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COMMITTEE REPORT

January 27, 2016

**S. 850**

Introduced by Senator Hayes

S. Printed 1/27/16--S.

Read the first time June 2, 2015.

**THE COMMITTEE ON BANKING AND INSURANCE**

To whom was referred a Bill (S. 850) to amend Section 38‑9‑180, Code of Laws of South Carolina, 1976, relating to standard valuation, so as to define necessary terms, to prescribe new requirements, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

ROBERT W. HAYES, JR. for Committee.

**A** **BILL**

TO AMEND SECTION 38‑9‑180, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO STANDARD VALUATION, SO AS TO DEFINE NECESSARY TERMS, TO PRESCRIBE NEW REQUIREMENTS FOR THE DIRECTOR OR HIS DESIGNEE CONCERNING VALUING RESERVE LIABILITIES FOR OUTSTANDING INSURANCE POLICIES BASED UPON THE EFFECTIVE DATE OF THE POLICY OR CONTRACT, TO ALTER THE ACTUARIAL OPINION REQUIREMENTS FOR ALL LIFE INSURANCE POLICIES, TO UPDATE REFERENCES TO REQUIRE THAT THE COMMISSIONER’S RESERVE VALUATION METHOD BE USED FOR POLICIES ISSUED AFTER MARCH 23, 1960, AND POLICIES ISSUED AFTER THE EFFECTIVE DATE OF THIS ACT, TO PROVIDE A NEW FORMULA TO COMPUTE THE CALENDAR YEAR STATUTORY INTEREST RATE, TO UPDATE REFERENCES TO REFLECT THE COMMISSIONER’S RESERVE VALUATION METHODS, TO PROVIDE THE MINIMUM RESERVE REQUIRED IF THE PREMIUM CHARGED BY A COMPANY IS LESS THAN THE VALUATION NET PREMIUM FOR THE POLICY OR CONTRACT, TO PRESCRIBE THE MINIMUM STANDARD OF VALUATION FOR ACCIDENT AND HEALTH INSURANCE CONTRACTS ISSUED ON OR AFTER THE OPERATIVE DATE OF THE OPERATION MANUAL, TO PRESCRIBE THE OPERATIVE DATE FOR THE VALUATION MANUAL AND WHAT THE VALUATION MANUAL MUST SPECIFY, TO ESTABLISH REQUIREMENTS FOR A COMPANY THAT USES A PRINCIPLE‑BASED VALUATION, TO DEFINE CONFIDENTIAL INFORMATION AND TO PROVIDE PRIVILEGE FOR AND CONFIDENTIALITY OF CONFIDENTIAL INFORMATION, AND TO PROVIDE EXEMPTIONS IN CERTAIN CIRCUMSTANCES; TO AMEND SECTION 38‑63‑510, RELATING TO STANDARD NONFORFEITURE LAW FOR LIFE INSURANCE, SO AS TO DEFINE THE TERM “OPERATIVE DATE OF THE VALUATION MANUAL”; AND TO AMEND SECTION 38‑63‑600, RELATING TO THE BASIS FOR CALCULATING ADJUSTED PREMIUMS AND PRESENT VALUES OF POLICIES ISSUED ON OR AFTER JANUARY 1, 1989, SO AS TO PROVIDE THAT THE COMMISSIONERS’ STANDARD MORTALITY TABLE SHALL BE USED TO DETERMINE THE MINIMUM NONFORFEITURE STANDARD FOR POLICIES ISSUED ON OR AFTER THE OPERATIVE DATE OF THE VALUATION MANUAL.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 38‑9‑180 of the 1976 Code is amended to read:

“Section 38‑9‑180. (A) This section is known as the ‘Standard Valuation Law’.

(B) For the purposes of this section, the following definitions shall apply on or after the operative date of the valuation manual:

(1) ‘Accident and health insurance’ means contracts that incorporate morbidity risk and provide protection against economic loss resulting from accident, sickness, or medical conditions and as may be specified in the valuation manual.

(2) ‘Appointed actuary’ means a qualified actuary who is appointed in accordance with the valuation manual to prepare the actuarial opinion required in subsection (D)(5).

(3) ‘Company’ means an entity which:

(a) has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit‑type contracts in this State and has at least one such policy in force or on claim; or

(b) has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit‑type contracts in any state and is required to hold a certificate of authority to write life insurance, accident and health insurance, or deposit‑type contracts in this State.

(4) ‘Deposit‑type contract’ means contracts that do not incorporate mortality or morbidity risks and as may be specified in the valuation manual.

(5) ‘Life insurance’ means contracts that incorporate mortality risk, including annuity and pure endowment contracts, and as may be specified in the valuation manual.

(6) ‘NAIC’ means the National Association of Insurance Commissioners.

(7) ‘Policyholder behavior’ means any action a policyholder, contract holder or any other person with the right to elect options, such as a certificate holder, may take under a policy or contract subject to this section including, but not limited to, lapse, withdrawal, transfer, deposit, premium payment, loan, annuitization, or benefit elections prescribed by the policy or contract but excluding events of mortality or morbidity that result in benefits prescribed in their essential aspects by the terms of the policy or contract.

(8) ‘Principle‑based valuation’ means a reserve valuation that uses one or more methods or one or more assumptions determined by the insurer and is required to comply with subsection (O) as specified in the valuation manual.

(9) ‘Qualified actuary’ means an individual who is qualified to sign the applicable statement of actuarial opinion in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements and who meets the requirements specified in the valuation manual.

(10) ‘Tail risk’ means a risk that occurs either where the frequency of low probability events is higher than expected under a normal probability distribution or where there are observed events of very significant size or magnitude.

(11) ‘Valuation manual’ means the manual of valuation instructions adopted by the NAIC as specified in this section or as subsequently amended.

