

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2474

BY DELEGATES WESTFALL, AZINGER, CRISS, JEFFRIES,

D., HAMRICK, MANDT, NELSON, ESPINOSA AND

PORTERFIELD

[Introduced January 17, 2019; Referred
to the Committee on Banking and Insurance then the
Judiciary.]

1 A BILL to amend and reenact §33-7-9 of the Code of West Virginia, 1931, as amended, relating
2 to a reserving methodology for health insurance and annuity contracts; describing how the
3 calendar year statutory valuation interest rate should be calculated regarding certain
4 annuities and guaranteed interest contracts; and prescribing the minimum standard of
5 valuation for health insurance contracts.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. ASSETS AND LIABILITIES.

§33-7-9. Standard Valuation Law.

1 (a) This section shall be known as the standard valuation law. For the purposes of this
2 section, the following definitions apply on or after the operative date of the valuation manual:

3 (1) The term “accident and health insurance” means contracts that incorporate morbidity
4 risk and provide protection against economic loss resulting from accident, sickness, or medical
5 conditions and as may be specified in the valuation manual.

6 (2) The term “appointed actuary” means a qualified actuary who is appointed in
7 accordance with the valuation manual to prepare the actuarial opinion required in subdivision (2),
8 subsection (c) of this section.

9 (3) The term “company” means an entity that has written, issued, or reinsured life
10 insurance contracts, accident and health insurance contracts, or deposit-type contracts in this
11 state and has at least one such policy in force or on claim, or has written, issued, or reinsured life
12 insurance contracts, accident and health insurance contracts, or deposit-type contracts in any
13 state and is required to hold a certificate of authority to write life insurance, accident and health
14 insurance, or deposit-type contracts in this state.

15 (4) The term “deposit-type contract” means contracts that do not incorporate mortality or
16 morbidity risks, and as may be specified in the valuation manual.

17 (5) The term “life insurance” means contracts that incorporate mortality risk, including
18 annuity and pure endowment contracts, and as may be specified in the valuation manual.

19 (6) The term “NAIC” means the National Association of Insurance Commissioners.

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

26 (8) The term “principle-based valuation” means a reserve valuation that uses one or more
27 methods or one or more assumptions determined by the insurer and is required to comply with
28 subsection (o) of this section as specified in the valuation manual.

29 (9) The term “qualified actuary” means an individual who is qualified to sign the applicable
30 statement of actuarial opinion in accordance with the American Academy of Actuaries qualification
31 standards for actuaries signing such statements and who meets the requirements specified in the
32 valuation manual.

33 (10) The term “tail risk” means a risk that occurs either where the frequency of low
34 probability events is higher than expected under a normal probability distribution or where there
35 are observed events of very significant size or magnitude.

36 (11) The term “valuation manual” means the manual of valuation instructions adopted by
37 the commissioner in accordance with subsection (n) of this section.

38 (b) Reserve valuation. — (1) Policies and Contracts Issued Prior to the Operative Date of
39 the Valuation Manual.

40 (A) The commissioner shall annually value, or cause to be valued, the reserve liabilities
41 (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure
42 endowment contracts of every life insurance company doing business in this state issued on or
43 after January 1, 1958 and prior to the operative date of the valuation manual. In calculating
44 reserves, the commissioner may use group methods and approximate averages for fractions of a

45 year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien
46 company, the commissioner may accept any valuation made, or caused to be made, by the
47 insurance supervisory official of any state or other jurisdiction when the valuation complies with
48 the minimum standard provided in this section.

49 (B) Subsections (d), (e), (f), (g), (h), (i), (j), (k), (l) and (m) of this section apply to all policies
50 and contracts, as appropriate, subject to this section issued on or after January 1, 1958 and prior
51 to the operative date of the valuation manual, and subsections (n) and (o) of this section do not
52 apply to any such policies and contracts.

53 (C) The minimum standard for the valuation of policies and contracts issued prior to
54 January 1, 1958 shall be that provided by the laws in effect immediately prior to that date.

55 (2) Policies and Contracts Issued On or After the Operative Date of the Valuation Manual.

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

63 (B) Subsection (n) and (o) of this section apply to all policies and contracts issued on or
64 after the operative date of the valuation manual.

65 (c) Actuarial opinion of reserves. -- (1) Actuarial Opinion Prior to the Operative Date of the
66 Valuation Manual.

67 (A) General. -- Every life insurance company doing business in this state shall annually
68 submit the opinion of a qualified actuary as to whether the reserves and related actuarial items
69 held in support of the policies and contracts specified by the commissioner by rule are computed
70 appropriately, are based on assumptions which satisfy contractual provisions, are consistent with

71 prior reported amounts and comply with applicable laws of this state. The commissioner shall
72 define the specifics of this opinion and add any other items deemed to be necessary to its scope.

73 (B) Actuarial analysis of reserves and assets supporting the reserves. —

74 (i) Every life insurance company, except as exempted by or pursuant to rule, shall also
75 annually include in the opinion required by paragraph (A) of this subdivision an opinion of the
76 same qualified actuary as to whether the reserves and related actuarial items held in support of
77 the policies and contracts specified by the commissioner by rule, when considered in light of the
78 assets held by the company with respect to the reserves and related actuarial items, including,
79 but not limited to, the investment earnings on the assets and the considerations anticipated to be
80 received and retained under the policies and contracts, make adequate provision for the
81 company's obligations under the policies and contracts, including, but not limited to, the benefits
82 under and expenses associated with the policies and contracts.

83 (ii) The commissioner may provide, by rule, for a transition period for establishing any
84 higher reserves that the qualified actuary may deem necessary in order to render the opinion
85 required by this subdivision.

86 (C) Requirement for opinion under paragraph (B) of this subdivision. -- Each opinion
87 required by paragraph (B) of this subdivision shall be governed by the following provisions:

88 (i) A memorandum in form and substance acceptable to the commissioner as specified by
89 rule shall be prepared to support each actuarial opinion.

90 (ii) If the insurance company fails to provide a supporting memorandum at the request of
91 the commissioner within a period specified by rule or the commissioner determines that the
92 supporting memorandum provided by the insurance company fails to meet the standards
93 prescribed by the rules or is otherwise unacceptable to the commissioner, the commissioner may
94 engage a qualified actuary at the expense of the company to review the opinion and the basis for
95 the opinion and prepare the supporting memorandum required by the commissioner.

96 (D) Requirement for all opinions subject to this subdivision. — Every opinion ~~subject to~~
97 required by this subdivision is governed by the following:

98 (i) The opinion shall be submitted with the annual statement reflecting the valuation of
99 such reserve liabilities for each year ending on or after December 31, 1995.

100 (ii) The opinion shall apply to all business in force, including individual and group health
101 insurance plans, in form and substance acceptable to the commissioner as specified by rule.

102 (iii) The opinion shall be based on standards adopted, from time to time, by the actuarial
103 standards board and on such additional standards as the commissioner may by rule prescribe.

