

STANDARD VALUATION LAW

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Section 1. Title and Definitions

- A. This Act shall be known as the Standard Valuation Law.
- B. For the purposes of this Act the following definitions shall apply on or after the operative date of the valuation manual:
- (1) The term “accident and health insurance” means contracts that incorporate morbidity risk and provide protection against economic loss resulting from accident, sickness, or medical conditions and as may be specified in the valuation manual.
 - (2) The term “appointed actuary” means a qualified actuary who is appointed in accordance with the valuation manual to prepare the actuarial opinion required in Section 3A of this Act.
 - (3) The term “company” means an entity, which (a) has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this State and has at least one such policy in force or on claim or (b) has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in any state and is required to hold a certificate of authority to write life insurance, accident and health insurance, or deposit-type contracts in this State.
 - (4) The term “deposit-type contract” means contracts that do not incorporate mortality or morbidity risks and as may be specified in the valuation manual.
 - (5) The term “life insurance” means contracts that incorporate mortality risk, including annuity and pure endowment contracts, and as may be specified in the valuation manual.
 - (6) The term “NAIC” means the National Association of Insurance Commissioners.

- (7) The term “policyholder behavior” means any action a policyholder, contract holder or any other person with the right to elect options, such as a certificate holder, may take under a policy or contract subject to this Act including, but not limited to, lapse, withdrawal, transfer, deposit, premium payment, loan, annuitization, or benefit elections prescribed by the policy or contract but excluding events of mortality or morbidity that result in benefits prescribed in their essential aspects by the terms of the policy or contract.
- (8) The term “principle-based valuation” means a reserve valuation that uses one or more methods or one or more assumptions determined by the insurer and is required to comply with Section 12 of this Act as specified in the valuation manual.
- (9) The term “qualified actuary” means an individual who is qualified to sign the applicable statement of actuarial opinion in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements and who meets the requirements specified in the valuation manual.
- (10) The term “tail risk” means a risk that occurs either where the frequency of low probability events is higher than expected under a normal probability distribution or where there are observed events of very significant size or magnitude.
- (11) The term “valuation manual” means the manual of valuation instructions adopted by the NAIC as specified in this Act or as subsequently amended.

Drafting Note: The term commissioner means the insurance supervisory official of a State or jurisdiction of the United States and therefore, the term commissioner should be replaced with the appropriate title in the adopting State or jurisdiction. In addition, the term State should be replaced with the appropriate term for the adopting jurisdiction.

Drafting Note: It is critical that each state retain the terms “accident and health”, “deposit-type contract”, and “life insurance” in this section because the terms are specifically defined for purposes of the standard valuation law and applicability of the valuation manual standards for such contracts issued on or after the operative date of the valuation manual.

Section 2. Reserve Valuation

- A. Policies and Contracts Issued Prior to the Operative Date of the Valuation Manual
 - (1) 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 issued on or after [insert the original effective date of the Standard Valuation Law in this State] and prior to the operative date of the valuation manual. In calculating reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves required of a foreign or alien company, the commissioner may accept a valuation made, or caused to be made, by the insurance supervisory official of any State or other jurisdiction when the valuation complies with the minimum standard provided in this Act.
 - (2) The provisions set forth in Sections 4, 4a, 4b, 5, 5a, 6, 7, 8, 9, and 10 of this Act shall apply to all policies and contracts, as appropriate, subject to this Act issued on or after [insert the original effective date of the Standard Valuation Law in this State] and prior to the operative date of the valuation manual and the provisions set forth in Sections 11 and 12 of this Act shall not apply to any such policies and contracts.
 - (3) The minimum standard for the valuation of policies and contracts issued prior to [insert the original effective date of the Standard Valuation Law in this State] shall be that provided by the laws in effect immediately prior to that date.

Drafting Note: The Standard Valuation Law prior to the operative date of the valuation manual applies to deposit-type contracts. There is no intent to change the valuation standards for deposit-type contracts.