(C)(1) The director or his designee annually shall value, or cause to be valued, the reserve liabilities, referred to as reserves, for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer doing business in this State issued prior to the operative date of the valuation manual. However, for an alien insurer the valuation is limited to ~~the~~ their United States business ~~and may certify the amount of the reserves, specifying the mortality table or tables, rate or rates of interest, and methods, net level premium method or other, used in the calculation of the reserves~~. In calculating the reserves he may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves required in this section of a foreign or an alien insurer, he may accept any valuation made, or caused to be made, by the insurance supervisory official of a state or another jurisdiction when the valuation complies with the minimum standard provided in this section ~~and if the official of the state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the director or his designee when the certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction~~.

(2) The provisions set forth in subsections (E) through (M) apply to all policies and contracts, as appropriate, subject to this section issued on or after March 24, 1960 and prior to the operative date of the valuation manual and the provisions set forth in subsections (N) and (O) must not apply to any such policies and contracts.

(3) The minimum standard for the valuation of policies and contracts issued prior to March 24, 1960, must be that provided by the laws in effect immediately prior to that date.

(4) The director or his designee annually shall value, or cause to be valued, the reserve liabilities, hereinafter called reserves, for all outstanding life insurance contracts, annuity and pure endowment contracts, accident and health contracts, and deposit‑type contracts of every company issued on or after the operative date of the valuation manual. In lieu of the valuation of the reserves required of a foreign or alien company, the director or his designee may accept a valuation made, or caused to be made, by the insurance supervisory official of any State or other jurisdiction when the valuation complies with the minimum standard provided in this section.

(5) The provisions set forth in subsections (M), (N) and (O) apply to all policies and contracts issued on or after the operative date of the valuation manual.

~~(B)~~(D)(1) Every life insurance company doing business in this State annually shall submit to the director or his designee the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the director by regulation are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this State. The director by regulation shall define the specifics of this opinion and add other items necessary to its scope.

(2)(a) Every life insurance company, except as exempted by or pursuant to regulation, also annually must include in the opinion required in item (1) an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the director by regulation, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company’s obligations under the policies and contracts, including, but not limited to, the benefits under and expenses associated with the policies and contracts.

(b) The director may provide by regulation for a transition period for establishing higher reserves which the qualified actuary considers necessary in order to render the opinion required by this subsection.

(3) Each opinion required by item (2)~~(b)~~ is governed by the following provisions:

(a) A memorandum, in form and substance acceptable to the ~~department~~ director or his designee as specified by regulation, must be prepared to support each actuarial opinion.

(b) If the insurance company fails to provide a supporting memorandum at the request of the director or his designee within a period specified by regulation or the director or his designee determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the regulations or is otherwise unacceptable to the director or his designee, the director or designee may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare supporting memorandum required by the director or designee.

(4) Every opinion is governed by the following provisions:

(a) The opinion must be submitted with the annual statement reflecting the valuation of reserve liabilities for each year ending after December 30, 1993.

(b) The opinion must apply to all business in force including individual and group health insurance plans, in form and substance acceptable to the director or designee as specified by regulation.

(c) The opinion must be based on standards adopted by the Actuarial Standards Board and on additional standards the director by regulation prescribes.

(d) For an opinion required to be submitted by a foreign or alien company, the director or designee may accept the opinion filed by that company with the insurance supervisory official of another state if the director or designee determines that the opinion reasonably meets the requirements applicable to a company domiciled in this State.

(e) For the purposes of this subsection, ‘qualified actuary’ means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in regulations.

(f) Except in cases of fraud or wilful misconduct, the qualified actuary must not be liable for damages to a person, other than the insurance company and the director or designee, for an act, an error, an omission, a decision, or conduct with respect to the actuary’s opinion.

(g) Disciplinary action by the director or designee against the company or the qualified actuary must be defined in regulations by the director.

(h) A memorandum in support of the opinion and related material provided by the company to the director or designee must be kept confidential by the director or designee and must not be made public or subject to subpoena, other than for the purpose of defending an action seeking damages from a person by reason of action required by this subsection or by regulations promulgated under it. However, the memorandum or other material may be released by the director or designee with the written consent of the company or to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the director or designee for preserving the confidentiality of the memorandum or other material. Once a portion of the confidential memorandum is cited by the company in its marketing, is cited before a governmental agency other than a state insurance department, or is released by the company to the news media all portions of the confidential memorandum are no longer confidential.

(5)(a) Every company with outstanding life insurance contracts, accident and health insurance contracts or deposit‑type contracts in this State and subject to regulation by the director annually shall submit the opinion of the appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this State. The valuation manual will prescribe the specifics of this opinion including any items deemed to be necessary to its scope.

(b) Every company with outstanding life insurance contracts, accident and health insurance contracts or deposit‑type contracts in this State and subject to regulation by the director, except as exempted in the valuation manual, annually shall include in the opinion required by item (5)(a), an opinion of the same appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified in the valuation manual, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company’s obligations under the policies and contracts, including, but not limited to, the benefits under and expenses associated with the policies and contracts.

(c) Each opinion required by this item must be governed by the following provisions:

(i) A memorandum, in form and substance as specified in the valuation manual, and acceptable to the director or his designee, shall be prepared to support each actuarial opinion.

(ii) If the insurance company fails to provide a supporting memorandum at the request of the director or his designee within a period specified in the valuation manual or the director or his designee determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the valuation manual or is otherwise unacceptable to the director or his designee, the director or his designee may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting memorandum required by the director or his designee.

(d) Every opinion must be governed by the following provisions:

(i) The opinion must be in form and substance as specified in the valuation manual and acceptable to the director or his designee.

(ii) The opinion must be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after the operative date of the valuation manual.

(iii) The opinion apply to all policies and contracts subject to item (5)(b), plus other actuarial liabilities as may be specified in the valuation manual.

(iv) The opinion must be based on standards adopted by the Actuarial Standards Board or its successor, and on additional standards as prescribed in the valuation manual.

(v) In the case of an opinion required to be submitted by a foreign or alien company, the director or his designee may accept the opinion filed by that company with the insurance supervisory official of another State if the director or his designee determines that the opinion reasonably meets the requirements applicable to a company domiciled in this State.