104 (iv) In the case of an opinion required to be submitted by a foreign or alien company, the
105 commissioner may accept the opinion filed by that company with the insurance supervisory official
106 of another state if the commissioner determines that the opinion reasonably meets the
107 requirements applicable to a company domiciled in this state.

108 (v) For the purposes of this ~~section~~ subsection, “qualified actuary” means a member in
109 good standing of the American Academy of Actuaries who meets the requirements set forth in
110 such regulations.

111 (vi) Except in cases of fraud or willful misconduct, the qualified actuary is not liable for
112 damages to any person (other than the insurance company and the commissioner) for any act,
113 error, omission, decision or conduct with respect to the actuary’s opinion.

114 (vii) Disciplinary action by the commissioner against the company or the qualified actuary
115 shall be defined in rules by the commissioner.

116 (viii) Except as provided in subparagraphs (xii), (xiii), and (xiv) of this paragraph,
117 documents, materials or other information in the possession or control of the commissioner that
118 are a memorandum in support of the opinion and any other material provided by the company to
119 the commissioner in connection therewith are confidential by law and privileged, exempt from
120 disclosure under article one, chapter twenty-nine-a of this code and are not to be subject to
121 subpoena and, additionally, are not subject to discovery or admissible in evidence in any private

122 civil action. However, the commissioner is authorized to use the documents, materials or other
123 information in the furtherance of any regulatory or legal action brought as a part of the
124 commissioner's official duties.

125 (ix) Neither the commissioner nor any person who received documents, materials or other
126 information while acting under the authority of the commissioner is permitted or required to testify
127 in any private civil action concerning any confidential documents, materials or information subject
128 to subparagraph (viii) of this paragraph.

129 (x) In order to assist in the performance of the commissioner's duties, the commissioner:

130 (I) May share documents, materials or other information, including the confidential and
131 privileged documents, materials or information subject to subparagraph (viii) of this paragraph
132 with other state, federal and international regulatory agencies, with the NAIC and its affiliates and
133 subsidiaries, and with state, federal and international law-enforcement authorities, provided that
134 the recipient agrees to maintain the confidentiality and privileged status of the document, material
135 or other information;

136 (II) May receive documents, materials or information, including otherwise confidential and
137 privileged documents, materials or information, from the NAIC and its affiliates and subsidiaries,
138 and from regulatory and law-enforcement officials of other foreign or domestic jurisdictions, and
139 shall maintain as confidential or privileged any document, material or information received with
140 notice or the understanding that it is confidential or privileged under the laws of the jurisdiction
141 that is the source of the document, material or information; and

142 (III) May enter into agreements governing sharing and use of information consistent with
143 this subparagraph and subparagraphs (viii) and (ix) ~~and this subparagraph~~ of this paragraph.

144 (xi) No waiver of any applicable privilege or claim of confidentiality in the documents,
145 materials or information occurs as a result of disclosure to the commissioner under this ~~section~~
146 subsection or as a result of sharing as authorized in subparagraph ~~(ix)~~ (x) of this paragraph.

147 (xii) A memorandum in support of the opinion, and any other material provided by the
148 company to the commissioner in connection with the memorandum, may be subject to subpoena
149 for the purpose of defending an action seeking damages from the actuary submitting the
150 memorandum by reason of an action required by this subsection or by rules.

151 (xiii) The memorandum or other material may otherwise be released by the commissioner
152 with the written consent of the company or to the American Academy of Actuaries upon request
153 stating that the memorandum or other material is required for the purpose of professional
154 disciplinary proceedings and setting forth procedures satisfactory to the commissioner for
155 preserving the confidentiality of the memorandum or other material.

156 (xiv) Once any portion of the confidential memorandum is cited by the company in its
157 marketing or is cited before a governmental agency other than a state insurance department or
158 is released by the company to the news media, all portions of the confidential memorandum shall
159 be no longer confidential.

160 (2) Actuarial Opinion of Reserves after the Operative Date of the Valuation Manual.

161 (A) General. Every company with outstanding life insurance contracts, accident and health
162 insurance contracts or deposit-type contracts in this state and subject to rule of the commissioner
163 shall annually submit the opinion of the appointed actuary as to whether the reserves and related
164 actuarial items held in support of the policies and contracts are computed appropriately, are based
165 on assumptions that satisfy contractual provisions, are consistent with prior reported amounts and
166 comply with applicable laws of this state. The valuation manual will prescribe the specifics of this
167 opinion including any items deemed to be necessary to its scope.

168 (B) Actuarial Analysis of Reserves and Assets Supporting Reserves. Every company with
169 outstanding life insurance contracts, accident and health insurance contracts or deposit-type
170 contracts in this state and subject to rule of the commissioner, except as exempted in the valuation
171 manual, shall also annually include in the opinion required by paragraph (A) of this subdivision,
172 an opinion of the same appointed actuary as to whether the reserves and related actuarial items

173 held in support of the policies and contracts specified in the valuation manual, when considered
174 in light of the assets held by the company with respect to the reserves and related actuarial items,
175 including, but not limited to, the investment earnings on the assets and the considerations
176 anticipated to be received and retained under the policies and contracts, make adequate provision
177 for the company's obligations under the policies and contracts, including, but not limited to, the
178 benefits under and expenses associated with the policies and contracts.

179 ~~(C) Requirements for Opinions Subject to paragraph (B), subdivision (2), subsection (c)~~
180 Requirement for opinion under paragraph (B) of this subdivision. Each opinion required by
181 ~~subdivision (2), subsection (c) of this section~~ paragraph (B) of this subdivision shall be governed
182 by the following:

183 (i) A memorandum, in form and substance as specified in the valuation manual, and
184 acceptable to the commissioner, shall be prepared to support each actuarial opinion.

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

192 ~~(D) Requirement for All Opinions Subject to subdivision (2), subsection (c) of this section~~
193 Requirement for all opinions subject to this subdivision. Every opinion required by this subdivision
194 is governed by the following:

195 (i) The opinion shall be in form and substance as specified in the valuation manual and
196 acceptable to the commissioner.

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

199 (iii) The opinion shall apply to all policies and contracts subject to paragraph (B)
200 ~~subdivision (2), subsection (c) of this section~~ of this subdivision, plus other actuarial liabilities as
201 may be specified in the valuation manual.

202 (iv) The opinion shall be based on standards adopted from time to time by the Actuarial
203 Standards Board or its successor, and on such additional standards as may be prescribed in the
204 valuation manual.

205 (v) In the case of an opinion required to be submitted by a foreign or alien company, the
206 commissioner may accept the opinion filed by that company with the insurance supervisory official
207 of another state if the commissioner determines that the opinion reasonably meets the
208 requirements applicable to a company domiciled in this state.

209 (vi) Except in cases of fraud or willful misconduct, the appointed actuary is not liable for
210 damages to any person, other than the insurance company and the commissioner, for any act,
211 error, omission, decision or conduct with respect to the appointed actuary's opinion.

212 (vii) Disciplinary action by the commissioner against the company or the appointed actuary
213 shall be defined in rules.

