SB 517

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2004

ENROLLED

SENATE BILL NO. 517

(By Senator Minard)

PASSED March 12, 2004

In Effect ninety days from Passage

ENROLLED

Senate Bill No. 517

(BY SENATOR MINARD)

[Passed March 12, 2004; in effect ninety days from passage.]

AN ACT to amend and reenact §33-7-9 of the code of West Virginia, 1931, as amended; and to amend and reenact §33-13-30a of said code, all relating to the valuation of annuities; establishing minimum standards for the valuation of life insurance policies; and modifying the standard nonforfeiture law for individual deferred annuities.

Be it enacted by the Legislature of West Virginia:

That §33-7-9 of the code of West Virginia, 1931, as amended, be amended and reenacted; and §33-13-30a of said code be amended and reenacted, all to read as follows:

ARTICLE 7. ASSETS AND LIABILITIES.

§33-7-9. Standard valuation law.

(a) *Title.* — This section shall be known as the standard valuation law.

(b) *Reserve valuation.* — The commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state 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 or she may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien company, he or she may accept any 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 herein provided and if the official of the state or jurisdiction accepts as sufficient and for all valid legal purposes the certificate of valuation of the commissioner 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.

(c) *Actuarial opinion of reserves.* — This subsection shall become operative on the first day of January, one thousand nine hundred ninety-six.

(1) *General.* — Every life insurance company doing business in this state shall annually submit 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 commissioner 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 commissioner, by regulation, shall define the specifics of this opinion and add any other item considered to be necessary to its scope.

(2) *Actuarial analysis of reserves and assets supporting the reserves.* —

(A) Every life insurance company, except as exempted by or pursuant to regulation, shall also annually include in the opinion required by subdivision (1) of this subsection 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 commissioner 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 commissioner may provide, by regulation, for a transition period for establishing any higher reserves which the qualified actuary may consider necessary in order to render the opinion required by this subsection.

(3) *Requirement for opinion under subdivision (2).* — Each opinion required by subdivision (2) of this subsection shall be governed by the following provisions:

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

(B) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by regulation or the commissioner 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 commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the commissioner.

(4) *Requirement for all opinions.* — Every opinion shall be governed by the following provisions:

(A) The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after the thirty-first day of December, one thousand nine hundred ninety-five.

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

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

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

(E) For the purposes of this section, "qualified actuary" means a member in good standing of the American academy of actuaries who meets the requirements set forth in such regulations.

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

(G) Disciplinary action by the commissioner against the company or the qualified actuary shall be defined in regulations by the commissioner.

(H) Any memorandum in support of the opinion and any other material provided by the company to the commissioner in connection therewith shall be kept confidential by the commissioner and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by regulations promulgated hereunder: *Provided*, That the memorandum or other material may otherwise be released by the commissioner: (i) With the written consent of the company; (ii) 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 commissioner for preserving the confidentiality of the memorandum or other material; or (iii) in accordance with section nineteen, article two of this chapter. Once any portion of the confidential memorandum is cited by the company in its marketing or is cited by the company before any governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.

(d) *Computation of minimum standards.* — Except as otherwise provided in subsections (e), (f) and (m) of this section, the minimum standard for the valuation of all policies and contracts issued prior to the effective date of this section shall be that provided by the laws in effect immediately prior to the effective date. Except as otherwise provided in subsections (e), (f) and (m) of this section, the minimum standard for the valuation of all policies and contracts issued on or after the effective date of this section shall be the commissioners reserve valuation methods defined in subsections (g), (h), (k) and (m) of this section, three and one-half percent interest or in the case of life insurance policies and contracts, other than annuity and pure endowment contracts, issued on or after the first day of June, one thousand nine hundred seventy-four, four percent interest for policies issued prior to the sixth day of April, one thousand nine hundred seventy-seven, five and one-half percent interest for single premium life insurance policies and four and one-half percent interest for all other policies issued on and after the sixth day of April, one thousand nine hundred seventy-seven, and the following tables:

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

(A) The commissioner's 1941 standard ordinary mortality table for policies issued prior to the operative date of subsection (4a), section thirty, article thirteen of this chapter;

(B) The commissioner's 1958 standard ordinary mortality table for policies issued on or after the operative date of subsection (4a), section thirty, article thirteen of this chapter and prior to the operative date of subsection (4c) of said section: *Provided*, That 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 six years younger than the actual age of the insured; and

(C) For policies issued on or after the operative date of subsection (4c), section thirty, article thirteen of this chapter:

(i) The commissioners 1980 standard ordinary mortality table; or

(ii) at the election of the company for any one or more specified plans of life insurance, the commissioner's 1980 standard ordinary mortality table with ten-year select mortality factors; or

(iii) any ordinary mortality table adopted after the year one thousand nine hundred eighty by the national association of insurance commissioners that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for the policies.