(vi) Except in cases of fraud or wilful misconduct, the appointed actuary is not liable for damages to a person, other than the insurance company and the director, for an act, error, omission, decision or conduct with respect to the appointed actuary’s opinion.

(vii) Disciplinary action by the director against the company or the appointed actuary must be defined in regulations by the director.

~~(C)~~(E)(1) Except as otherwise provided in item (3) ~~of this subsection~~ and subsection ~~(D)~~(F), the minimum standard for the valuation of policies and contracts issued before March 24, 1960, is that provided by the laws in effect immediately before that date except the minimum standards for the valuation of annuities and pure endowments purchased under group annuity and pure endowment contracts issued before the effective date is that provided for by the laws in effect immediately before that date but replacing the interest rates as specified in the laws by an interest rate of five percent a year.

(2) Except as otherwise provided in item (3) ~~of this subsection~~ and subsection ~~(D)~~(F), the minimum standard for the valuation of policies and contracts issued after March 23, 1960, is the ~~director’s or designee’s~~ commissioner’s reserve valuation methods defined in subsections ~~(E)~~(G), ~~(F)~~(H), and ~~(I)~~(K), five percent interest for group annuity and pure endowment contracts and three and one‑half percent interest for all other policies and contracts, or for policies and contracts other than annuity and pure endowment contracts issued after May 25, 1975, four percent interest for policies issued before January 1, 1979, five and one‑half percent interest for single premium life insurance policies, and four and one‑half percent interest for all other policies issued after December 31, 1978, and the following tables:

(a) for ~~all~~ ordinary policies of life insurance issued on the standard basis, excluding disability and accidental death benefits in the policies, the commissioner’s 1941 Standard Ordinary Mortality Table for the policies issued before the operative date stated in Section 38‑63‑650, the commissioner’s 1958 Standard Ordinary Mortality Table for the policies issued on or after the operative date of Section 38‑63‑590 of the Standard Nonforfeiture Law for Life Insurance, and before the operative date of Section 38‑63‑590 of the Standard Nonforfeiture Law for Life Insurance, if for any category of policies issued on female risks all modified net premiums and present values referred to in this section may be calculated according to an age not more than three years younger than the actual age of the insured; for policies issued before January 1, 1979, and not more than six years younger than the actual age of the insured or policies issued after December 31, 1978, and before the operative date of Section 38‑63‑600; and for policies issued on or after the operative date of Section 38‑63‑600 of the Standard Nonforfeiture Law for Life Insurance the commissioner’s 1980 Standard Ordinary Mortality Table, at the election of the company for one or more specified plans of life insurance, the commissioner’s 1980 Standard Ordinary Mortality Table with Ten‑Year Select Mortality Factors, or any ordinary mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the director for use in determining the minimum standard of valuation for the policies;

(b) for ~~all~~ industrial life insurance policies issued on the standard basis, excluding disability and accidental death benefits in the policies, the 1941 Standard Industrial Mortality Table for policies issued before the operative date stated in Section 38‑63‑650; for all policies issued on or after operative date, the 1941 Standard Industrial Mortality Table or the commissioner’s 1961 Standard Industrial Mortality Table or any industrial mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the director for use in determining the minimum standard of valuation for policies, according to which of these tables is used to calculate adjusted premiums and present values as specified in Section 38‑63‑580;

(c) for individual annuity and pure endowment contracts, excluding disability and accidental death benefits in the policies, the 1937 Standard Annuity Mortality Table or, at the option of the company, the Annuity Mortality Table for 1949, Ultimate, or a modification of either of these tables approved by the director or designee;

(d) for group annuity and pure endowment contracts, excluding disability and accidental death benefits in the policies, the Group Annuity Mortality Table for 1951, a modification of the table approved by the director or designee or, at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts;

(e) for total and permanent disability benefits in or supplementary to ordinary policies or contracts, for policies or contracts issued after December 31, 1965, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit or tables of disablement rates and termination rates, adopted after 1980 by the National Association of Insurance Commissioners, approved by regulation promulgated by the director, for use in determining the minimum standard of valuation for the policies; for policies or contracts issued after December 31, 1960, and before January 1, 1966, either the tables or, at the option of the company, the Class (3) Disability Table (1926) and for policies issued before January 1, 1961, the Class (3) Disability Table (1926) or other table approved by the director or designee. The table, for active lives, must be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(f) for accidental death benefits in or supplementary to policies, for policies issued after December 31, 1965, the 1959 Accidental Death Benefits Table, or any accidental death benefits table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the director for use in determining the minimum standard of valuation for the policies; for policies issued after December 31, 1960, and before January 1, 1966, either the table or, at the option of the company, the Inter‑Company Double Indemnity Mortality Table; and for policies issued before January 1, 1961, the Inter‑Company Double Indemnity Mortality Table, or other table approved by the director or designee. The table must be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(g) for extra benefits provided in life or endowment contracts or policies under which there is payable a series of coupons or guaranteed dividends or a series of constant or variable pure endowments maturing either during the term of the contract and the continuation of the life of the insured or maturing as a series after the death of the insured, the table or basis of reserves approved by the director or designee;

(h) for group life insurance, life insurance issued on the substandard basis and other special benefits, the tables approved by the director or designee;

(3) Except as provided in subsection ~~(D)~~(F), the minimum standard for the valuation ~~of all~~ for individual annuity and pure endowment contracts issued on or after the operative date of this item, as defined in this section, and for all annuities and pure endowments purchased on or after the operative date under group annuity and pure endowment contracts, is the ~~director’s or designee’s~~ commissioner’s reserve valuation methods defined in subsections ~~(E)~~(G) and ~~(F)~~(H) and the following tables and interest rates:

(a) for individual annuity and pure endowment contracts issued before January 1, 1979, excluding disability and accidental death benefits in the contracts, the 1971 Individual Annuity Mortality Table, or a modification of this table approved by the director or designee, and six percent interest for single premium immediate annuity contracts, and four percent interest for all other individual annuity and pure endowment contracts;