214 (d) Computation of minimum standards. — Except as otherwise provided in subsections
215 (e), (f) and (m) of this section, the minimum standard for the valuation of all policies and contracts
216 issued prior to January 1, 1958 shall be that provided by the laws in effect immediately prior to
217 that date. Except as otherwise provided in subsections (e), (f) and (m) of this section, the minimum
218 standard for the valuation of all policies and contracts issued on or after January 1, 1958 of this
219 section shall be the commissioner's reserve valuation methods defined in subsections (g), (h), (k)
220 and (m) of this section, three and one-half percent interest or in the case of life insurance policies
221 and contracts, other than annuity and pure endowment contracts, issued on or after June 1, 1974,
222 four percent interest for policies issued prior to April 6, 1977, five and one-half percent interest for
223 single premium life insurance policies and four and one-half percent interest for all other policies
224 issued on and after April 6, 1977, and the following tables:

225 (1) For all ordinary policies of life insurance issued on the standard basis, excluding any
226 disability and accidental death benefits in the policies:

227 (A) The commissioner's 1941 standard ordinary mortality table for policies issued prior to
228 the operative date of §33-13-30(e) of this code;

229 (B) The commissioner's 1958 standard ordinary mortality table for policies issued on or
230 after the operative date of subsection (e), section thirty, article thirteen of this chapter and prior to
231 the operative date of subsection (g) of that section: *Provided*, That for any category of policies
232 issued on female risks, all modified net premiums and present values referred to in this section
233 may be calculated according to an age not more than six years younger than the actual age of
234 the insured; and

235 (C) For policies issued on or after the operative date of §33-13-30(g) of this code:

236 (i) The commissioner's 1980 standard ordinary mortality table; or

237 (ii) At the election of the company for any one or more specified plans of life insurance,
238 the commissioner's 1980 standard ordinary mortality table with 10 year select mortality factors;
239 or

240 (iii) Any ordinary mortality table adopted after the year 1980 by the ~~national association of~~
241 ~~Insurance Commissioners~~ NAIC that is approved by rule promulgated by the commissioner for
242 use in determining the minimum standard of valuation for the policies.

243 (2) For all industrial life insurance policies issued on the standard basis, excluding any
244 disability and accidental death benefits in the policies: The 1941 standard industrial mortality table
245 for policies issued prior to the operative date of §33-13-30(f) of this code and for policies issued
246 on or after the operative date, the commissioner's 1961 standard industrial mortality table or any
247 industrial mortality table adopted after the year 1980 by the ~~national association of Insurance~~
248 ~~Commissioners~~ NAIC that is approved by rule promulgated by the commissioner for use in
249 determining the minimum standard of valuation for the policies.

250 (3) For individual annuity and pure endowment contracts, excluding any disability and
251 accidental death benefits in policies: The 1937 standard annuity mortality table or, at the option
252 of the company, the annuity mortality table for 1949, ultimate, or any modification of either of these
253 tables approved by the commissioner.

254 (4) For group annuity and pure endowment contracts, excluding any disability and
255 accidental death benefits in the policies: The group annuity mortality table for 1951, any
256 modification of the table approved by the commissioner or, at the option of the company, any of
257 the tables or modifications of tables specified for individual annuity and pure endowment
258 contracts.

259 (5) For total and permanent disability benefits in or supplementary to ordinary policies or
260 contracts: For policies or contracts issued on or after January 1, 1966, the tables of period two
261 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society
262 of actuaries, with due regard to the type of benefit or any tables of disablement rates and
263 termination rates adopted after the year 1980 by the ~~national association of Insurance~~
264 ~~Commissioners~~ NAIC that are approved by rule promulgated by the commissioner for use in
265 determining the minimum standard of valuation for the policies; for policies or contracts issued on
266 or after January 1, 1961, and prior to January 1, 1966, either those tables or, at the option of the
267 company, the Class (3) disability table (1926); and for policies issued prior to January 1, 1961,
268 the Class (3) disability table (1926). Any such table shall, for active lives, be combined with a
269 mortality table permitted for calculating the reserves for life insurance policies.

270 (6) For accidental death benefits in or supplementary to policies issued on or after January
271 1, 1966, the 1959 accidental death benefits table or any accidental death benefits table adopted
272 after the year 1980 by the ~~national association of Insurance Commissioners~~ NAIC that is approved
273 by rules promulgated by the commissioner for use in determining the minimum standard of
274 valuation for such policies, for policies issued on or after January 1, 1961, and prior to January 1,
275 1966, either such table or, at the option of the company, the intercompany double indemnity

276 mortality table; and for policies issued prior to January 1, 1961, the intercompany double
277 indemnity mortality table. Either table shall be combined with a mortality table for calculating the
278 reserves for life insurance policies.

279 (7) For group life insurance, life insurance issued on the substandard basis and other
280 special benefits: Tables as may be approved by the commissioner.

281 (e) Computation of minimum standard for annuities. — Except as provided in subsection
282 (f) of this section, the minimum standard for the valuation of all individual annuity and pure
283 endowment contracts issued on or after the operative date of this subsection, and for all annuities
284 and pure endowments purchased on or after the operative date under group annuity and pure
285 endowment contracts shall be the commissioner's reserve valuation methods defined in
286 subsections (g) and (h) of this section and the following tables and interest rates:

287 (1) For individual annuity and pure endowment contracts issued prior to April 6, 1977,
288 excluding any disability and accidental death benefits in the contracts: The 1971 individual annuity
289 mortality table or any modification of this table approved by the commissioner and six percent
290 interest for single premium immediate annuity contracts and four percent interest for all other
291 individual annuity and pure endowment contracts;

292 (2) For individual single premium immediate annuity contracts issued on or after April 6,
293 1977, excluding any disability and accidental death benefits in such contracts: The 1971 individual
294 annuity mortality table or any individual annuity mortality table adopted after the year 1980 by the
295 ~~national association of Insurance Commissioners~~ NAIC that is approved by rule promulgated by
296 the commissioner for use in determining the minimum standard of valuation for the contracts or
297 any modification of these tables approved by the commissioner and seven and one-half percent
298 interest;

299 (3) For individual annuity and pure endowment contracts issued on or after April 6, 1977,
300 other than single premium immediate annuity contracts, excluding any disability and accidental
301 death benefits in those contracts: The 1971 individual annuity mortality table or any individual

302 annuity mortality table adopted after the year 1980 by the ~~national association of Insurance~~
303 ~~Commissioners~~ NAIC that is approved by rule promulgated by the commissioner for use in
304 determining the minimum standard of valuation for the contracts or any modification of these
305 tables approved by the commissioner and five and one-half percent interest for single premium
306 deferred annuity and pure endowment contracts and four and one-half percent interest for all
307 other individual annuity and pure endowment contracts;

308 (4) For all annuities and pure endowments purchased prior to April 6, 1977, under group
309 annuity and pure endowment contracts, excluding any disability and accidental death benefits
310 purchased under those contracts: The 1971 group annuity mortality table or any modification of
311 this table approved by the commissioner and six percent interest;

312 (5) For all annuities and pure endowments purchased on or after April 6, 1977, under
313 group annuity and pure endowment contracts, excluding any disability and accidental death
314 benefits purchased under the contracts: The 1971 group annuity mortality table or any group
315 annuity mortality table adopted after the year 1980 by the ~~national association of Insurance~~
316 ~~Commissioners~~ NAIC that is approved by rule promulgated by the commissioner for use in
317 determining the minimum standard of valuation for annuities and pure endowments or any
318 modification of these tables approved by the commissioner and seven and one-half percent
319 interest.