Drafting Note: The dates inserted should remain unchanged from those appearing in the State's existing Standard Valuation Law.

B. Policies and Contracts Issued On or After the Operative Date of the Valuation Manual

- (1) The commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance contracts, annuity and pure endowment contracts, accident and health contracts, and deposit-type contracts of every company issued on or after the operative date of the valuation manual. In lieu of the valuation of the reserves required of a foreign or alien company, the commissioner may accept a valuation made, or caused to be made, by the insurance supervisory official of any State or other jurisdiction when the valuation complies with the minimum standard provided in this Act.
- (2) The provisions set forth in Sections 11 and 12 of this Act shall apply to all policies and contracts issued on or after the operative date of the valuation manual.

Section 3. Actuarial Opinion of Reserves

A. Actuarial Opinion Prior to the Operative Date of the Valuation Manual

(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 that satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The commissioner shall define by regulation the specifics of this opinion and add any other items deemed to be necessary to its scope.

(2) Actuarial Analysis of Reserves and Assets Supporting Reserves

- (a) Every life insurance company, except as exempted by regulation, shall also annually include in the opinion required by subsection (1) of this section, 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 that the qualified actuary may deem necessary in order to render the opinion required by this section.

(3) Requirement for Opinion Under Section 3A(2)

Each opinion required by subsection (2) 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 the supporting memorandum required by the commissioner.

(4) Requirement for All Opinions Subject to Section 3A

Every opinion required by Section 3A 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 December 31, [].

Drafting Note: The date inserted should remain unchanged from the one appearing in the State's existing Standard Valuation Law.

- (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 the regulation.
- (f) Except in cases of fraud or willful misconduct, the qualified actuary shall not be 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) Except as provided in paragraphs (l), (m) and (n), documents, materials or other information in the possession or control of the Department of Insurance that are a memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection with the memorandum, shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.
- (i) Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to paragraph (h).
- (j) In order to assist in the performance of the commissioner's duties, the commissioner:

- (i) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to paragraph (h) with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;
- (ii) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and
- (iii) [Optional provision] May enter into agreements governing sharing and use of information consistent with Paragraphs (h) to (j).

Drafting Note: The language in paragraph (j)(i) assumes the recipient has the authority to protect the applicable confidentiality or privilege, but does not address the verification of that authority, which would presumably occur in the context of a broader information sharing agreement.

- (k) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in paragraph (j).
- (l) A memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection with the memorandum, may be subject to subpoena for the purpose of defending an action seeking damages from the actuary submitting the memorandum by reason of an action required by this section or by regulations promulgated hereunder.
- (m) The memorandum or other material may otherwise be released by the commissioner with the written consent of the company or to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material.
- (n) Once any portion of the confidential memorandum is cited by the company in its marketing or is cited before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.

B. Actuarial Opinion of Reserves after the Operative Date of the Valuation Manual
 (1) General

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

(2) Actuarial Analysis of Reserves and Assets Supporting Reserves

Every company with outstanding life insurance contracts, accident and health insurance contracts or deposit-type contracts in this State and subject to regulation by the commissioner, except as exempted in the valuation manual, shall also annually include in the opinion required by subsection (1) of this section, an opinion of the same appointed actuary as to whether the reserves

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

(3) Requirements for Opinions Subject to Section 3B(2)

Each opinion required by subsection 3B shall be governed by the following provisions:

- (a) A memorandum, in form and substance as specified in the valuation manual, and acceptable to the commissioner, 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 in the valuation manual or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the valuation manual or is otherwise unacceptable to the 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 the supporting memorandum required by the commissioner.