(2) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in the policies: The 1941 standard industrial mortality table for policies issued prior to the operative date of subdivision (4), subsection (b), section thirty, article thirteen of this chapter and for policies issued on or after the operative date, the commissioner's 1961 standard industrial mortality table or any industrial mortality table adopted after the year one thousand nine hundred eighty by the national association of insurance commissioners that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for the policies.

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

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

(5) For total and permanent disability benefits in or supplementary to ordinary policies or contracts: For policies or contracts issued on or after the first day of January, one thousand nine hundred sixty-six, the tables of period two 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 any tables of disablement rates and termination rates adopted

after the year one thousand nine hundred eighty by the national association of insurance commissioners that are approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for the policies; for policies or contracts issued on or after the first day of January, one thousand nine hundred sixty-one, and prior to the first day of January, one thousand nine hundred sixty-six, either such tables or, at the option of the company, the Class (3) disability table (1926); and for policies issued prior to the first day of January, one thousand nine hundred sixty-one, the Class (3) disability table (1926).

Any table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(6) For accidental death benefits in or supplementary to policies issued on or after the first day of January, one thousand nine hundred sixty-six, the 1959 accidental death benefits table or any accidental death benefits table adopted after the year one thousand nine hundred eighty by the national association of insurance commissioners, that is approved by rules promulgated by the commissioner for use in determining the minimum standard of valuation for such policies, for policies issued on or after the first day of January, one thousand nine hundred sixty-one, and prior to the first day of January, one thousand nine hundred sixty-six, either such table or, at the option of the company, the intercompany double indemnity mortality table; and for policies issued prior to the first day of January, one thousand nine hundred sixty-one, the intercompany double indemnity mortality table. Either table shall be combined with a mortality table for calculating the reserves for life insurance policies.

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

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

(1) For individual annuity and pure endowment contracts issued prior to the sixth day of April, one thousand nine hundred seventy-seven, excluding any disability and accidental death benefits in the contracts: The 1971 individual annuity mortality table or any modification of this table approved by the commissioner and six percent interest for single premium immediate annuity contracts and four percent interest for all other individual annuity and pure endowment contracts;

(2) For individual single premium immediate annuity contracts issued on or after the sixth day of April, one thousand nine hundred seventy-seven, excluding any disability and accidental death benefits in such contracts: The 1971 individual annuity mortality table or any individual annuity mortality table adopted after the year one thousand nine hundred eighty by the national association of insurance commissioners that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for the contracts or any modification of these tables approved by the commissioner and seven and one-half percent interest;

(3) For individual annuity and pure endowment contracts issued on or after the sixth day of April, one thousand nine hundred seventy-seven, other than single premium immediate annuity contracts, excluding any

disability and accidental death benefits in the contracts: The 1971 individual annuity mortality table or any individual annuity mortality table adopted after the year one thousand nine hundred eighty by the national association of insurance commissioners that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for the contracts or any modification of these tables approved by the commissioner 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;

(4) For all annuities and pure endowments purchased prior to the sixth day of April, one thousand nine hundred seventy-seven, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under the contracts: The 1971 group annuity mortality table or any modification of this table approved by the commissioner and six percent interest;

(5) For all annuities and pure endowments purchased on or after the sixth day of April, one thousand nine hundred seventy-seven, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under the contracts: The 1971 group annuity mortality table or any group annuity mortality table adopted after the year one thousand nine hundred eighty by the national association of insurance commissioners that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for annuities and pure endowments or any modification of these tables approved by the commissioner and seven and one-half percent interest.

After the third day of June, one thousand nine hundred seventy-four, any company may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before the first day of January, one thousand nine hundred seventy-nine, which shall be the operative date of this subsection for the company provided, if a company makes no election, the operative date of this section for the company shall be the first day of January, one thousand nine hundred seventy-nine.

(f) *Computation of minimum standard by calendar year of issue.* —

(1) *Applicability of this section.* — The interest rates 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 subdivision (4), subsection (c), section thirty, article thirteen of this chapter, as amended;

(B) All individual annuity and pure endowment contracts issued in a particular calendar year on or after the first day of January, one thousand nine hundred eighty-two;

(C) All annuities and pure endowments purchased in a particular calendar year on or after the first day of January, one thousand nine hundred eighty-two, under group annuity and pure endowment contracts; and

(D) The net increase, if any, in a particular calendar year after the first day of January, one thousand nine hundred eighty-two, in amounts held under guaranteed interest contracts shall be the calendar year statutory valuation interest rates as defined in this subsection.