320 After June 3, 1974, any company may file with the commissioner a written notice of its
321 election to comply with the provisions of this subsection after a specified date before January 1,
322 1979, which shall be the operative date of this subsection for the company provided, if a company
323 makes no election, the operative date of this section for the company shall be January 1, 1979.

324 (f) Computation of minimum standard by calendar year of issue. --

325 (1) The interest rates used in determining the minimum standard for the valuation of the
326 following shall be the calendar year statutory valuation interest rates as defined in this section:

327 (A) All life insurance policies issued in a particular calendar year, on or after the operative
328 date of §33-13-30(g) of this code, as amended;

329 (B) All individual annuity and pure endowment contracts issued in a particular calendar
330 year on or after January 1, 1982;

331 (C) All annuities and pure endowments purchased in a particular calendar year on or after
332 January 1, 1982, under group annuity and pure endowment contracts; and

333 (D) The net increase, if any, in a particular calendar year after January 1, 1982, in amounts
334 held under guaranteed interest contracts.

335 (2) Calendar year statutory valuation interest rates. --

336 (A) The calendar year statutory valuation interest rates, I, shall be determined as follows
337 and the results rounded to the nearer one quarter of one percent:

338 (i) For life insurance: $I = .03 + W(R1 - .03) + W/2(R2 - .09)$

339 (ii) For single premium immediate annuities and for annuity benefits involving life
340 contingencies arising from other annuities with cash settlement options and from guaranteed
341 interest contracts with cash settlement options: ~~$I = .03 + W(R1 - .03)$~~ $I = .03 + W(R - .03)$

342 Where R1 is the lesser of R and .09; R2 is the greater of R and .09; R is the reference
343 interest rate defined in this subsection; and W is the weighting factor defined in this ~~section~~
344 subsection;

345 (iii) For other annuities with cash settlement options and guaranteed interest contracts
346 with cash settlement options, valued on an issue-year basis, except as stated in subparagraph

347 (ii) of this paragraph, the formula for life insurance stated in subparagraph (i) of this paragraph
348 shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of
349 ten years and the formula for single premium immediate annuities stated in subparagraph (ii) of
350 this paragraph shall apply to annuities and guaranteed interest contracts with guarantee duration
351 of ten years or less;

352 (iv) For other annuities with no cash settlement options and for guaranteed interest
353 contracts with no cash settlement options, the formula for single premium immediate annuities
354 stated in subparagraph (ii) of this paragraph shall apply;

355 (v) For other annuities with cash settlement options and guaranteed interest contracts with
356 cash settlement options, valued on a change in fund basis, the formula for single premium
357 immediate annuities stated in subparagraph (ii) of this paragraph shall apply.

358 (B) However, if the calendar year statutory valuation interest rate for any life insurance
359 policies issued in any calendar year determined without reference to this sentence differs from
360 the corresponding actual rate for similar policies issued in the immediately preceding calendar
361 year by less than one half of one percent, the calendar year statutory valuation interest rate for
362 such life insurance policies shall be equal to the corresponding actual rate for the immediately
363 preceding calendar year. For purposes of applying the immediately preceding sentence, the
364 calendar year statutory valuation interest rate for life insurance policies issued in a calendar year
365 shall be determined for the year 1980 (using the reference interest rate defined for the year 1979)
366 and shall be determined for each subsequent calendar year regardless of when §33-13-30(g) of
367 this code, as amended, becomes operative.

368 (3) Weighting factors. —

369 (A) The weighting factors referred to in the formulas stated above are given in the following
370 tables:

371 (i) Weighting Factors for Life Insurance:

372 ~~Guarantee~~

373 ~~Duration Weighting~~

374 ~~(Years) Factors~~

375 ~~10 or less .50~~

376 ~~More than 10, but not more than 20 .45~~

377 ~~More than 20 .35~~

378 Guarantee duration of 10 years or less: .50

379 Guarantee duration of more than 10 years but not more than 20 years: .45

380 Guarantee duration of more than 20 years: .35

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

385 (ii) Weighting factor for single premium immediate annuities and for annuity benefits
386 involving life contingencies arising from other annuities with cash settlement options and
387 guaranteed interest contracts with cash settlement options: .80;

388 (iii) Weighting factors for other annuities and for guaranteed interest contracts, except as
389 stated in subparagraph (ii) of this paragraph, shall be as specified in clauses (I), (II) and (III) of
390 this subparagraph, according to the rules and definitions in clauses (IV), (V) and (VI) of this
391 subparagraph:

392 (I) For annuities and guaranteed interest contracts valued on an issue year basis, the
393 following weighting factors shall apply:

394 ~~Guarantee Weighting Factor~~

395 ~~Duration for Plan Type~~

396 ~~(Years) A B C~~

397 ~~5 or less: .80 .60 .50~~

398 ~~More than 5, but not more than 10: .75 .60 .50~~

399 ~~More than 10, but not more than 20: .65 .50 .45~~

400 ~~More than 20: .45 .35 .35~~

401 Guarantee duration of five years or less: Plan Type A - .80; Plan Type B - .60; Plan Type

402 C - .50

403 Guarantee duration of more than five years but not more than 10 years: Plan Type A - .75;

404 Plan Type B - .60; Plan Type C - .50

405 Guarantee duration of more than 10 years but not more than 20 years: Plan Type A - .65;

406 Plan Type B - .50; Plan Type C - .45

407 Guarantee duration of more than 20 years: Plan Type A - .45; Plan Type B - .35; Plan

408 Type C - .35

409 (II) For annuities and guaranteed interest contracts valued on a change in fund basis, the
410 factors shown in clause (I) of this subparagraph increased by:

411 ~~Weighting Factor~~

412 ~~for Plan Type~~

413 ~~A-B-C1~~

414 ~~.15 .25 .05~~

415 Plan Type A - .15; Plan Type B - .25; Plan Type C - .05

416 (III) For annuities and guaranteed interest contracts valued on an issue-year basis (other
417 than those with no cash settlement options) which do not guarantee interest on considerations
418 received more than one year after issue or purchase and for annuities and guaranteed interest
419 contracts valued on a change in fund basis which do not guarantee interest rates on
420 considerations received more than 12 months beyond the valuation date, the factors shown in
421 clause (I) of this subparagraph or derived in clause (II) of this subparagraph increased by:

422 ~~Weighting Factor~~

423 ~~for Plan Type~~

424 ~~A-B-C1~~

425 ~~.05 .05 .05~~

426 Plan Type A - .05; Plan Type B - .05; Plan Type C - .05

427 (IV) For other annuities with cash settlement options and guaranteed interest contracts
428 with cash settlement options, the guarantee duration is the number of years for which the contract

429 guarantees interest rates in excess of the calendar year statutory valuation interest rate for life
430 insurance policies with guarantee duration in excess of 20 years. For other annuities with no cash
431 settlement options and for guaranteed interest contracts with no cash settlement options, the
432 guaranteed duration is the number of years from the date of issue or date of purchase to the date
433 annuity benefits are scheduled to commence.