(4) Requirement for All Opinions Subject to Section 3B

Every opinion shall be governed by the following provisions:

- (a) The opinion shall be in form and substance as specified in the valuation manual and acceptable to the commissioner.
- (b) The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after the operative date of the valuation manual.
- (c) The opinion shall apply to all policies and contracts subject to Section 3B(2), plus other actuarial liabilities as may be specified in the valuation manual.
- (d) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board or its successor, and on such additional standards as may be prescribed in the valuation manual.
- (e) 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.
- (f) Except in cases of fraud or willful misconduct, the appointed actuary shall not be 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 appointed actuary's opinion.
- (g) Disciplinary action by the commissioner against the company or the appointed actuary shall be defined in regulations by the commissioner.

Drafting Note: States may need to adopt regulations to address disciplinary action.

Section 4. Computation of Minimum Standard

Except as provided in Sections 4a, 4b and 10, the minimum standard for the valuation of policies and contracts issued prior to the effective date of this Act shall be that provided by the laws in effect immediately prior to that date. Except as otherwise

provided in Sections 4a, 4b and 10, the minimum standard for the valuation of all policies and contracts issued on or after [insert original effective date of the Standard Valuation Law in this State] shall be the commissioners reserve valuation methods defined in Sections 5, 5a, 8 and 10, three and one-half percent (3 1/2%) interest, or in the case of life insurance policies and contracts, other than annuity and pure endowment contracts, issued on or after [insert effective date of 1972 NAIC amendments to the Standard Valuation Law], four percent (4%) interest for policies issued prior to [insert effective date of 1976 NAIC amendments to the Standard Valuation Law], five and one-half percent (5 1/2%) interest for single premium life insurance policies and four and one-half percent (4 1/2%) interest for all other policies issued on and after [insert effective date of 1976 NAIC amendments to the Standard Valuation Law], and the following tables:

- A. For ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in the policies: the Commissioners 1941 Standard Ordinary Mortality Table for policies issued prior to the operative date of Section 5a of the Standard Nonforfeiture Law for Life Insurance as amended, the Commissioners 1958 Standard Ordinary Mortality Table for policies issued on or after the operative date of Section 5a of the Standard Nonforfeiture Law for Life Insurance as amended and prior to the operative date of Section 5c of the Standard Nonforfeiture Law for Life Insurance as amended, provided that for any category of policies issued on female risks, all modified net premiums and present values referred to in this Act may be calculated according to an age not more than six (6) years younger than the actual age of the insured; and for policies issued on or after the operative date of Section 5c of the Standard Nonforfeiture Law for Life Insurance as amended:
 - (1) The Commissioners 1980 Standard Ordinary Mortality Table;
 - (2) At the election of the company for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; or
 - (3) Any ordinary mortality table, adopted after 1980 by the NAIC, which is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies;
- B. For 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 Section 5b of the Standard Nonforfeiture Law for Life Insurance as amended, and for policies issued on or after the operative date of Section 5b, the Commissioners 1961 Standard Industrial Mortality Table or any industrial mortality table adopted after 1980 by the NAIC that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for the policies;
- C. For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in the policies: the 1937 Standard Annuity Mortality Table, or at the option of the company, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the commissioner;
- D. For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in the policies: the Group Annuity Mortality Table for 1951, a 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;
- E. For total and permanent disability benefits in or supplementary to ordinary policies or contracts: for policies or contracts issued on or after January 1, 1966, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates adopted after 1980 by the NAIC, that are approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for those policies; for policies or contracts issued on or after January 1, 1961 and prior to January 1, 1966, either those tables or, at the option of the company, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies;

- F. For accidental death benefits in or supplementary to policies issued on or after January 1, 1966: the 1959 Accidental Death Benefits Table or any accidental death benefits table adopted after 1980 by the NAIC that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for those policies, for policies issued on or after January 1, 1961 and prior to January 1, 1966, either that table or, at the option of the company, the Inter-Company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined with a mortality table for calculating the reserves for life insurance policies; and
- G. For group life insurance, life insurance issued on the substandard basis and other special benefits: tables approved by the commissioner.

Drafting Note: The dates inserted should remain unchanged from those appearing in the State's existing Standard Valuation Law.