(2) *Calendar year statutory valuation interest rates.* —

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

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

(ii) 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• -.03) where R1 is the lesser of R and .09, R2 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 section;

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

(iv) 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 subparagraph (ii) of this paragraph shall apply;

(v) 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 subparagraph (ii) of this paragraph shall apply.

(B) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any 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 such life insurance policies shall 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 shall be determined for the year one thousand nine hundred eighty (using the reference interest rate defined for the year one thousand nine hundred seventy-nine) and shall be determined for each subsequent calendar year regardless of when subdivision (4), subsection (c), section thirty, article thirteen of this chapter, as amended, becomes operative.

(3) *Weighting factors.* —

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

(i) Weighting Factors for Life Insurance:

Guarantee Duration (Years)	Weighting Factors
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 can 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;

(ii) 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: .80;

(iii) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in subparagraph

(ii) of this paragraph, shall be as specified in clauses (I), (II) and (III) of this subparagraph, according to the rules and definitions in clauses (IV), (V) and (VI) of this subparagraph:

(I) For annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration (Years)	Weighting Factor for Plan Type A	B	C
5 or less:	.80	.60	.50
More than 5, 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 subparagraph (i) of this paragraph increased by:

Weighting Factor for Plan Type A	B	C1
.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 clause (I) of this subparagraph or derived in clause (II) of this subparagraph increased by:

Weighting Factor for Plan Type A	B	C1
.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 guaranteed duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

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

Plan Type A:

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

Plan Type B:

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

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: (1) Without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(VI) A company 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 section, 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) *Reference interest rate.* –

(A) Reference interest rate referred to in subparagraph (ii), paragraph (A), subdivision (2) of this subsection shall be defined as follows:

(i) 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 the thirtieth day of June of the calendar year next preceding the year of issue, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody's investors service, inc.

(ii) 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 a period of twelve months, ending on the thirtieth day of June of the calendar year of issue or year of purchase, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody's investors service, inc.

(iii) 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 subparagraph (ii) of this paragraph, with guarantee duration in excess of ten years, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody's investors service, inc.

(iv) 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 subparagraph (ii) of this paragraph, with guarantee duration of ten years or less, the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody's investors service, inc.

(v) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody's investors service, inc.

(vi) 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 subparagraph (ii) of this paragraph, the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of the change in the fund, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody's investors service, inc.

(5) *Alternative method for determining reference interest rates.* —

In the event that the monthly average of the composite yield on seasoned corporate bonds is no longer published by Moody's investors service, inc., or in the event that the national association of insurance commissioners determines that the monthly average of the composite yield on seasoned corporate bonds 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 commissioner, may be substituted.

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

Except as otherwise provided in subsections (h), (k) and (m) of this section, reserves according to the commissioners 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 shall be the excess, if any, of the present value, at the date of valuation, of the future guaranteed benefits provided for by the policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be the uniform percentage of the respective contract premiums for the benefits that the present value, at the date of issue of the policy, of all the modified net premiums shall be equal to the sum of the then present value of the benefits provided for by the policy and the excess of subdivision (1) of this subsection over subdivision (2) of this subsection, as follows:

(1) A net level annual premium equal to the present value, at the date of issue, of such 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 such policy on which a premium falls due: *Provided*, That such net level annual premium shall 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 at issue of such policy.

(2) A net one-year term premium for such benefits provided for in the first policy year: *Provided*, That for any life insurance policy issued on or after the first day of January, one thousand nine hundred eighty-five, 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 such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the commissioners' reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in subsection (k) of this section, be the greater of the reserve as of such 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: (i) The value defined in subdivision (1) of that paragraph being reduced by fifteen percent of the amount of such excess first-year premium; (ii) all present values of benefits and premiums being determined without reference to premi-

ums or benefits provided for by the policy after the assumed ending date; (iii) the policy being assumed to mature on the date as an endowment; and (iv) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison, the mortality and interest bases stated in subsections (d) and (f) of this section shall be used.

Reserves according to the commissioners' reserve valuation method for: (i) Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums; (ii) 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 by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code (26 U. S. C. §408) as now or hereafter amended; (iii) disability and accidental death benefits in all policies and contracts; and (iv) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of the preceding paragraphs of this section.

(h) *Reserve valuation method.* — Annuity and pure endowment benefits. This subsection shall apply 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 by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code (26 U. S. C. §408) as now or hereafter amended.

Reserves according to the commissioners' annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be 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 such contracts at the end of each respective contract year over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year.

The future guaranteed benefits shall 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 such contracts to determine nonforfeiture values.