(b) for individual single premium immediate annuity contracts issued after December 31, 1978, excluding disability and accidental death benefits in the contracts, the 1971 Individual Annuity Mortality Table or any individual annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the director for use in determining the minimum standard of valuation for the contracts, or a modification of these tables approved by the director or designee, and seven and one‑half percent interest;

(c) for individual annuity and pure endowment contracts issued after December 31, 1978, other than single premium immediate annuity contracts, excluding disability and accidental death benefits in the contracts, the 1971 Individual Annuity Mortality Table or any individual annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the director for use in determining the minimum standard of valuation for the contracts, or a modification of these tables approved by the director or designee, and five and one‑half percent interest for single premium deferred annuity and pure endowment contracts and four and one‑half percent interest for all other individual annuity and pure endowment contracts;

(d) for ~~all~~ annuities and pure endowments purchased before January 1, 1979, under group annuity and pure endowment contracts, excluding disability and accidental death benefits purchased under the contracts, the 1971 Group Annuity Mortality Table, or a modification of this table approved by the director or designee, and six percent interest;

(e) for ~~all~~ annuities and pure endowments purchased after December 31, 1978, under group annuity and pure endowment contracts, excluding disability and accidental death benefits purchased under the contracts, the 1971 Group Annuity Mortality Table or a group annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the director for use in determining the minimum standard of valuation for the annuities and pure endowments, or a modification of these tables approved by the director or designee, and seven and one‑half percent interest.

After May 26, 1975, an insurer may file with the director or designee a written notice of its election to comply with this item after a specified date before January 1, 1979, which is the operative date of this item for the insurer. However, an insurer may elect a different effective date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If an insurer makes no election, the effective date of this item for the insurer is January 1, 1979.

~~(D)~~(F)(1) The calendar year statutory valuation interest rates as defined in this subsection must be used in determining the minimum standard for the valuation of:

(a) ~~all~~ life insurance policies issued in a particular calendar year, on or after the operative date of Section 38‑63‑600 of the Standard Nonforfeiture Law for Life Insurance;

(b) ~~all~~ individual annuity and pure endowment contracts issued in a particular calendar year after December 31, 1982;

(c) ~~all~~ annuities and pure endowments purchased in a particular calendar year after December 31, 1982, under group annuity and pure endowment contracts;

(d) the net increase, if any, in a particular calendar year after January 1, 1983, in amounts held under guaranteed interest contracts.

(2) The calendar year statutory valuation interest rates, I, must be determined as follows and the results rounded to the nearer one‑quarter of one percent:

(a) for life insurance,

~~I .03 + W (R(1) ‑ .03) + 2W(R(2) ‑ .09)~~ I = .03 + W (R(1) ‑ .03) + W\* (1/2) \* (R(2) ‑ .09);

(b) for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options,

I~~.~~ = .03 + W (R ‑ .03),

where R(1) is the lesser of R and .09, R(2) is the greater of R and .09, R is the reference interest rate defined in this subsection, and W is the weighting factor defined in this subsection;

(c) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in subitem (b) ~~of this item~~, the formula for life insurance stated in subitem (a) ~~of this item~~ applies to annuities and guaranteed interest contracts with guarantee durations in excess of ten years and the formula for single premium immediate annuities stated in subitem (b) applies to annuities and guaranteed interest contracts with guarantee duration of ten years or less;

(d) for other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in subitem (b) applies;

(e) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in subitem (b) applies.

However, if the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one‑half of one percent, the calendar year statutory valuation interest rate for the life insurance policies must be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year must be determined for 1980, using the reference interest rate defined for 1979, and must be determined for each subsequent calendar year regardless of when Section 38‑63‑600 of the Standard Nonforfeiture Law for Life Insurance becomes operative.

(3) The weighting factors referred to in the formulas stated in this subsection are given in the following tables:

(a) weighting Factors for Life Insurance:

Guarantee Duration Weighting

Years

10 or Less: .50

More than 10, but not

more than 20 .45

More than 20 .35

For life insurance, the guarantee duration is the maximum number of years the life insurance may remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy;

(b) weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options:

Weighting Factors

.80

(c) weighting factors for other annuities and for guaranteed interest contracts, except as stated in subitem (b) of this item are as specified subsubitems (i), (ii), and (iii) according to the rules and definitions in subsubitems (iv), (v), and (vi):

(i) for annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration Weighting

(Years) for Plan Type

A B C

5 or less .80 .60 .50

More than five, but not

more than 10: .75 .60 .50

More than 10, but not

more than 20: .65 .50 .45

More than 20: .45 .35 .35

(ii) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in subsubitem (i) of this subitem increased by:

Plan Type

A B C

.15 .25 .05

(iii) for annuities and guaranteed interest contracts valued on an issue year basis other than those with no cash settlement options, which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than twelve months beyond the valuation date, the factors shown in subsubitem (i) of this subitem or derived in subsubitem (ii) increased by:

Plan Type

A B C

.05 .05 .05

(iv) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(d) Plan type as used in the above tables is defined as:

(i) Plan Type A:

At any time policyholder may withdraw funds only:

a. with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurer;

b. without the adjustment but in installments over five years or more;

c. as an immediate life annuity; or

d. no withdrawal permitted;

(ii) Plan Type B:

Before expiration of the interest rate guarantee, policyholder may withdraw funds only:

a. with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurer;

b. without the adjustment but in installments over five years or more; or

c. no withdrawal permitted. At the end of interest rate guarantee, funds may be withdrawn without the adjustment in a single sum or installments over less than five years;

(iii) Plan Type C:

Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either:

a. without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurer; or

b. subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

An insurer may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. As used in this subsection an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(4) The Reference Interest Rate referred to in item (2) of this subsection is defined as:

(a) for ~~all~~ life insurance, the lesser of the average over a period of thirty‑six months and the average over a period of twelve months, ending on June thirtieth of the calendar year next preceding the year of issue, of Moody’s Corporate Bond Yield Average ‑ Monthly Average Corporates, as published by Moody’s Investors Service, Inc.;

(b) for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over twelve months, ending on June thirtieth of the calendar year of issue or year of purchase, of Moody’s Corporate Bond Yield Average ‑ Monthly Average Corporates, as published by Moody’s Investors Service, Inc.;

(c) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subitem (b) with guarantee duration in excess of ten years, the lesser of the average over thirty‑six months and the average over twelve months, ending on June thirtieth of the calendar year of issue or purchase, of Moody’s Corporate Bond Yield Average ‑ Monthly Average Corporates, as published by Moody’s Investors Service, Inc.;

(d) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subitem (b), with guarantee duration of ten years or less, the average over twelve months, ending on June thirtieth of the calendar year of issue or purchase, of Moody’s Corporate Bond Yield Average ‑ Monthly Average Corporates, as published by Moody’s Investors Service, Inc.;

(e) for other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over twelve months, ending on June thirtieth of the calendar year of issue or purchase, of Moody’s Corporate Bond Yield Average ‑ Monthly Average Corporates, as published by Moody’s Investors Service, Inc.;

(f) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in subitem (b), the average over twelve months, ending on June thirtieth of the calendar year of the change in the fund, of Moody’s Corporate Bond Yield Average ‑ Monthly Average Corporates, as published by Moody’s Investors Service, Inc.;

(5) If Moody’s Corporate Bond Yield Average ‑ Monthly Average Corporates is no longer published by Moody’s Investors Service, Inc., or if the National Association of Insurance Commissioners determines that Moody’s Corporate Bond Yield Average ‑ Monthly Average Corporates as published by Moody’s Investors Service, Inc., is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the National Association of Insurance Commissioners and approved by regulation promulgated by the director, may be substituted.

~~(E)~~(G) Except as otherwise provided in subsections ~~(F)~~(H) and ~~(I)~~(K), reserves according to the ~~director’s or designee’s~~ commissioner’s reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, are the excess, if any, of the present value, at the date of valuation, of future guaranteed benefits provided for by the policies, over the then present value of future modified net premiums. The modified net premiums for the policy are the uniform percentage of the respective contract premiums for the benefits that the present value, at the date of issue of the policy, of the modified net premiums is equal to the sum of the then present value of the benefits provided for by the policy and the excess of item (1) over item (2), as follows:

(1) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium may not exceed the net level annual premium on the nineteen year premium whole life plan for insurance of the same amount at an age one year higher than the age of issue of the policy.

(2) A net one year term premium for the benefits provided for in the first policy year. For a life insurance policy issued after December 31, 1985, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for the excess and which provides an endowment benefit or a cash surrender value or a combination of them in an amount greater than the excess premium, the reserve according to the director’s or designee’s reserve valuation method as of a policy anniversary occurring on or before the assumed ending date defined in this section as the first policy anniversary on which the sum of an endowment benefit and cash surrender value then available is greater than the excess premium, except as otherwise provided in subsection ~~(I)~~(K), is the greater of the reserve as of the policy anniversary calculated as described in the preceding paragraph and the reserve as of the policy anniversary calculated as described in that paragraph, but with the value defined in item (1) being reduced by fifteen percent of the amount of the excess first year premium, all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date, the policy being assumed to mature on the date as an endowment, and the cash surrender value provided on the date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in subsection ~~(C)(1) and (D)~~ (E)(1) and (F) shall be used.

Reserves according to the ~~director’s or designee’s~~ commissioner’s reserve valuation method for: life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums, group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer including a partnership or sole proprietorship or by an employee organization, or both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as amended, disability and accidental death benefits in all policies and contracts, and all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, must be calculated by a method consistent with the principles of subsection ~~(D)~~(F), except extra premiums charged because of impairments or special hazards must be disregarded in the determination of modified net premiums.

~~(F)~~(H) This subsection applies to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer including a partnership or sole proprietorship, or by an employee organization, or both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as amended. Reserves according to the ~~director’s or designee’s~~ commissioner’s annuity reserve method for benefits under annuity or pure endowment contracts, excluding disability and accidental death benefits in the contracts, is the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by the contracts at the end of each respective contract year, over the present value, at the date of valuation, of future valuation considerations derived from future gross considerations, required by the terms of the contract, that become payable before the end of the respective contract year. The future guaranteed benefits must be determined by using the mortality table, if any, and the interest rate, or rates, specified in the contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of the contracts to determine nonforfeiture values.

~~(G)~~(I)(1) An insurer’s aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued after March 23, 1960, must not be less than the aggregate reserves calculated in accordance with the methods set forth in subsections ~~(E), (F), (I), and (J)~~ (G), (H), (K), and (L) and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for the policies.

(2) The aggregate reserves for all policies, contracts, and benefits must not be less than the aggregate reserves determined by the ~~qualified~~ appointed actuary to be necessary to render the opinion required by subsection ~~(B)~~(D).

~~(H)~~(J) Reserves for ~~all~~ policies and contracts issued before March 24, 1960, may be calculated, at the option of the insurer, according to the standards which produce greater aggregate reserves for all the policies and contracts than the minimum reserves required by the laws in effect immediately before the date. Reserves for a category of policies, contracts, or benefits established by the director or designee, after March 23, 1960, may be calculated, at the option of the insurer, according to the standards which produce greater aggregate reserves for the category than those calculated according to the minimum standard provided in this section, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, must not be ~~higher~~ greater than the corresponding rate or rates of interest used in calculating nonforfeiture benefits. An insurer which adopts a standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided in this section, with the approval of the director or his designee, may adopt a lower standard of valuation, but not lower than the minimum provided in this section. However, for purposes of this subsection, the holding of additional reserves previously determined by ~~a qualified~~ the appointed actuary to be necessary to render the opinion required by subsection ~~(B)~~(D) must not be deemed to be the adoption of a higher standard of valuation.

