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ENROLLED

House Bill 2474

BY DELEGATE WESTFALL, AZINGER, CRISS, D. JEFFRIES,
HAMRICK, MANDT, NELSON, ESPINOSA AND PORTERFIELD

[Passed March 9, 2019; in effect ninety days from
passage.]

1 AN ACT 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.* —

39 (1) *Policies and Contracts Issued Prior to the Operative Date of 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.* —

66 (1) *Actuarial Opinion Prior to the Operative Date of the 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 required by
97 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 subsection, “qualified actuary” means a member in good
109 standing of the American Academy of Actuaries who meets the requirements set forth in such
110 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 §29A-1-1 *et seq.* of this code and are not to be subject to subpoena and,
121 additionally, are not subject to discovery or admissible in evidence in any private civil action.

122 However, the commissioner is authorized to use the documents, materials, or other information
123 in the furtherance of any regulatory or legal action brought as a part of the commissioner's official
124 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) 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
146 subsection or as a result of sharing as authorized in subparagraph (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
162 health insurance contracts, or deposit-type contracts in this state and subject to rule of the
163 commissioner shall annually submit the opinion of the appointed actuary as to whether the
164 reserves and related actuarial items held in support of the policies and contracts are computed
165 appropriately, are based on assumptions that satisfy contractual provisions, are consistent with
166 prior reported amounts and comply with applicable laws of this state. The valuation manual will
167 prescribe the specifics of this opinion including any items deemed to be necessary to its scope.

168 (B) *Actuarial Analysis of Reserves and Assets Supporting Reserves.* — Every company
169 with 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) *Requirement for opinion under paragraph (B) of this subdivision.* — Each opinion
180 required by paragraph (B) of this subdivision shall be governed by the following:

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

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

190 (D) *Requirement for all opinions subject to this subdivision.* — Every opinion required by
191 this subdivision is governed by the following:

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

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

196 (iii) The opinion shall apply to all policies and contracts subject to paragraph (B) of this
197 subdivision, plus other actuarial liabilities as may be specified in the valuation manual.

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

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

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

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

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

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

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

225 (B) The commissioner's 1958 standard ordinary mortality table for policies issued on or
226 after the operative date of §33-13-30(e) of this code and prior to the operative date of §33-13-
227 30(g) of this code: *Provided*, That for any category of policies issued on female risks, all modified
228 net premiums and present values referred to in this section may be calculated according to an
229 age not more than six years younger than the actual age of the insured; and

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

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

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

235 (iii) Any ordinary mortality table adopted after the year 1980 by the NAIC that is approved
236 by rule promulgated by the commissioner for use in determining the minimum standard of
237 valuation for the policies.

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

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

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

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

265 (6) For accidental death benefits in or supplementary to policies issued on or after January
266 1, 1966, the 1959 accidental death benefits table or any accidental death benefits table adopted
267 after the year 1980 by the NAIC that is approved by rules promulgated by the commissioner for
268 use in determining the minimum standard of valuation for the policies, for policies issued on or
269 after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the
270 company, the intercompany double indemnity mortality table; and for policies issued prior to
271 January 1, 1961, the intercompany double indemnity mortality table. Either table shall be
272 combined with a mortality table for calculating the reserves for life insurance policies.

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

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

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

286 (2) For individual single premium immediate annuity contracts issued on or after April 6,
287 1977, excluding any disability and accidental death benefits in the contracts: The 1971 individual
288 annuity mortality table or any individual annuity mortality table adopted after the year 1980 by the
289 NAIC that is approved by rule promulgated by the commissioner for use in determining the
290 minimum standard of valuation for the contracts or any modification of these tables approved by
291 the commissioner and seven and one-half percent interest;

292 (3) For individual annuity and pure endowment contracts issued on or after April 6, 1977,
293 other than single premium immediate annuity contracts, excluding any disability and accidental
294 death benefits in those contracts: The 1971 individual annuity mortality table or any individual
295 annuity mortality table adopted after the year 1980 by the NAIC that is approved by rule
296 promulgated by the commissioner for use in determining the minimum standard of valuation for
297 the contracts or any modification of these tables approved by the commissioner and five and one-
298 half percent interest for single premium deferred annuity and pure endowment contracts and four
299 and one-half percent interest for all other individual annuity and pure endowment contracts;

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

304 (5) For all annuities and pure endowments purchased on or after April 6, 1977, under
305 group annuity and pure endowment contracts, excluding any disability and accidental death
306 benefits purchased under the contracts: The 1971 group annuity mortality table or any group
307 annuity mortality table adopted after the year 1980 by the NAIC that is approved by rule
308 promulgated by the commissioner for use in determining the minimum standard of valuation for
309 annuities and pure endowments or any modification of these tables approved by the
310 commissioner and seven and one-half percent interest.