434 (V) Plan type as used in the above tables is defined as follows:

435 Plan Type A:

436 At any time policyholder may withdraw funds only: (1) With an adjustment to reflect
437 changes in interest rates or asset values since receipt of the funds by the insurance company; or
438 (2) without such adjustment but in installments over five years or more; or (3) as an immediate
439 life annuity; or (4) no withdrawal permitted;

440 Plan Type B:

441 Before expiration of the interest rate guarantee, policyholder may withdraw funds only: (1)
442 With an adjustment to reflect changes in interest rates or asset values since receipt of the funds
443 by the insurance company; or (2) without such adjustment but in installments over five years or
444 more; or (3) no withdrawal permitted. At the end of interest rate guarantee, funds may be
445 withdrawn without such adjustment in a single sum or installments over less than five years;

446 Plan Type C:

447 Policyholder may withdraw funds before expiration of interest rate guarantee in a single
448 sum or installments over less than five years either: (1) Without adjustment to reflect changes in
449 interest rates or asset values since receipt of the funds by the insurance company; or (2) subject
450 only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

451 (VI) A company may elect to value guaranteed interest contracts with cash settlement
452 options and annuities with cash settlement options on either an issue-year basis or on a change
453 in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities
454 with no cash settlement options must be valued on an issue-year basis. As used in this section,

455 an issue-year basis of valuation refers to a valuation basis under which the interest rate used to
456 determine the minimum valuation standard for the entire duration of the annuity or guaranteed
457 interest contract is the calendar year valuation interest rate for the year of issue or year of
458 purchase of the annuity or guaranteed interest contract and the change in fund basis of valuation
459 refers to a valuation basis under which the interest rate used to determine the minimum valuation
460 standard applicable to each change in the fund held under the annuity or guaranteed interest
461 contract is the calendar year valuation interest rate for the year of the change in the fund.

462 (4) The reference interest rate. —

463 (A) Reference interest rate referred to in subdivision (2) of this subsection is defined as
464 follows:

465 (i) For all life insurance, the lesser of the average over a period of 36 months and the
466 average over a period of 12 months, ending on June 30 of the calendar year next preceding the
467 year of issue, of the monthly average of the composite yield on seasoned corporate bonds as
468 published by Moody's Investors Service, Inc.

469 (ii) For single premium immediate annuities and for annuity benefits involving life
470 contingencies arising from other annuities with cash settlement options and guaranteed interest
471 contracts with cash settlement options, the average over a period of 12 months, ending on June
472 30 of the calendar year of issue or year of purchase, of the monthly average of the composite
473 yield on seasoned corporate bonds as published by Moody's Investors Service, Inc.

474 (iii) For other annuities with cash settlement options and guaranteed interest contracts
475 with cash settlement options, valued on a year of issue basis, except as stated in subparagraph
476 (ii) of this paragraph, with guarantee duration in excess of 10 years, the lesser of the average
477 over a period of 36 months and the average over a period of 12 months, ending on June 30 of
478 the calendar year of issue or purchase, of the monthly average of the composite yield on
479 seasoned corporate bonds as published by Moody's Investors Service, Inc.

480 (iv) For other annuities with cash settlement options and guaranteed interest contracts
481 with cash settlement options, valued on a year of issue basis, except as stated in subparagraph
482 (ii) of this paragraph, with guarantee duration of 10 years or less, the average over a period of 12
483 months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of
484 the composite yield on seasoned corporate bonds as published by Moody's Investors Service,
485 Inc.

486 (v) For other annuities with no cash settlement options and for guaranteed interest
487 contracts with no cash settlement options, the average over a period of 12 months, ending on
488 June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield
489 on seasoned corporate bonds as published by Moody's Investors Service, Inc.

490 (vi) For other annuities with cash settlement options and guaranteed interest contracts
491 with cash settlement options, valued on a change in fund basis, except as stated in subparagraph
492 (ii) of this paragraph, the average over a period of 12 months, ending on June 30 of the calendar
493 year of the change in the fund, of the monthly average of the composite yield on seasoned
494 corporate bonds as published by Moody's Investors Service, Inc.

495 (5) Alternative method for determining reference interest rates. --

496 In the event that the monthly average of the composite yield on seasoned corporate bonds
497 is no longer published by Moody's Investors Service, Inc., or in the event that the ~~national~~
498 ~~association of Insurance Commissioners~~ NAIC determines that the monthly average of the
499 composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc.,
500 is no longer appropriate for the determination of the reference interest rate, then an alternative
501 method for determination of the reference interest rate, which is adopted by the ~~national~~
502 ~~association of Insurance Commissioners~~ NAIC and approved by rule promulgated by the
503 commissioner, may be substituted.

504 (g) Reserve valuation method. — Life insurance and endowment benefits.

505 (1) Except as otherwise provided in subsections (h), (k) and (m) of this section, reserves
506 according to the commissioner's reserve valuation method for the life insurance and endowment
507 benefits of policies providing for a uniform amount of insurance and requiring the payment of
508 uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of the
509 future guaranteed benefits provided by the policies, over the then present value of any future
510 modified net premiums therefor. The modified net premiums for any such policy shall be the
511 uniform percentage of the respective contract premiums for the benefits that the present value, at
512 the date of issue of the policy, of all the modified net premiums shall be equal to the sum of the
513 then present value of the benefits provided by the policy and the excess of ~~subdivision (1)~~
514 paragraph (A) of this ~~subsection~~ subdivision over ~~subdivision (2)~~ paragraph (B) of this ~~subsection~~
515 subdivision, as follows:

516 ~~(1)~~ (A) A net level annual premium equal to the present value, at the date of issue, of such
517 benefits provided for after the first policy year, divided by the present value, at the date of issue,
518 of an annuity of one per annum payable on the first and each subsequent anniversary of such
519 policy on which a premium falls due: *Provided*, That such net level annual premium shall not
520 exceed the net level annual premium on the 19 year premium whole life plan for insurance of the
521 same amount at an age one year higher than the age at issue of such policy.

522 ~~(2)~~ (B) A net one-year term premium for such benefits provided for in the first policy year.

