this state, the director of insurance shall consider, among other  
88 things:

- 89             (1) The history and financial condition of the company;  
90             (2) The character, responsibility and general fitness of the officers and directors  
91 of the company; and  
92             (3) In the case of a company other than a domestic company, whether the

93 statutes and regulations of the jurisdiction of its incorporation provide a degree of  
94 protection to policyholders and the public which is substantially equal to that provided  
95 by this section and the rules and regulations issued thereunder.

96         8. An authorized life insurance company, whether domestic, foreign or alien,  
97 which issues contracts under which amounts are to be allocated to one or more separate  
98 accounts as provided herein, and which is a subsidiary of or affiliated through common  
99 management or ownership with another life insurance company authorized to do  
100 business in this state, may be deemed to have met the provisions of subsection 7 of this  
101 section if either it or the parent or affiliated company meets the requirements thereof.

102         9. If the contract provides for payment of benefits in variable amounts, it shall  
103 contain a statement of the essential features of the procedure to be followed by the  
104 company in determining the dollar amount of such variable benefits. Any such contract,  
105 including a group contract, and any certificate issued thereunder, shall state that such  
106 dollar amount may decrease or increase and shall contain on its first page a statement  
107 that the benefits thereunder are on a variable basis.

108         10. Except as otherwise provided in this section, all pertinent provisions of the  
109 insurance laws of this state shall apply to separate accounts and contracts relating  
110 thereto.

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