§ 4238. Group annuity contracts. (a) Any policy or contract, except a joint, reversionary or survivorship annuity contract, whereby annuities are payable dependent upon the continuance of the lives of more than one person, shall be deemed a group annuity contract. The party or parties to whom or to which such contract is issued, as herein provided, shall be deemed the holder of such contract. The term "annuitant", as used herein, refers to any person upon whose continued life such annuity is dependent.

(b) No authorized insurer shall deliver or issue for delivery in this state any group annuity contract except the following:

(1) A contract issued to an employer, which permits all of the employees of such employer or of any specified class or classes thereof to become annuitants.

(2) A contract issued to an employers' association which permits all of the employees of such employers or of any specified class or classes thereof to become annuitants. Such employers' association may provide for the representation of annuitants on its board of directors.

(3) A contract issued to a labor union which permits all of the members of such union or of any specified class or classes thereof to become annuitants.

(4) A contract issued to the trustees of a trust established by an employer, or by an employers' association, or by one or more labor unions, or by one or more employers and one or more labor unions, which permits all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof, to become annuitants.

(5) A contract issued to an association of persons having a common interest, calling or profession who constitute a homogeneous group, which association has a constitution and by-laws and is organized and maintained in good faith for purposes other than obtaining annuities or to trustees of a trust established by such an association which permits all members of the association and their employees or of any specified class or classes thereof to become annuitants.

(6) A contract issued to a bank or trust company or trustees of one or more trusts which permit individuals for whom contributions are made to individual retirement accounts or for individual retirement annuities described in section four hundred eight of the Internal Revenue Code of

1954 to become annuitants.

(7) A contract issued to the trustees of one or more trusts (other than trusts described in paragraph four hereof) for employees of more than one employer which permits all of the employees of each such employer or of any specified class or classes thereof to become annuitants, provided that if payments made to the insurer are derived wholly from funds contributed by such employees, the insurer shall issue a certificate complying with the requirements of this chapter applicable to individual annuities for delivery to each employee who contributes to the contract.

(8) A contract issued to the trustees of a foundation or endowment fund which permits any specified class or classes of professional persons to become annuitants.

(9) A contract issued to an association, or the trustee or trustees of a trust established, or participated in, by one or more associations, which permits all of the members of the associations, or all of any specified class or classes thereof, to become annuitants subject to the following:

each association shall have:

(A) a minimum of two hundred covered members at the contract's date of issue;

(B) been organized and maintained in good faith for purposes principally other than that of obtaining annuities;

(C) been in active existence for at least two years; and

(D) a constitution and by-laws which provide that:

(i) the association holds regular meetings not less than annually to further purposes of the association;

(ii) the association collects dues or solicits contributions from members; and

(iii) the members have voting privileges and representation on the governing board and committees.

(10) A contract issued to any organization, or the trustee or trustees of a trust established, or participated in, by one or more of such organizations which permits certain persons to become annuitants subject to the following:

(A) the organization must be:

(i) a bank, retailer, or other issuer of a credit card, charge card, or payment card which can be used to buy goods or services, and the contract must cover holders of that card; or

(ii) a bank, savings and loan association, credit union, mutual fund, money market fund, stockbroker, or other similar financial institution regulated by state or federal law, and the contract must cover the depositors, account holders, or members of that institution; and

(B) the organization or organizations shall have a minimum of two hundred covered persons at the contract's date of issue.

(11) A contract issued to the trustees of one or more trusts which permits any specified class or classes of plaintiffs or claimants to become annuitants with respect to amounts paid or payable on their behalf by way of settlement, judgment or other award. Any such contract or any certificate issued in connection with such contract shall not be subject to section four thousand two hundred twenty-three of this article.

(c) Payments made to the insurer under a group annuity contract may be derived in whole or in part from funds contributed by the persons covered thereunder. A group of employees covered under a contract may include retired employees, employees of affiliates and subsidiaries of the employer, individual proprietors affiliated with the employer, and partners and employees of individuals affiliated with the employer and of firms controlled by the employer.

(d) Anything in this chapter to the contrary notwithstanding, any group annuity contract may provide for readjustment of the rate of premium consideration or deposit based on the experience thereunder at the end of the first contract year or of any subsequent contract year, and such readjustment may be made retroactive only for such contract year. Any such rate readjustment shall be computed on a basis which is equitable to all group annuity contracts.

(e) No domestic, foreign or alien life insurance company shall be permitted to do business in this state if it hereafter issues, within or without this state, any group annuity contract which on its issuance does not appear to be self-supporting on reasonable assumptions as to interest, mortality and expense.