523 ~~Provided, That for~~ (2) For any life insurance policy issued on or after January 1, 1985, for
524 which the contract premium in the first policy year exceeds that of the second year and for which
525 no comparable additional benefit is provided in the first year for such excess and which provides
526 an endowment benefit or a cash surrender value or a combination thereof in an amount greater
527 than such excess premium, the reserve according to the ~~commissioners'~~ commissioner's reserve
528 valuation method as of any policy anniversary occurring on or before the assumed ending date
529 defined herein as the first policy anniversary on which the sum of any endowment benefit and any
530 cash surrender value then available is greater than such excess premium shall, except as

531 otherwise provided in subsection (k) of this section, be the greater of the reserve as of such policy
532 anniversary calculated as described in ~~the preceding paragraph~~ subdivision (1) of this subsection
533 and the reserve as of the policy anniversary calculated as described in that ~~paragraph~~ subdivision,
534 but with: (i) The value defined in subdivision (1) of ~~that paragraph~~ this subsection being reduced
535 by fifteen percent of the amount of such excess first-year premium; (ii) all present values of
536 benefits and premiums being determined without reference to premiums or benefits provided by
537 the policy after the assumed ending date; (iii) the policy being assumed to mature on the date as
538 an endowment; and (iv) the cash surrender value provided on such date being considered as an
539 endowment benefit. In making the above comparison, the mortality and interest bases stated in
540 subsections (d) and (f) of this section shall be used.

541 (3) Reserves according to the ~~commissioners'~~ commissioner's reserve valuation method
542 shall be calculated by a method consistent with the principles of ~~the preceding paragraphs~~
543 subdivisions (1) and (2) of this section subsection for:

544 ~~(i)~~ (A) Life insurance policies providing for a varying amount of insurance or requiring the
545 payment of varying premiums;

546 ~~(ii)~~ (B) Group annuity and pure endowment contracts purchased under a retirement plan
547 or plan of deferred compensation, established or maintained by an employer (including a
548 partnership or sole proprietorship) or by an employee organization, or by both, other than a plan
549 providing individual retirement accounts or individual retirement annuities under section 408 of
550 the Internal Revenue Code (26 U.S.C. §408) as now or hereafter amended;

551 ~~(iii)~~ (C) Disability and accidental death benefits in all policies and contracts; and

552 ~~(iv)~~ (D) All other benefits, except life insurance and endowment benefits in life insurance
553 policies and benefits provided by all other annuity and pure endowment contracts. ~~shall be~~
554 ~~calculated by a method consistent with the principles of the preceding paragraphs of this section~~

555 (h) Reserve valuation method. -- Annuity and pure endowment benefits.

556 (1) This subsection shall apply to all annuity and pure endowment contracts other than
557 group annuity and pure endowment contracts purchased under a retirement plan or plan of
558 deferred compensation established or maintained by an employer (including a partnership or sole
559 proprietorship) or by an employee organization, or by both, other than a plan providing individual
560 retirement accounts or individual retirement annuities under section 408 of the Internal Revenue
561 Code (26 U.S.C. §408) as now or hereafter amended.

562 (2) Reserves according to the ~~commissioners'~~ commissioner's annuity reserve method for
563 benefits under annuity or pure endowment contracts, excluding any disability and accidental death
564 benefits in such contracts, shall be the greatest of the respective excesses of the present values,
565 at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture
566 benefits, provided by such contracts at the end of each respective contract year over the present
567 value, at the date of valuation, of any future valuation considerations derived from future gross
568 considerations, required by the terms of such contract, that become payable prior to the end of
569 the respective contract year. The future guaranteed benefits shall be determined by using the
570 mortality table, if any, and the interest rate, or rates, specified in the contracts for determining
571 guaranteed benefits. The valuation considerations are the portions of the respective gross
572 considerations applied under the terms of such contracts to determine nonforfeiture values.

573 (i) Minimum reserves. —

574 (1) In no event shall a company's aggregate reserves for all life insurance policies,
575 excluding disability and accidental death benefits, issued on or after January 1, 1958 be less than
576 the aggregate reserves calculated in accordance with the methods set forth in subsections (g),
577 (h), (k) and (l) of this section and the mortality table or tables and rate or rates of interest used in
578 calculating nonforfeiture benefits for the policies.

579 (2) In no event shall the aggregate reserves for all policies, contracts and benefits be less
580 than the aggregate reserves determined by the qualified actuary to be necessary to render the
581 opinion required by subsection (c) of this section.

582 (j) Optional reserve calculation. —

583 (1) Reserves for all policies and contracts issued prior to ~~the effective date of this section~~
584 January 1, 1958 may be calculated, at the option of the company, according to any standards
585 which produce greater aggregate reserves for all policies and contracts than the minimum
586 reserves required by the laws in effect immediately prior to such date.

587 (2) Reserves for any category of policies, contracts or benefits as established by the
588 commissioner issued on or after January 1, 1958 may be calculated, at the option of the company,
589 according to any standards which produce greater aggregate reserves for such category than
590 those calculated according to the minimum standard herein provided, but the rate or rates of
591 interest used for policies and contracts, other than annuity and pure endowment contracts, shall
592 not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture
593 benefits provided therein.

594 (3) Any such company which at any time shall have adopted any standard of valuation
595 producing greater aggregate reserves than those calculated according to the minimum standard
596 herein provided may, with the approval of the commissioner, adopt any lower standard of
597 valuation, but not lower than the minimum herein provided: *Provided*, That for the purposes of
598 this section, the holding of additional reserves previously determined by the appointed actuary to
599 be necessary to render the opinion required by subsection (c) of this section shall not be
600 considered to be the adoption of a higher standard of valuation.

601 (k) Reserve calculation. — Valuation net premium exceeding the gross premium charged.

602 (1) If in any contract year the gross premium charged by any life insurance company on
603 any policy or contract is less than the valuation net premium for the policy or contract calculated
604 by the method used in calculating the reserve thereon but using the minimum valuation standards
605 of mortality and rate of interest, the minimum reserve required for such policy or contract shall be
606 the greater of either the reserve calculated according to the mortality table, rate of interest and
607 method actually used for such policy or contract or the reserve calculated by the method actually

608 used for such policy or contract but using the minimum valuation standards of mortality and rate
609 of interest and replacing the valuation net premium by the actual gross premium in each contract
610 year for which the valuation net premium exceeds the actual gross premium. The minimum
611 valuation standards of mortality and rate of interest referred to in this section are those standards
612 stated in subsections (d) and (f) of this section: *Provided*, That for any life insurance policy issued
613 on or after January 1, 1985, for which the gross premium in the first policy year exceeds that of
614 the second year and for which no comparable additional benefit is provided in the first year for
615 such excess and which provides an endowment benefit or a cash surrender value or a
616 combination thereof in an amount greater than such excess premium, the foregoing provisions of
617 this subsection shall be applied as if the method actually used in calculating the reserve for such
618 policy were the method described in subsection (g) of this section, ignoring ~~the second paragraph~~
619 subdivision (2) of said subsection.

620 (2) The minimum reserve at each policy anniversary of such a policy shall be the greater
621 of the minimum reserve calculated in accordance with subsection (g) of this section, including ~~the~~
622 ~~second paragraph~~ subdivision (2) of said ~~section~~ subsection, and the minimum reserve calculated
623 in accordance with this subsection.