311 After June 3, 1974, any company may file with the commissioner a written notice of its
312 election to comply with the provisions of this subsection after a specified date before January 1,
313 1979, which shall be the operative date of this subsection for the company provided, if a company
314 makes no election, the operative date of this section for the company shall be January 1, 1979.

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

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

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

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

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

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

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

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

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

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

333 Where R1 is the lesser of R and .09; R2 is the greater of R and .09; R is the reference
334 interest rate defined in this subsection; and W is the weighting factor defined in this subsection;

335 (iii) For other annuities with cash settlement options and guaranteed interest contracts
336 with cash settlement options, valued on an issue-year basis, except as stated in subparagraph
337 (ii) of this paragraph, the formula for life insurance stated in subparagraph (i) of this paragraph
338 shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of
339 ten years and the formula for single premium immediate annuities stated in subparagraph (ii) of
340 this paragraph shall apply to annuities and guaranteed interest contracts with guarantee duration
341 of 10 years or less;

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

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

348 (B) However, if the calendar year statutory valuation interest rate for any life insurance
349 policies issued in any calendar year determined without reference to this sentence differs from
350 the corresponding actual rate for similar policies issued in the immediately preceding calendar
351 year by less than one half of one percent, the calendar year statutory valuation interest rate for

352 the life insurance policies shall be equal to the corresponding actual rate for the immediately
353 preceding calendar year. For purposes of applying the immediately preceding sentence, the
354 calendar year statutory valuation interest rate for life insurance policies issued in a calendar year
355 shall be determined for the year 1980 (using the reference interest rate defined for the year 1979)
356 and shall be determined for each subsequent calendar year regardless of when §33-13-30(g) of
357 this code, as amended, becomes operative.

358 (3) *Weighting factors.* —

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

361 (i) Weighting factors for life insurance:

362 Guarantee duration of 10 years or less: .50

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

364 Guarantee duration of more than 20 years: .35

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

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

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

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

378 Guarantee duration of five years or less: Plan Type A - .80; Plan Type B - .60; Plan Type
379 C - .50

380 Guarantee duration of more than five years but not more than 10 years: Plan Type A - .75;
381 Plan Type B - .60; Plan Type C - .50

382 Guarantee duration of more than 10 years but not more than 20 years: Plan Type A - .65;
383 Plan Type B - .50; Plan Type C - .45

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

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

388
389 Plan Type A - .15; Plan Type B - .25; Plan Type C - .05

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

396
397 Plan Type A - .05; Plan Type B - .05; Plan Type C - .05

398 (IV) For other annuities with cash settlement options and guaranteed interest contracts
399 with cash settlement options, the guarantee duration is the number of years for which the contract
400 guarantees interest rates in excess of the calendar year statutory valuation interest rate for life
401 insurance policies with guarantee duration in excess of 20 years. For other annuities with no cash
402 settlement options and for guaranteed interest contracts with no cash settlement options, the

403 guaranteed duration is the number of years from the date of issue or date of purchase to the date
404 annuity benefits are scheduled to commence.

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

406 Plan Type A:

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

411 Plan Type B:

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

417 Plan Type C:

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

422 (VI) A company may elect to value guaranteed interest contracts with cash settlement
423 options and annuities with cash settlement options on either an issue-year basis or on a change
424 in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities
425 with no cash settlement options must be valued on an issue-year basis. As used in this section,
426 an issue-year basis of valuation refers to a valuation basis under which the interest rate used to
427 determine the minimum valuation standard for the entire duration of the annuity or guaranteed
428 interest contract is the calendar year valuation interest rate for the year of issue or year of

429 purchase of the annuity or guaranteed interest contract and the change in fund basis of valuation
430 refers to a valuation basis under which the interest rate used to determine the minimum valuation
431 standard applicable to each change in the fund held under the annuity or guaranteed interest
432 contract is the calendar year valuation interest rate for the year of the change in the fund.