(i) *Minimum reserves.* –

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

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

(j) *Optional reserve calculation.* –

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

Reserves for any category of policies, contracts or benefits as established by the commissioner issued on or after the effective date of this section may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided therein.

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

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

If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest and method actually used for such policy or contract or the reserve calculated by the method actually used for such 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 section are those standards stated in subsections (d) and (f) of this section: *Provided*, That for any life insurance policy issued on or after the first day of January, one thousand nine hundred eighty-five, 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 such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the foregoing provisions of this subsection shall be applied as if the method actually used in calculating the reserve for such policy were the method described in subsection (g) of this section, ignoring the second paragraph of said subsection.

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

(l) *Reserve calculation.* – Indeterminate premium plans.

In the case of any plan of life insurance which provides for

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

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

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

(m) *Minimum standards for health (disability, accident and sickness) plans.* –

The commissioner shall promulgate a rule containing the minimum standards applicable to the valuation of health (disability, sickness and accident) plans.

(n) The commissioner shall promulgate a rule on or before the first day of November, one thousand nine hundred ninety-five, prescribing the guidelines and standards for statements of actuarial opinion which are to be submitted in accordance with subsection (c) of this section and for memoranda in support thereof; guidelines and standards for statements of actuarial opinion which are to be submitted when a company is exempt from subdivision (2) of said subsection of the standard valuation law; and rules applicable to the appointment of an appointed actuary.

(o) *Effective date.* — All acts and parts of acts inconsistent with the provision of this section are hereby repealed as of the effective date of this section. This section shall take effect the first day of January, one thousand nine hundred ninety-six.

(p) *Modification of the standard valuation law for certain types of contracts.* —

(1) The commissioner may, by rule, establish alternative methods of calculating reserve liabilities, which methods shall be used to calculate reserve liabilities for the types of policies, annuities or other contracts identified in the rule: *Provided*, That the method specified in the rule shall be one which, in the opinion of the commissioner and in light of the methods applied to the contracts by the insurance regulators of other states, is appropriate to the contracts. This power shall be in addition to, and in no way diminish, rule-making power granted to the commissioner elsewhere in this code.

(2) The legislative rule filed in the state register on the twentieth day of August, one thousand nine hundred ninety-six, (valuation of life insurance policies, 114 CSR 49) is hereby disapproved and is not authorized for promulgation: *Provided*, That for purposes of determining the legal effects of the aforementioned rule, this provision shall be considered to have taken effect on the thirty-first day of December, one thousand nine hundred ninety-seven. This disapproval shall in no way limit the commissioner's power to promulgate in the future a rule similar or identical to the rule here disapproved.

ARTICLE 13. LIFE INSURANCE.

§33-13-30a. Standard nonforfeiture law for individual deferred annuities.

(a) This section shall be known as the "Standard Nonforfeiture Law for Individual Deferred Annuities".

(b) This section may not apply to any reinsurance, group annuity 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 by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced or reversionary annuity, nor to any contract which shall be delivered outside this state through an agent or other representative of the company issuing the contract.

(c) In the case of contracts issued on or after the operative date of this section, no contract of annuity, except as stated in subsection (b) of this section, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions or corresponding provisions which, in the opinion of the commissioner, are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:

(1) That upon cessation of payment of considerations under a contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of the value as is specified in subsections (e), (f), (g), (h) and (j) of this section;

(2) If a contract provides for a lump sum settlement at maturity or at any other time that, upon surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash surrender benefit of the amount as is specified in subsections (e), (f), (h) and (j) of this section. The company shall reserve the right to defer the payment of the cash surrender benefit for a period of six months after demand therefor with surrender of the contract;

(3) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of the benefits; and

(4) A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract

are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which the benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this subsection, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to the period would be less than twenty dollars monthly, the company may at its option terminate the contract by payment in cash of the then present value of the portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit and by the payment shall be relieved of any further obligation under the contract.

(d) (1) The minimum values as specified in subsections (e), (f), (g), (h) and (j) of this section of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this subdivision:

(A) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to the time at a rate of interest of three percent per annum of percentages of the net considerations (as hereinafter defined) paid prior to the time, decreased by the sum of:

(i) Any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three percent per annum; and

(ii) The amount of any indebtedness to the company on the contract, including interest due and accrued; and increased by any existing additional amounts credited by the company to the contract;

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less than an annual contract charge of thirty dollars and less a collection charge of one dollar and twenty-five cents per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five percent of the net consideration for the first contract year and eighty-seven and one-half percent of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five percent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five percent;