Section 4a. Computation of Minimum Standard for Annuities

- A. Except as provided in Section 4b, the minimum standard of valuation for individual annuity and pure endowment contracts issued on or after the operative date of this Section 4a and for annuities and pure endowments purchased on or after the operative date under group annuity and pure endowment contracts, shall be the commissioners reserve valuation methods defined in Sections 5 and 5a and the following tables and interest rates:
 - (1) For individual annuity and pure endowment contracts issued prior to [insert effective date of 1976 NAIC amendments to the Standard Valuation Law], excluding any disability and accidental death benefits in those contracts: the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the commissioner, and six percent (6%) interest for single premium immediate annuity contracts and four percent (4%) interest for all other individual annuity and pure endowment contracts;
 - (2) For individual single premium immediate annuity contracts issued on or after [insert effective date of 1976 NAIC amendments to the Standard Valuation Law], excluding any disability and accidental death benefits in those contracts: the 1971 Individual Annuity Mortality Table or any individual annuity mortality table adopted after 1980 by the NAIC that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for these contracts, or any modification of these tables approved by the commissioner, and seven and one-half percent (7 1/2%) interest;
 - (3) For individual annuity and pure endowment contracts issued on or after [insert effective date of 1976 NAIC amendments to the Standard Valuation Law], other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in those contracts: the 1971 Individual Annuity Mortality Table or any individual annuity mortality table adopted after 1980 by the NAIC, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for those contracts, or any modification of these tables approved by the commissioner, and five and one-half percent (5 1/2%) interest for single premium deferred annuity and pure endowment contracts and four and one-half percent (4 1/2%) interest for all other individual annuity and pure endowment contracts;
 - (4) For annuities and pure endowments purchased prior to [insert effective date of 1976 NAIC amendments to the Standard Valuation Law] under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under those contracts: the 1971 Group Annuity Mortality Table or any modification of this table approved by the commissioner, and six percent (6%) interest; and
 - (5) For annuities and pure endowments purchased on or after [insert effective date of 1976 NAIC amendments to the Standard Valuation Law] under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under those contracts: the 1971

Group Annuity Mortality Table, or any group annuity mortality table adopted after 1980 by the NAIC 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 (7 1/2%) interest;

- B. After [insert effective date of 1972 NAIC amendments to the Standard Valuation Law], 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 January 1, 1979, which shall be the operative date of this section for that company. If a company makes no election, the operative date of this section for that company shall be January 1, 1979.

Drafting Note: The dates inserted should remain unchanged from those appearing in the State's existing Standard Valuation Law.

Section 4b. Computation of Minimum Standard by Calendar Year of Issue

- A. The interest rates used in determining the minimum standard for the valuation of the following shall be the calendar year statutory valuation interest rates as defined in this section:
- (1) Life insurance policies issued in a particular calendar year, on or after the operative date of Section 5c of the Standard Nonforfeiture Law for Life Insurance as amended;
 - (2) Individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 19[] [insert the calendar year next following the effective date of the 1980 NAIC amendments to the Standard Valuation Law];
 - (3) Annuities and pure endowments purchased in a particular calendar year on or after January 1, 19[] [insert the calendar year next following the effective date of the 1980 NAIC amendments to the Standard Valuation Law] under group annuity and pure endowment contracts; and
 - (4) The net increase, if any, in a particular calendar year after January 1, 19[] [insert the calendar year next following the effective date of the 1980 NAIC amendments to the Standard Valuation Law], in amounts held under guaranteed interest contracts.

Drafting Note: The dates inserted should remain unchanged from those appearing in the State's existing Standard Valuation Law.