433 (4) *The reference interest rate.* —

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

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

440 (ii) For single premium immediate annuities and for annuity benefits involving life
441 contingencies arising from other annuities with cash settlement options and guaranteed interest
442 contracts with cash settlement options, the average over a period of 12 months, ending on June
443 30 of the calendar year of issue or year of purchase, of the monthly average of the composite
444 yield on seasoned corporate bonds as published by Moody's Investors Service, Inc.;

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

451 (iv) For other annuities with cash settlement options and guaranteed interest contracts
452 with cash settlement options, valued on a year of issue basis, except as stated in subparagraph
453 (ii) of this paragraph, with guarantee duration of 10 years or less, the average over a period of 12
454 months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of

455 the composite yield on seasoned corporate bonds as published by Moody's Investors Service,
456 Inc.;

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

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

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

467 In the event that the monthly average of the composite yield on seasoned corporate bonds
468 is no longer published by Moody's Investors Service, Inc., or in the event that the NAIC determines
469 that the monthly average of the composite yield on seasoned corporate bonds as published by
470 Moody's Investors Service, Inc., is no longer appropriate for the determination of the reference
471 interest rate, then an alternative method for determination of the reference interest rate, which is
472 adopted by the NAIC and approved by rule promulgated by the commissioner, may be substituted.

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

474 (1) Except as otherwise provided in subsections (h), (k), and (m) of this section, reserves
475 according to the commissioner's reserve valuation method for the life insurance and endowment
476 benefits of policies providing for a uniform amount of insurance and requiring the payment of
477 uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of the
478 future guaranteed benefits provided by the policies, over the then present value of any future
479 modified net premiums therefor. The modified net premiums for any such policy shall be the
480 uniform percentage of the respective contract premiums for the benefits that the present value, at

481 the date of issue of the policy, of all the modified net premiums shall be equal to the sum of the
482 then present value of the benefits provided by the policy and the excess of paragraph (A) of this
483 subdivision over paragraph (B) of this subdivision, as follows:

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

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

491 (2) For any life insurance policy issued on or after January 1, 1985, for which the contract
492 premium in the first policy year exceeds that of the second year and for which no comparable
493 additional benefit is provided in the first year for such excess and which provides an endowment
494 benefit or a cash surrender value or a combination thereof in an amount greater than such excess
495 premium, the reserve according to the commissioner's reserve valuation method as of any policy
496 anniversary occurring on or before the assumed ending date defined herein as the first policy
497 anniversary on which the sum of any endowment benefit and any cash surrender value then
498 available is greater than such excess premium shall, except as otherwise provided in subsection
499 (k) of this section, be the greater of the reserve as of such policy anniversary calculated as
500 described in subdivision (1) of this subsection and the reserve as of the policy anniversary
501 calculated as described in that subdivision, but with: (i) The value defined in subdivision (1) of this
502 subsection being reduced by 15 percent of the amount of such excess first-year premium; (ii) all
503 present values of benefits and premiums being determined without reference to premiums or
504 benefits provided by the policy after the assumed ending date; (iii) the policy being assumed to
505 mature on the date as an endowment; and (iv) the cash surrender value provided on such date

506 being considered as an endowment benefit. In making the above comparison, the mortality and
507 interest bases stated in subsections (d) and (f) of this section shall be used.

508 (3) Reserves according to the commissioner's reserve valuation method shall be
509 calculated by a method consistent with the principles of subdivisions (1) and (2) of this subsection
510 for:

511 (A) Life insurance policies providing for a varying amount of insurance or requiring the
512 payment of varying premiums;

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

518 (C) Disability and accidental death benefits in all policies and contracts; and

519 (D) All other benefits, except life insurance and endowment benefits in life insurance
520 policies and benefits provided by all other annuity and pure endowment contracts.

521 (h) *Reserve valuation method: Annuity and pure endowment benefits.* —

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

528 (2) Reserves according to the commissioner's annuity reserve method for benefits under
529 annuity or pure endowment contracts, excluding any disability and accidental death benefits in
530 the contracts, shall be the greatest of the respective excesses of the present values, at the date
531 of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits,

532 provided by the contracts at the end of each respective contract year over the present value, at
533 the date of valuation, of any future valuation considerations derived from future gross
534 considerations, required by the terms of the contract, that become payable prior to the end of the
535 respective contract year. The future guaranteed benefits shall be determined by using the
536 mortality table, if any, and the interest rate, or rates, specified in the contracts for determining
537 guaranteed benefits. The valuation considerations are the portions of the respective gross
538 considerations applied under the terms of the contracts to determine nonforfeiture values.