Notwithstanding any other provision of this section, any contract issued on or after the first day of July, two thousand three, and before the first day of July, two thousand six, the interest rate at which net considerations, prior withdrawals and partial surrenders shall be accumulated for the purpose of determining nonforfeiture amounts may not be less than one and one-half percent per annum;

(B) With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:

(i) The portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five percent of the net consideration for the first contract year plus twenty-two and one-half percent of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years;

(ii) The annual contract charge shall be the lesser of: (1) Thirty dollars; or (2) ten percent of the gross annual consideration;

(C) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to ninety percent and the net consideration shall be the gross consideration less a contract charge of seventy-five dollars;

(D) This subdivision applies to contracts issued before the first day of July, two thousand four, and may be applied by a company on a contract-by-contract basis to contracts issued on or after the first day of July, two thousand four, and before the first day of July, two thousand six;

(2) The minimum values as specified in subsections (e), (f), (g), (h) and (j) of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this subdivision;

(A) (i) The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at rates of interest as indicated in paragraph (B) of this subdivision of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of subparagraphs (I) through (IV) below:

(I) Any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as indicated in paragraph (B) of this subdivision;

(II) An annual contract charge of fifty dollars, accumulated at rates of interest as indicated in paragraph (B) of this subdivision;

(III) Any premium tax paid by the company for the contract, accumulated at rates of interest as indicated in subparagraph (ii), paragraph (B) of this subdivision; and

(IV) The amount of any indebtedness to the company on the contract, including interest due and accrued;

(ii) The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount equal to eighty-seven and one-half percent of the gross considerations credited to the contract during that contract year;

(B) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three percent per annum and the following, which shall be specified in the contract if the interest rate will be reset:

(i) The five-year constant maturity treasury rate reported by the federal reserve as of a date, or average over a period, rounded to the nearest 1/20th of one percent, specified in the contract no longer than fifteen months prior to the contract issue date or redetermination date under subparagraph (iv) of this paragraph;

(ii) Reduced by one hundred twenty-five basis points;

(iii) Where the resulting interest rate is not less than one percent; and

(iv) The interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date, basis and period, if any, shall be stated in the contract. The basis is the date or average over a specified period that produces the value of the five-year constant maturity treasury rate to be used at each redetermination date;

(C) During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in subparagraph (ii), paragraph (B) of this subdivision by up to an additional one hundred basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date thereafter, of the additional reduction may not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. Lacking a determination that is acceptable to the commissioner, the commissioner may disallow or limit the additional reduction;

(D) The commissioner may adopt rules to implement the provisions of this subsection and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts that the commissioner determines their adjustments are justified;

(E) This subdivision shall apply to contracts outstanding on the first day of July, two thousand four, and may be applied by a company on a contract-by-contract basis to any contract issued after the first day of July, two thousand four, and before the first day of July, two thousand six.

(e) Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. The present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

(f) For contracts which provide cash surrender benefits, the cash surrender benefits available prior to maturity may not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from consideration paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, the present value being calculated on the basis of an interest rate not more than one percent higher than the interest rate specified in the contract for accumulating the net considerations to determine the maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under the contracts shall be at least equal to the cash surrender benefit.

(g) For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity may not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, the present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine the maturity value and increased by any existing additional amounts credited by the company to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, the present values shall be calculated on a basis of the interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

(h) For the purpose of determining the benefits calculated under subsections (f) and (g) of this section, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date is considered to be the latest date for which election is permitted by the contract, but is not considered to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

(i) Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that the benefits are not provided.

(j) Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

(k) For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of subsections (e), (f), (g), (h) and (j) of this section, additional benefits payable: (1) In the event of total and permanent disability; (2) as reversionary annuity or deferred reversionary annuity benefits; or (3) as other policy benefits additional to life insurance, endowment and annuity benefits and considerations for all the additional benefits shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section. The inclusion of the additional benefits may not be required in any paid-up benefits unless the additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

(l) After the effective date of this section, any company may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before the second anniversary of the effective date of this section. After the filing of the notice, then upon the specified date which shall be the operative date of this section for the company, this section shall become operative with respect to annuity contracts thereafter issued by the company. If a company makes no election, the operative date of this section for the company is the second anniversary of the effective date of this section.

(m) (1) During the period from the first day of July, two thousand four, through the first day of July, two thousand six, an insurer may elect on a contract-by-contract basis to apply the provisions of either subdivision (1) or (2), subsection (d) of this section to any annuity contract issued during that period of time;

(2) The provisions of subdivision (1), subsection (d) of this section expires the first day of July, two thousand six.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 5th

Day of April, 2004.

Governor

® GCIU 326-C

PRESENTED TO THE
GOVERNOR
DATE 3/20/04
TIME 4:05 pm