- B. Calendar Year Statutory Valuation Interest Rates

- (1) 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 (1/4 of 1%):

- (a) For life insurance:

$$I = .03 + W \cdot (R_1 - .03) + \frac{W}{2} \cdot (R_2 - .09)$$

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

$$I = .03 + W \cdot (R - .03)$$

Where R_1 is the lesser of R and .09,

R_2 is the greater of R and .09,

R is the reference interest rate defined in this section,

W is the weighting factor defined in this section;

- (c) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in subparagraph (b) above, the formula for life insurance stated in subparagraph (a) above shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten (10) years and the formula for single premium immediate annuities stated in subparagraph (b) above shall apply to annuities and guaranteed interest contracts with guarantee duration of ten (10) years or less;
 - (d) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in subparagraph (b) above shall apply.
 - (e) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in subparagraph (b) above shall apply.
- (2) However, if the calendar year statutory valuation interest rate for a life insurance policy 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 (1/2 of 1%), the calendar year statutory valuation interest rate for the 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 1980 (using the reference interest rate defined in 1979) and shall be determined for each subsequent calendar year regardless of when Section 5c of the Standard Nonforfeiture Law for Life Insurance as amended becomes operative.

C. Weighting Factors

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

- (a) 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;

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

.80

- (c) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in subparagraph (b) above, shall be as specified in items (i), (ii) and (iii) below, according to the rules and definitions in items (iv), (v) and (vi) below:

- (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 item (i) above increased by:
- | | Plan Type | | |
|--|-----------|-----|-----|
| | A | B | C |
| | .15 | .25 | .05 |

- (iii) For annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement options) that 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 that do not guarantee interest rates on considerations received more than twelve (12) months beyond the valuation date, the factors shown in item (i) or derived in item (ii) increased by:
- | | Plan Type | | |
|--|-----------|-----|-----|
| | A | B | C |
| | .05 | .05 | .05 |

- (iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty (20) 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 an adjustment but 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 an 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 an 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.

D. Reference Interest Rate

- (1) The reference interest rate referred to in subsection B of this section shall be defined as follows:
- (a) For life insurance, the lesser of the average over a period of thirty-six (36) months and the average over a period of twelve (12) months, ending on June 30 of the calendar year 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.
 - (b) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve (12) months, ending on June 30 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.
 - (c) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subparagraph (b) above, with guarantee duration in excess of ten (10) years, the lesser of the average over a period of thirty-six (36) months and the average over a period of twelve (12) months, ending on June 30 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.

- (d) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subparagraph (b) above, with guarantee duration of ten (10) years or less, the average over a period of twelve (12) months, ending on June 30 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.
 - (e) 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 (12) months, ending on June 30 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.
 - (f) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in subparagraph (b) above, the average over a period of twelve (12) months, ending on June 30 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.
- E. 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 NAIC 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 adopted by the NAIC and approved by regulation promulgated by the commissioner may be substituted.

Section 5. Reserve Valuation Method—Life Insurance and Endowment Benefits

- A. Except as otherwise provided in Sections 5a, 8 and 10, reserves according to the commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of the future guaranteed benefits provided for by those policies, over the then present value of any future modified net premiums therefor. The modified net premiums for a policy shall be the uniform percentage of the respective contract premiums for the benefits such that the present value, at the date of issue of the policy, of all 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 (1) over (2), as follows:
- (1) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium 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 the policy.
 - (2) A net one-year term premium for the benefits provided for in the first policy year.
- B. For a life insurance policy issued on or after January 1, 19[] [insert the fourth calendar year commencing after the effective date of the 1980 NAIC amendments to the Standard Valuation Law] for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for the excess and which provides an endowment benefit or a cash surrender value or a combination in an amount greater than the excess premium, the reserve according to the commissioner's 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 the excess premium shall, except as otherwise provided in Section 8, be the greater of the reserve as of the policy anniversary calculated as described in the preceding paragraph and the reserve as of the policy anniversary calculated as described in

that paragraph, but with (i) the value defined in subsection A of that paragraph being reduced by fifteen percent (15%) of the amount of such excess first year premium, (ii) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date, (iii) the policy being assumed to mature on that date as an endowment, and (iv) the cash surrender value provided on that date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in Sections 4 and 4b shall be used.