~~(I)~~(K) If in a contract year the gross premium charged by a ~~life insurer~~ company on a policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for the policy or contract is the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for the policy or contract, or the reserve calculated by the method actually used for the policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this subsection are those standards stated in subsections ~~(C)(1) and (D)~~ (E)(1) and (F). For a life insurance policy issued after December 31, 1985, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for the excess and which provides an endowment benefit or a cash surrender value or a combination of them in an amount greater than the excess premium, this subsection must be applied as if the method actually used in calculating the reserve for the policy were the method described in subsection ~~(E)~~(G), ignoring the second paragraph of subsection ~~(E)~~(G). The minimum reserve at each policy anniversary of the policy is the greater of the minimum reserve calculated in accordance with subsection ~~(E)~~(G), including the second paragraph of that subsection, and the minimum reserve calculated in accordance with this subsection.

~~(J)~~(L) For a plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurer based on then estimates of future experience, or for a plan of life insurance or annuity which is of a nature so that the minimum reserves cannot be determined by the methods described in subsections ~~(E), (F), and (I)~~ (G), (H), and (K), the reserves which are held under the plan must be:

(1) appropriate in relation to the benefits and the pattern of premiums for that plan;

(2) computed by a method which is consistent with the principles of this Standard Valuation Law, as determined by regulations promulgated by the director.

~~(K)~~ ~~This section is known as the “Standard Valuation Law”.~~

(M) For accident and health insurance contracts issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under subsection (C)(2).

(N)(1) For policies issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under subsection (C)(2), except as provided under items (5) or (7).

(2) The operative date of the valuation manual is January first of the first calendar year following July first as of which all of the following have occurred:

(a) The valuation manual has been adopted by the NAIC by an affirmative vote of at least forty‑two members, or three‑fourths of the members voting, whichever is greater.

(b) The Standard Valuation Law, as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by states representing greater than seventy‑five percent of the direct premiums written as reported in the following annual statements submitted for 2008: life, accident and health annual statements; health annual statements; or fraternal annual statements.

(c) The Standard Valuation Law, as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by at least forty‑two of the following fifty‑five jurisdictions: The fifty states of the United States, American Samoa, the American Virgin Islands, the District of Columbia, Guam, and Puerto Rico.

(3) Unless a change in the valuation manual specifies a later effective date, changes to the valuation manual shall be effective on January first following the date when the change to the valuation manual has been adopted by the NAIC by an affirmative vote representing:

(a) at least three‑fourths of the members of the NAIC voting, but not less than a majority of the total membership; and

(b) members of the NAIC representing jurisdictions totaling greater than seventy‑five percent of the direct premiums written as reported in the following annual statements most recently available prior to the vote in subitem (a): life, accident and health annual statements, health annual statements, or fraternal annual statements.

(4) The valuation manual must specify all of the following:

(a) minimum valuation standards for and definitions of the policies or contracts subject to subsection (C)(2). These minimum valuation standards must be:

(i) the commissioner’s reserve valuation method for life insurance contracts, other than annuity contracts, subject to subsection (C)(2);

(ii) the commissioner’s annuity reserve valuation method for annuity contracts subject to subsection (C)(2); and

(iii) minimum reserves for all other policies or contracts subject to subsection (C)(2);

(b) the policies or contracts or types of policies or contracts that are subject to the requirements of a principle‑based valuation in subsection (O)(1) and the minimum valuation standards consistent with those requirements;

(c) for policies and contracts subject to a principle‑based valuation under subsection (O):

(i) requirements for the format of reports to the director under subsection (O)(2)(c) and which must include information necessary to determine if the valuation is appropriate and in compliance with this section;

(ii) assumptions must be prescribed for risks over which the company does not have significant control or influence;

(iii) procedures for corporate governance and oversight of the actuarial function, and a process for appropriate waiver or modification of the procedures;

(d) for policies not subject to a principle‑based valuation under subsection (O), the minimum valuation standard must either:

(i) be consistent with the minimum standard of valuation prior to the operative date of the valuation manual; or

(ii) develop reserves that quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring;

(e) other requirements, including, but not limited to, those relating to reserve methods, models for measuring risk, generation of economic scenarios, assumptions, margins, use of company experience, risk measurement, disclosure, certifications, reports, actuarial opinions and memorandums, transition rules and internal controls; and

(f) the data and form of the data required under subsection (O), with whom the data must be submitted, and may specify other requirements including data analyses and reporting of analyses.

(5) In the absence of a specific valuation requirement or if a specific valuation requirement in the valuation manual is not, in the opinion of the director or his designee, in compliance with this section, then the company shall, with respect to such requirements, comply with minimum valuation standards prescribed by the director by regulation.

(6) The director or his designee may engage a qualified actuary, at the expense of the company, to perform an actuarial examination of the company and opinion on the appropriateness of any reserve assumption or method used by the company, or to review and opinion on a company’s compliance with any requirement set forth in this section. The director or his designee may rely upon the opinion, regarding provisions contained within this section, of a qualified actuary engaged by the commissioner of another state, district or territory of the United States. As used in this item, the term ‘engage’ includes employment and contracting.

(7) The director or his designee may require a company to change any assumption or method that in the opinion of the director or his designee is necessary in order to comply with the requirements of the valuation manual or this section; and the company shall adjust the reserves as required by the director or his designee. The director or his designee may take other disciplinary action as permitted pursuant to Sections 38‑2‑10 and 38‑5‑120.

(O)(1) A company must establish reserves using a principle‑based valuation that meets the following conditions for policies or contracts as specified in the valuation manual:

(a) Quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring during the lifetime of the contracts. For polices or contracts with significant tail risk, reflects conditions appropriately adverse to quantify the tail risk.

(b) Incorporate assumptions, risk analysis methods and financial models, and management techniques that are consistent with, but not necessarily identical to, those utilized within the company’s overall risk assessment process, while recognizing potential differences in financial reporting structures and any prescribed assumptions or methods.