624 (l) Reserve calculation. — Indeterminate premium plans.

625 In the case of any plan of life insurance which provides for future premium determination,
626 the amounts of which are to be determined by the insurance company based on then estimates
627 of future experience, or in the case of any plan of life insurance or annuity which is of such a
628 nature that the minimum reserves cannot be determined by the methods described in subsections
629 (g), (h) and (k) of this section, the reserves which are held under any such plan must:

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

631 (2) Be computed by a method which is consistent with the principles of this standard
632 valuation law as determined by rules promulgated by the commissioner.

633 (m) ~~The commissioner may, by rule, establish alternative methods of calculating reserve~~
634 ~~liabilities, which methods shall be used to calculate reserve liabilities for the types of policies,~~
635 ~~annuities or other contracts identified in the rule: *Provided*, That the method specified in the rule~~
636 ~~shall be one which, in the opinion of the commissioner and in light of the methods applied to the~~
637 ~~contracts by the insurance regulators of other states, is appropriate to the contracts. This power~~
638 ~~shall be in addition to, and in no way diminish, rule-making power granted to the commissioner~~
639 ~~elsewhere in this code~~ Minimum standard for accident and health insurance contracts. – For
640 accident and health insurance contracts issued on or after the operative date of the valuation
641 manual, the standard prescribed in the valuation manual is the minimum standard of valuation
642 required under subdivision (2), subsection (b) of this section. For accident and sickness insurance
643 contracts issued on or after January 1, 1958 and prior to the operative date of the valuation
644 manual, the minimum standard of valuation is the standard adopted by the commissioner by rule.

645 (n) Valuation Manual for Policies Issued On or After the Operative Date of the Valuation
646 Manual. —

647 (1) The commissioner shall promulgate emergency rules adopting a valuation manual that
648 is substantially similar to the valuation manual approved by the ~~National Association of Insurance~~
649 ~~Commissioners~~ NAIC and any amendments to such manual as may be subsequently approved
650 by the ~~National Association of Insurance Commissioners~~ NAIC, and such rules shall be effective
651 in accordance with subdivisions (2) and (3) of this subsection.

652 (2) The operative date of the valuation manual is January 1 of the first calendar year
653 following the first July 1 as of which all of the following have occurred:

654 (A) The valuation manual has been adopted by the ~~National Association of Insurance~~
655 ~~Commissioners~~ NAIC by an affirmative vote of at least 42 members, or three-fourths of the
656 members voting, whichever is greater;

657 (B) The Standard Valuation Law, as amended by the ~~National Association of Insurance~~
658 ~~Commissioners~~ NAIC in 2009, or legislation including substantially similar terms and provisions,

659 has been enacted by states representing greater than 75 percent of the direct premiums written
660 as reported in the following annual statements submitted for 2008: Life, accident and health
661 annual statements; health annual statements; and fraternal annual statements; and

662 (C) The Standard Valuation Law, as amended by the ~~National Association of Insurance~~
663 ~~Commissioners~~ NAIC in 2009, or legislation including substantially similar terms and provisions,
664 has been enacted by at least 42 of the following 55 jurisdictions: The 50 states of the United
665 States, American Samoa, the American Virgin Islands, the District of Columbia, Guam, and Puerto
666 Rico.

667 (3) Unless a change in the valuation manual specifies a later effective date, changes to
668 the valuation manual shall be effective on January 1 following the date when such changes have
669 been adopted by the ~~National Association of Insurance Commissioners~~ NAIC by an affirmative
670 vote representing:

671 (A) At least three-fourths of the members of the ~~National Association of Insurance~~
672 ~~Commissioners~~ NAIC voting, but not less than a majority of the total membership; and

673 (B) Members of the ~~National Association of Insurance Commissioners~~ NAIC representing
674 jurisdictions totaling greater than 75 percent of the direct premiums written, as reported in the
675 following annual statements most recently available prior to the vote in paragraph (A) of this
676 subdivision: Life, accident and health annual statements, health annual statements, or fraternal
677 annual statements.

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

679 (A) Minimum valuation standards for and definitions of the policies or contracts subject to
680 subdivision (2), subsection (b) of this section. Such minimum valuation standards shall be:

681 (i) The commissioner's reserve valuation method for life insurance contracts, other than
682 annuity contracts, subject to subdivision (2), subsection (b) of this section;

683 (ii) The commissioner's annuity reserve valuation method for annuity contracts subject to
684 subdivision (2), subsection (b) of this section; and

685 (iii) Minimum reserves for all other policies or contracts subject to subdivision (2),
686 subsection (b) of this section.

687 (B) Which policies or contracts or types of policies or contracts that are subject to the
688 requirements of a principle-based valuation in subdivision (1), subsection (o) of this section and
689 the minimum valuation standards consistent with those requirements.

690 (C) For policies and contracts subject to a principle-based valuation under subsection (o)
691 of this section:

692 (i) Requirements for the format of reports to the commissioner under paragraph (C),
693 subdivision (2), subsection (o) of this section and which shall include information necessary to
694 determine if the valuation is appropriate and in compliance with this section;

695 (ii) Assumptions shall be prescribed for risks over which the company does not have
696 significant control or influence; and

697 (iii) Procedures for corporate governance and oversight of the actuarial function and a
698 process for appropriate waiver or modification of such procedures.

699 (D) For policies not subject to a principle-based valuation under subsection (o), the
700 minimum valuation standard shall either:

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

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

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

710 (F) The data and form of the data required under subsection (p) of this section, with whom
711 the data must be submitted, and may specify other requirements including data analyses and
712 reporting of analyses.

713 (5) For policies issued on or after the operative date of the valuation manual, the standard
714 prescribed in the valuation manual is the minimum standard of valuation required under
715 subdivision (2), subsection (b) of this section, except as provided under subdivision (6) or (8) of
716 this subsection.

717 (6) In the absence of a specific valuation requirement or if a specific valuation requirement
718 in the valuation manual is not, in the opinion of the commissioner, in compliance with this section,
719 then the company shall, with respect to such requirements, comply with minimum valuation
720 standards prescribed by rule.

721 (7) The commissioner may engage a qualified actuary, at the expense of the company, to
722 perform an actuarial examination of the company and opine on the appropriateness of any reserve
723 assumption or method used by the company, or to review and opine on a company's compliance
724 with any requirement set forth in this section. The commissioner may rely upon the opinion,
725 regarding provisions contained within this section, of a qualified actuary engaged by the
726 commissioner of another state, district or territory of the United States. As used in this subdivision,
727 term "engage" includes employment and contracting.

728 (8) The commissioner may require a company to change any assumption or method that
729 in the opinion of the commissioner is necessary in order to comply with the requirements of the
730 valuation manual or this section, and the company shall adjust the reserves as required by the
731 commissioner.

732 (o) Requirements of a Principle-Based Valuation. —

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

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

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

743 (C) Incorporate assumptions that are derived in one of the following manners:

744 (i) The assumption is prescribed in the valuation manual; or

745 (ii) For assumptions that are not prescribed, the assumptions shall either:

746 (I) Be established utilizing the company's available experience, to the extent it is relevant
747 and statistically credible; or

748 (II) To the extent that company data is not available, relevant or statistically credible, be
749 established utilizing other relevant, statistically credible experience.