Drafting Note: The date inserted should remain unchanged from the one appearing in the State's existing Standard Valuation Law.

- C. Reserves according to the commissioners reserve valuation method shall be calculated by a method consistent with the principles of the preceding paragraphs of this section for:
 - (1) Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums;
 - (2) 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, as now or hereafter amended;
 - (3) Disability and accidental death benefits in all policies and contracts; and
 - (4) All other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts.

Section 5a. Reserve Valuation Method—Annuity and Pure Endowment Benefits

- A. This section 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, as now or hereafter amended.
- B. Reserves according to the commissioners annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in the 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 the 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 the contract, that become payable prior to the end of the 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 the contracts to determine nonforfeiture values.

Section 6. Minimum Reserves

- A. In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after [insert original effective date of the Standard Valuation Law in this State], be less than the aggregate reserves calculated in accordance with the methods set forth in Sections 5, 5a, 8 and 9 and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for the policies.
- B. In no event shall the aggregate reserves for all policies, contracts and benefits be less than the aggregate reserves determined by the appointed actuary to be necessary to render the opinion required by Section 3.

Drafting Note: The date inserted should remain unchanged from the one appearing in the State’s existing Standard Valuation Law.

Section 7. Optional Reserve Calculation

- A. Reserves for policies and contracts issued prior to [insert original effective date of the Standard Valuation Law in this State] may be calculated, at the option of the company, according to any standards that produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to that date.
- B. Reserves for any category of policies, contracts or benefits established by the commissioner, issued on or after [insert original effective date of the Standard Valuation Law in this State], may be calculated, at the option of the company, according to any standards that produce greater aggregate reserves for the category than those calculated according to the minimum standard provided herein, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be greater than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided in the policies or contracts.
- C. A company, which adopts at any time a standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided under this Act, may adopt a lower standard of valuation with the approval of the commissioner, but not lower than the minimum provided herein; provided that, for the purposes of this section, the holding of additional reserves previously determined by the appointed actuary to be necessary to render the opinion required by Section 3 shall not be deemed to be the adoption of a higher standard of valuation.

Drafting Note: The dates inserted should remain unchanged from those appearing in the State’s existing Standard Valuation Law.

Section 8. Reserve Calculation—Valuation Net Premium Exceeding the Gross Premium Charged

If in any contract year the gross premium charged by a company on a policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for the policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for the policy or contract, or the reserve calculated by the method actually used for the policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in Sections 4 and 4b.

For a life insurance policy issued on or after January 1, 19[] [insert the fourth calendar year commencing after the effective date of the 1980 NAIC amendments to the Standard Valuation Law] for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for the excess and which provides an endowment benefit or a cash surrender value or a combination in an amount greater than the excess premium, the provisions of this section shall be applied as if the method actually used in calculating the reserve for the policy were the method described in Section 5, ignoring the second paragraph of Section 5. The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with Section 5, including the second paragraph of that section, and the minimum reserve calculated in accordance with this section.

Drafting Note: The date inserted should remain unchanged from the one appearing in the State’s existing Standard Valuation Law.

Section 9. Reserve Calculation—Indeterminate Premium Plans

In the case of a plan of life insurance that 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 a plan of life insurance or annuity that is of such a nature that the minimum reserves cannot be determined by the methods described in Sections 5, 5a and 8, the reserves that are held under the plan shall:

- A. Be appropriate in relation to the benefits and the pattern of premiums for that plan; and

- B. Be computed by a method that is consistent with the principles of this Standard Valuation Law, as determined by regulations promulgated by the commissioner.

Drafting Note: If desired the following paragraph may be added.

“Notwithstanding any other provision in the laws of this State, a policy, contract or certificate providing life insurance under such a plan shall be affirmatively approved by the commissioner before it can be marketed, issued, delivered or used in this State.”