(c) Incorporate assumptions that are prescribed in the valuation manual or for assumptions that are not prescribed, the assumptions must be established using the company’s available experience, to the extent it is relevant and statistically credible; or to the extent that company data is not available, relevant, or statistically credible, be established utilizing other relevant, statistically credible experience.

(d) Provide margins for uncertainty including adverse deviation and estimation error, such that the greater the uncertainty, the larger the margin and resulting reserve.

(2) A company using a principle‑based valuation for one or more policies or contracts subject to this section as specified in the valuation manual shall:

(a) establish procedures for corporate governance and oversight of the actuarial valuation function consistent with those described in the valuation manual;

(b) provide to the director and the company’s board of directors an annual certification of the effectiveness of the internal controls with respect to the principle‑based valuation. These controls must be designed to assure that all material risks inherent in the liabilities and associated assets subject to such valuation are included in the valuation, and that valuations are made in accordance with the valuation manual. The certification must be based on the controls in place as of the end of the preceding calendar year; and

(c) develop, and file with the director or his designee upon request, a principle‑based valuation report that complies with standards prescribed in the valuation manual.

(3) A principle‑based valuation may include a prescribed formulaic reserve component.

(P) A company shall submit mortality, morbidity, policyholder behavior, or expense experience and other data as prescribed in the valuation manual.

(Q)(1) For purposes of this subsection, ‘Confidential Information’ means:

(a) a memorandum in support of an opinion submitted pursuant to subsection (D) and any other documents, materials and other information, including, but not limited to, all working papers, and copies created, produced or obtained by, or disclosed to the director or any other person in connection with the memorandum;

(b) all documents, materials and other information, including, but not limited to, all working papers, and copies, created, produced or obtained by or disclosed to the director or any other person in the course of an examination made pursuant subsection (N)(6); provided, however, that if an examination report or other material prepared in connection with an examination made under Section 38‑13‑20 is not held as private and confidential information under Section 38‑13‑10, et seq., an examination report or other material prepared in connection with an examination made under subsection (N)(6) is not ‘confidential information’ to the same extent as if such examination report or other material had been prepared under Section 38‑13‑10, et seq.;

(c) any reports, documents, materials and other information developed by a company in support of, or in connection with, an annual certification by the company pursuant to subsection (O)(2)(b) evaluating the effectiveness of the company’s internal controls with respect to a principle‑based valuation and any other documents, materials and other information, including, but not limited to, all working papers, and copies, created, produced or obtained by or disclosed to the director or any other person in connection with such reports, documents, materials and other information;

(d) any principle‑based valuation report developed under subsection (O)(2)(c) of this section and any other documents, materials and other information, including, but not limited to, all working papers, and copies of them, created, produced or obtained by or disclosed to the director or any other person in connection with the report; and

(e) any documents, materials, data and other information submitted by a company pursuant to subsection (P), collectively, ‘experience data’, and any other documents, materials, data and other information, including, but not limited to, all working papers, and copies created or produced in connection with the experience data, in each case that includes any potentially company‑identifying or personally identifiable information, that is provided to or obtained by the director or his designee, together with any ‘experience data’, ‘experience materials’, and any other documents, materials, data and other information, including, but not limited to, all working papers, and copies, created, produced, or obtained by or disclosed to the director or any other person in connection with such experience materials.

(2)(a) Except as provided in this subsection, a company’s confidential information is confidential by law and privileged, is not subject to disclosure pursuant to the Freedom of Information Act, and is not subject to subpoena or discovery or admissible in evidence in any private civil action; provided, however, that the director or his designee is authorized to use the confidential information in the furtherance of any regulatory or legal action brought against the company as a part of the director’s or his designee’s official duties.

(b) Neither the director nor any person who received confidential information while acting under the authority of the director is permitted or required to testify in any private civil action concerning any confidential information.

(c) In order to assist in the performance of the director’s or his designee’s duties, the director or his designee may share confidential information with other state, federal and international regulatory agencies and with the NAIC and its affiliates and subsidiaries, and in the case of confidential information specified in item (1)(a) and (d) only, with the Actuarial Board for Counseling and Discipline, or its successor, upon request stating that the confidential information is required for the purpose of professional disciplinary proceedings and with state, federal and international law enforcement officials, provided that such recipient agrees, and has the legal authority to agree, to maintain the confidentiality and privileged status of such documents, materials, data and other information in the same manner and to the same extent as required for the director or his designee.

(d) The director or his designee may receive documents, materials, data and other information, including otherwise confidential and privileged documents, materials, data or information, from the NAIC and its affiliates and subsidiaries, from regulatory or law enforcement officials of other foreign or domestic jurisdictions and from the Actuarial Board for Counseling and Discipline or its successor and shall maintain as confidential or privileged any document, material, data or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.

(e) The director or his designee may enter into agreements governing sharing and use of information consistent with item (2).

(f) No waiver of any applicable privilege or claim of confidentiality in the confidential information shall occur as a result of disclosure to the director or his designee under this section or as a result of sharing as authorized in item (2)(c).

(g) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this item (2) must be available and enforced in any proceeding in, and in any court of, this State.

(h) As used in this subsection, ‘regulatory agency,’ ‘law enforcement agency’ and the ‘NAIC’ include, but are not limited to, their employees, agents, consultants and contractors.

(3) Notwithstanding item (2), any confidential information specified in item (1)(a) and (d):

(a) may be subject to subpoena for the purpose of defending an action seeking damages from the appointed actuary submitting the related memorandum in support of an opinion submitted under subsection (D) or principle‑based valuation report developed under subsection (O)(2)(c) by reason of an action required by this section or by regulations promulgated under this section;

(b) may otherwise be released by the director with the written consent of the company; and

(c) once any portion of a memorandum in support of an opinion submitted under subsection (D) or a principle‑based valuation report developed under subsection (O)(2)(c) is cited by the company in its marketing or is publicly volunteered to or before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of the memorandum or report must no longer be confidential.