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

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

754 (A) Establish procedures for corporate governance and oversight of the actuarial valuation
755 function consistent with those described in the valuation manual.

756 (B) Provide to the commissioner and the board of directors an annual certification of the
757 effectiveness of the internal controls with respect to the principle-based valuation. Such controls
758 shall be designed to assure that all material risks inherent in the liabilities and associated assets
759 subject to such valuation are included in the valuation, and that valuations are made in

760 accordance with the valuation manual. The certification shall be based on the controls in place as
761 of the end of the preceding calendar year.

762 (C) Develop, and file with the commissioner upon request, a principle-based valuation
763 report that complies with standards prescribed in the valuation manual.

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

765 (p) Experience Reporting for Policies In Force On or After the Operative Date of the
766 Valuation Manual. — A company shall submit mortality, morbidity, policyholder behavior, or
767 expense experience and other data as prescribed in the valuation manual.

768 (q) Confidentiality. —

769 (1) For purposes of this subsection, “confidential information” means:

770 (A) A memorandum in support of an opinion submitted under subsection (c) of this section
771 and any other documents, materials and other information, including, but not limited to, all working
772 papers, and copies thereof, created, produced or obtained by or disclosed to the commissioner
773 or any other person in connection with such memorandum;

774 (B) All documents, materials and other information, including, but not limited to, all working
775 papers, and copies thereof, created, produced or obtained by or disclosed to the commissioner
776 or any other person in the course of an examination made under subdivision (7), subsection (n)
777 of this section, but only to the same extent as such documents, materials and other information
778 would be held confidential were they created, produced or obtained in connection with an
779 examination made under the general examination law set forth in §33-2-9 of this code;

780 (C) Any reports, documents, materials and other information developed by a company in
781 support of, or in connection with, an annual certification by the company under paragraph (B),
782 subdivision (2), subsection (o) of this section evaluating the effectiveness of the company’s
783 internal controls with respect to a principle-based valuation and any other documents, materials
784 and other information, including, but not limited to, all working papers, and copies thereof, created,

785 produced or obtained by or disclosed to the commissioner or any other person in connection with
786 such reports, documents, materials and other information;

787 (D) Any principle-based valuation report developed under paragraph (C), subdivision (2),
788 subsection (o) of this section and any other documents, materials and other information, including,
789 but not limited to, all working papers, and copies thereof, created, produced or obtained by or
790 disclosed to the commissioner or any other person in connection with such report; and

791 (E) Any documents, materials, data and other information submitted by a company under
792 subsection (p) of this section (collectively, "experience data") and any other documents, materials,
793 data and other information, including, but not limited to, all working papers, and copies thereof,
794 created or produced in connection with such experience data, in each case that include any
795 potentially company-identifying or personally identifiable information, that is provided to or
796 obtained by the commissioner (together with any "experience data", the "experience materials")
797 and any other documents, materials, data and other information, including, but not limited to, all
798 working papers, and copies thereof, created, produced or obtained by or disclosed to the
799 commissioner or any other person in connection with such experience materials.

800 (2) Privilege for, and Confidentiality of, Confidential Information.

801 (A) Except as otherwise provided in this subsection, a company's confidential information
802 is confidential by law and privileged, is exempt from disclosure under article one, chapter twenty-
803 nine-a of this code, is not subject to subpoena, and is not subject to discovery or admissible in
804 evidence in any private civil action: *Provided*, That the commissioner is authorized to use the
805 confidential information in the furtherance of any regulatory or legal action brought against the
806 company as a part of the commissioner's official duties.

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

810 (C) In order to assist in the performance of the commissioner's duties, the commissioner
811 may share confidential information:

812 (i) With other state, federal and international regulatory agencies and with the ~~National~~
813 ~~Association of Insurance Commissioners~~ NAIC and its affiliates and subsidiaries;

814 (ii) In the case of confidential information specified in paragraphs (A) and (D), subdivision
815 (1) of this subsection only, with the Actuarial Board for Counseling and Discipline or its successor
816 upon request stating that the confidential information is required for the purpose of professional
817 disciplinary proceedings and with state, federal and international law-enforcement officials; and

818 (iii) In the case of subparagraphs (i) and (ii) of this paragraph, provided that such recipient
819 agrees and has the legal authority to agree, to maintain the confidentiality and privileged status
820 of such documents, materials, data and other information in the same manner and to the same
821 extent as required for the commissioner.

822 (D) The commissioner may receive documents, materials, data and other information,
823 including otherwise confidential and privileged documents, materials, data or information, from
824 the ~~National Association of Insurance Commissioners~~ NAIC and its affiliates and subsidiaries,
825 from regulatory or law-enforcement officials of other foreign or domestic jurisdictions, and from
826 the Actuarial Board for Counseling and Discipline or its successor, and he or she shall maintain
827 as confidential or privileged any document, material, data or other information received with notice
828 or the understanding that it is confidential or privileged under the laws of the jurisdiction that is
829 the source of the document, material or other information.

830 (E) The commissioner may enter into agreements governing sharing and use of
831 information consistent with this subdivision.

832 (F) No waiver of any applicable privilege or claim of confidentiality in the confidential
833 information occurs as a result of disclosure to the commissioner under this section or as a result
834 of sharing as authorized in paragraph (C) of this subdivision.

835 (G) A privilege established under the law of any state or jurisdiction that is substantially
836 similar to the privilege established under this subdivision is available and may ~~be enforced~~ be
837 enforced in any proceeding in, and in any court of, this state.

838 (H) In this subsection “regulatory agency”, “law-enforcement agency” and the “NAIC”
839 include, but are not limited to, their employees, agents, consultants and contractors.

840 (3) Notwithstanding subdivision (2) of this subsection, any confidential information
841 specified in paragraphs (A) and (D), subdivision (1) of this subsection:

842 (A) May be subject to subpoena for the purpose of defending an action seeking damages
843 from the appointed actuary submitting the related memorandum in support of an opinion
844 submitted under subsection (c) of this section or principle-based valuation report developed under
845 paragraph (C), subdivision (2), subsection (o) of this section by reason of an action required by
846 this section or by rules promulgated hereunder;

847 (B) May otherwise be released by the commissioner with the written consent of the
848 company; and

849 (C) Once any portion of a memorandum in support of an opinion submitted under
850 subsection (c) of this section or a principle-based valuation report developed under paragraph
851 (C), subdivision (2), subsection (o) of this section is cited by the company in its marketing or is
852 publicly volunteered to or before a governmental agency other than a state insurance department
853 or is released by the company to the news media, all portions of such memorandum or report are
854 no longer ~~be~~ confidential.

NOTE: The purpose of this bill is to prescribe the minimum standard of valuation for health insurance contracts. The legislation is needed for the State of West Virginia to remain accredited with the National Association of Insurance Commissioners.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.