539 (i) *Minimum reserves.* —

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

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

548 (j) *Optional reserve calculation.* —

549 (1) Reserves for all policies and contracts issued prior to January 1, 1958 may be
550 calculated, at the option of the company, according to any standards which produce greater
551 aggregate reserves for all policies and contracts than the minimum reserves required by the laws
552 in effect immediately prior to such date.

553 (2) Reserves for any category of policies, contracts or benefits as established by the
554 commissioner issued on or after January 1, 1958 may be calculated, at the option of the company,
555 according to any standards which produce greater aggregate reserves for such category than
556 those calculated according to the minimum standard herein provided, but the rate or rates of
557 interest used for policies and contracts, other than annuity and pure endowment contracts, shall

558 not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture
559 benefits provided therein.

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

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

568 (1) If in any contract year the gross premium charged by any life insurance company on
569 any policy or contract is less than the valuation net premium for the policy or contract calculated
570 by the method used in calculating the reserve thereon but using the minimum valuation standards
571 of mortality and rate of interest, the minimum reserve required for the policy or contract shall be
572 the greater of either the reserve calculated according to the mortality table, rate of interest, and
573 method actually used for the policy or contract or the reserve calculated by the method actually
574 used for the policy or contract but using the minimum valuation standards of mortality and rate of
575 interest and replacing the valuation net premium by the actual gross premium in each contract
576 year for which the valuation net premium exceeds the actual gross premium. The minimum
577 valuation standards of mortality and rate of interest referred to in this section are those standards
578 stated in subsections (d) and (f) of this section: *Provided*, That for any life insurance policy issued
579 on or after January 1, 1985, for which the gross premium in the first policy year exceeds that of
580 the second year and for which no comparable additional benefit is provided in the first year for
581 such excess and which provides an endowment benefit or a cash surrender value or a
582 combination thereof in an amount greater than the excess premium, the foregoing provisions of
583 this subsection shall be applied as if the method actually used in calculating the reserve for the

584 policy were the method described in subsection (g) of this section, ignoring subdivision (2) of said
585 subsection.

586 (2) The minimum reserve at each policy anniversary of such a policy shall be the greater
587 of the minimum reserve calculated in accordance with subsection (g) of this section, including
588 subdivision (2) of said subsection, and the minimum reserve calculated in accordance with this
589 subsection.

590 (l) *Reserve calculation: Indeterminate premium plans.* —

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

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

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

599 (m) *Minimum standard for accident and health insurance contracts.* —

600 For accident and health insurance contracts issued on or after the operative date of the
601 valuation manual, the standard prescribed in the valuation manual is the minimum standard of
602 valuation required under subdivision (2), subsection (b) of this section. For accident and sickness
603 insurance contracts issued on or after January 1, 1958 and prior to the operative date of the
604 valuation manual, the minimum standard of valuation is the standard adopted by the
605 commissioner by rule.

606 (n) *Valuation manual for policies issued on or after the operative date of the valuation*
607 *manual.* —

608 (1) The commissioner shall promulgate emergency rules adopting a valuation manual that
609 is substantially similar to the valuation manual approved by the NAIC and any amendments to the

610 manual as may be subsequently approved by the NAIC, and the rules shall be effective in
611 accordance with subdivisions (2) and (3) of this subsection.

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

614 (A) The valuation manual has been adopted by the NAIC by an affirmative vote of at least
615 42 members, or three-fourths of the members voting, whichever is greater;

616 (B) The Standard Valuation Law, as amended by the NAIC in 2009, or legislation including
617 substantially similar terms and provisions, has been enacted by states representing greater than
618 75 percent of the direct premiums written as reported in the following annual statements submitted
619 for 2008: Life, accident, and health annual statements; health annual statements; and fraternal
620 annual statements; and

621 (C) The Standard Valuation Law, as amended by the NAIC in 2009, or legislation including
622 substantially similar terms and provisions, has been enacted by at least 42 of the following 55
623 jurisdictions: The 50 states of the United States, American Samoa, the American Virgin Islands,
624 the District of Columbia, Guam, and Puerto Rico.