(R)(1) The director may exempt specific product forms or product lines of a domestic company that is licensed and doing business only in this State from the requirements of subsection (N) provided:

(a) the director has issued an exemption in writing to the company and has not subsequently revoked the exemption in writing; and

(b) the company computes reserves using assumptions and methods used prior to the operative date of the valuation manual in addition to any requirements established by the director and promulgated by regulation.

(2) For any company granted an exemption under this section, subsections (D) through (M) are applicable. With respect to any company applying this exemption, any reference to subsection (N) found in subsections (D) through (M) is not applicable.

(S)(1) A company that has less than three hundred million dollars of ordinary life premium and that is licensed and doing business in this State and that is subject to the requirements of subsections (N) and (O), may hold reserves based on the mortality tables and interest rates defined by the valuation manual for net premium reserves as defined by the valuation manual and using the methodology defined in subsections (G), (I), (J), (K), and (L) as they apply to ordinary life insurance in lieu of the reserves required by subsections (N) and (O), provided that:

(a) if the company is a member of a group of life insurers, the group has combined ordinary life premiums of less than six hundred million dollars;

(b) the company reported total adjusted capital of at least four hundred and fifty percent of authorized control level risk‑based capital in the risk‑based capital report for the prior calendar year;

(c) the appointed actuary has provided an unqualified opinion on the reserves in accordance with subsection (D) for the prior calendar year; and

(d) the company has provided a certification by a qualified actuary that any universal life policy with a secondary guarantee issued after the operative date of the valuation manual meets the definition of a nonmaterial secondary guarantee universal life product as defined in the valuation manual.

(2) For purposes of item (1), ordinary life premiums are measured as direct premium plus reinsurance assumed from an unaffiliated company, as reported in the prior calendar year annual statement.

(3) A domestic company meeting the requirement of items (1) and (2) may file a statement prior to July first with the director or his designee certifying that these conditions are met for the current calendar year based on premiums and other values from the prior calendar year financial statements. The director or his designee may reject the statement before to September first and require a company to comply with the valuation manual requirements for life insurance reserves.”

SECTION 2. Section 38‑63‑510 of the 1976 Code is amended to read:

“Section 38‑63‑510. (1) This article is known and may be cited as the ‘Standard Nonforfeiture Law for Life Insurance’.

(2) The term ‘operative date of the valuation manual’ means January first of the first calendar year that the valuation manual, as defined in Section 38‑9‑180, is effective.”

SECTION 3. Sections 38‑63‑600(8) and (9) of the 1976 Code are amended to read:

“(8) All adjusted premiums and present values referred to in this article:

(A) must for all policies of ordinary insurance be calculated on the basis of (i) the Commissioners’ 1980 Standard Ordinary Mortality Table or (ii) at the election of the insurer for any one or more specified plans of life insurance, the Commissioners’ 1980 Standard Ordinary Mortality Table with Ten‑Year Select Mortality Factors;

(B) must for all policies of industrial insurance be calculated on the basis of the Commissioners’ 1961 Standard Industrial Mortality Table; and

(C) must for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this section for policies issued in that calendar year. However:

(a) At the option of the insurer, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this section, for policies issued in the immediately preceding calendar year.

(b) Under any paid‑up nonforfeiture benefit, including any paid‑up dividend additions, any cash surrender value available, whether or not required by Section 38‑63‑520, must be calculated on the basis of the mortality table and rate of interest used in determining the amount of the paid‑up nonforfeiture benefit and paid‑up dividend additions, if any.

(c) An insurer may calculate the amount of any guaranteed paid‑up nonforfeiture benefit including any paid‑up additions under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.

(d) In calculating the present value of any paid‑up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners’ 1980 Extended Term Insurance Table for policies of ordinary insurance and not more than the Commissioners’ 1961 Industrial Extended Term Insurance Table for policies of industrial insurance.

(e) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the aforementioned tables.

(f) For policies issued prior to the operative date of the valuation manual, any Commissioners’ Standard ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the department for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners’ 1980 Standard Ordinary Mortality Table with or without Ten‑Year Select Mortality Factors or for the Commissioners’ 1980 Extended Term Insurance Table.

For policies issued on or after the operative date of the valuation manual, the valuation manual shall provide the Commissioners’ Standard mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the Commissioners’ 1980 Standard Ordinary Mortality Table with or without the Ten‑Year Select Mortality Factors or for the Commissioners’ 1980 Extended Term Insurance Table. If the director approves, by regulation, any Commissioners’ Standard ordinary mortality table adopted by the National Association of Insurance Commissioners’ for use in determining the minimum nonforfetiture standard for policies issued on or after the operative date of the valuation manual, then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.

(g) For policies issued prior to the operative date of the valuation manual, any Commissioners’ industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the department for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners’ 1961 Standard Industrial Mortality Table or the Commissioners’ 1961 Industrial Extended Term Insurance Table.

For policies issued on or after the operative date of the valuation manual, the valuation manual must provide the Commissioners’ Standard mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the Commissioners’ 1961 Standard Industrial Mortality Table or the Commissioners’ 1961 Industrial Extended Term Insurance Table. If the director approves, by regulation, any Commissioners’ Standard industrial mortality table adopted by the National Association of Insurance Commissioners’ for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual, then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.

(9) The nonforfeiture interest rate is:

(a) for policies issued prior to the operative date of the valuation manual, the nonforfeiture interest rate is per annum for any policy issued in a particular calendar year must be equal to one hundred twenty‑five percent of the calendar year statutory valuation interest rate for the policy as defined in the Standard Valuation Law rounded to the nearest one‑quarter of one percent, provided, however, that the nonforfeiture interest rate shall not be less than four percent; and

(b) for policies issued on and after the operative date of the valuation manual, the nonforfeiture interest rate per annum for any policy issued in a particular calendar year must be provided by the valuation manual.”

SECTION 4. This act takes effect upon approval by the Governor.

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