625 (3) Unless a change in the valuation manual specifies a later effective date, changes to
626 the valuation manual shall be effective on January 1 following the date when the changes have
627 been adopted by the NAIC by an affirmative vote representing:

628 (A) At least three-fourths of the members of the NAIC voting, but not less than a majority
629 of the total membership; and

630 (B) Members of the NAIC representing jurisdictions totaling greater than 75 percent of the
631 direct premiums written, as reported in the following annual statements most recently available
632 prior to the vote in paragraph (A) of this subdivision: Life, accident, and health annual statements,
633 health annual statements, or fraternal annual statements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

712 (B) Provide to the commissioner and the board of directors an annual certification of the
713 effectiveness of the internal controls with respect to the principle-based valuation. The controls
714 shall be designed to assure that all material risks inherent in the liabilities and associated assets
715 subject to the valuation are included in the valuation, and that valuations are made in accordance
716 with the valuation manual. The certification shall be based on the controls in place as of the end
717 of the preceding calendar year.

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

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

721 (p) *Experience reporting for policies in force on or after the operative date of the valuation*
722 *manual.* — A company shall submit mortality, morbidity, policyholder behavior, or expense
723 experience and other data as prescribed in the valuation manual.

724 (q) *Confidentiality.* —

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

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

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

736 (C) Any reports, documents, materials, and other information developed by a company in
737 support of, or in connection with, an annual certification by the company under paragraph (B),
738 subdivision (2), subsection (o) of this section evaluating the effectiveness of the company's
739 internal controls with respect to a principle-based valuation and any other documents, materials,
740 and other information, including, but not limited to, all working papers, and copies thereof, created,
741 produced or obtained by, or disclosed to the commissioner or any other person in connection with
742 the reports, documents, materials, and other information;

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

747 (E) Any documents, materials, data, and other information submitted by a company under
748 subsection (p) of this section (collectively, "experience data") and any other documents, materials,
749 data, and other information, including, but not limited to, all working papers, and copies thereof,
750 created or produced in connection with the experience data, in each case that include any
751 potentially company-identifying or personally identifiable information, that is provided to or
752 obtained by the commissioner (together with any "experience data", the "experience materials")
753 and any other documents, materials, data, and other information, including, but not limited to, all
754 working papers, and copies thereof, created, produced or obtained by, or disclosed to the
755 commissioner or any other person in connection with the experience materials.

756 (2) *Privilege for, and Confidentiality of, Confidential Information.* —

757 (A) Except as otherwise provided in this subsection, a company's confidential information
758 is confidential by law and privileged, is exempt from disclosure under §29A-1-1 *et seq.* of this
759 code, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any
760 private civil action: *Provided*, That the commissioner is authorized to use the confidential

761 information in the furtherance of any regulatory or legal action brought against the company as a
762 part of the commissioner's official duties.

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

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

768 (i) With other state, federal, and international regulatory agencies and with the NAIC and
769 its affiliates and subsidiaries;

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

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

778 (D) The commissioner may receive documents, materials, data, and other information,
779 including otherwise confidential and privileged documents, materials, data, or information, from
780 the NAIC and its affiliates and subsidiaries, from regulatory or law-enforcement officials of other
781 foreign or domestic jurisdictions, and from the Actuarial Board for Counseling and Discipline or its
782 successor, and he or she shall maintain as confidential or privileged any document, material, data,
783 or other information received with notice or the understanding that it is confidential or privileged
784 under the laws of the jurisdiction that is the source of the document, material or other information.

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

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

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

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

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

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

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

804 (C) Once any portion of a memorandum in support of an opinion submitted under
805 subsection (c) of this section or a principle-based valuation report developed under paragraph
806 (C), subdivision (2), subsection (o) of this section is cited by the company in its marketing or is
807 publicly volunteered to or before a governmental agency other than a state insurance department
808 or is released by the company to the news media, all portions of the memorandum or report are
809 no longer confidential.

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

.....
Chairman, House Committee

.....
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

.....
Clerk of the House of Delegates

.....
Clerk of the Senate

.....
Speaker of the House of Delegates

.....
President of the Senate

The within this the.....
day of, 2019.

.....
Governor