If the previous paragraph is enacted in a State where prior filing and approval of life insurance policy forms has not been previously required by statute, this paragraph would mandate such action for plans requiring approval under Section 9. If the previous paragraph is enacted in a State where approval is deemed under certain circumstances, the deemed provision would be overridden by the terms of this section. In some States specific reference must be made to any statutory provision that is overridden.

Section 10. Minimum Standard for Accident and Health Insurance Contracts

For accident and health insurance contracts issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under Section 2B. For [disability, accident and sickness, accident and health] insurance contracts issued on or after [insert the original effective date of the Standard Valuation Law in the State] and prior to the operative date of the valuation manual the minimum standard of valuation is the standard adopted by the commissioner by regulation.

Drafting Note: States should substitute their state specific terminology for accident and health contracts in place of the bracketed terms. However, it is critical that each state retain the terms “accident and health” in the title and first sentence of this section because the term is specifically defined for purposes of the standard valuation law and applicability of the valuation manual standards for such contracts issued on or after the operative date of the valuation manual.

Section 11. Valuation Manual for Policies Issued On or After the Operative Date of the Valuation Manual

- A. For policies issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under Section 2B, except as provided under paragraphs E or G of this section.
- B. The operative date of the valuation manual is January 1 of the first calendar year following the first July 1 as of which all of the following have occurred:
 - (1) The valuation manual has been adopted by the NAIC by an affirmative vote of at least forty-two (42) members, or three-fourths of the members voting, whichever is greater.
 - (2) The Standard Valuation Law, as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by States representing greater than 75% of the direct premiums written as reported in the following annual statements submitted for 2008: life, accident and health annual statements; health annual statements; or fraternal annual statements.
 - (3) The Standard Valuation Law, as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by at least forty-two (42) of the following fifty-five (55) jurisdictions: The fifty States of the United States, American Samoa, the American Virgin Islands, the District of Columbia, Guam, and Puerto Rico.
- C. Unless a change in the valuation manual specifies a later effective date, changes to the valuation manual shall be effective on January 1 following the date when [all of the following have occurred]:
 - (1) The change to the valuation manual has been adopted by the NAIC by an affirmative vote representing:

- (a) At least three-fourths (3/4) of the members of the NAIC voting, but not less than a majority of the total membership, and
- (b) Members of the NAIC representing jurisdictions totaling greater than 75% of the direct premiums written as reported in the following annual statements most recently available prior to the vote in subsection C(1)(a): life, accident and health annual statements, health annual statements, or fraternal annual statements.

Drafting Note: The following section is optional:

(2) The valuation manual becomes effective pursuant to [an order of] [regulation adopted by] the commissioner.]

D. The valuation manual must specify all of the following:

- (1) Minimum valuation standards for and definitions of the policies or contracts subject to Section 2B. Such minimum valuation standards shall be:
 - (a) The commissioner’s reserve valuation method for life insurance contracts, other than annuity contracts, subject to Section 2B;
 - (b) The commissioner’s annuity reserve valuation method for annuity contracts subject to Section 2B; and
 - (c) Minimum reserves for all other policies or contracts subject to Section 2B.
- (2) Which policies or contracts or types of policies or contracts that are subject to the requirements of a principle-based valuation in Section 12A and the minimum valuation standards consistent with those requirements;
- (3) For policies and contracts subject to a principle-based valuation under Section 12:
 - (a) Requirements for the format of reports to the commissioner under Section 12B(2) and which shall include information necessary to determine if the valuation is appropriate and in compliance with this Act;
 - (b) ~~Procedures for corporate governance and oversight of the actuarial function, and a process for appropriate waiver or modification of such procedures.~~
- (4) For policies not subject to a principle-based valuation under Section 12 the minimum valuation standard shall either
 - (a) Be consistent with the minimum standard of valuation prior to the operative date of the valuation manual; or
 - (b) Develop reserves that quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring.

Deleted: Assumptions shall be prescribed for risks over which the company does not have significant control or influence.

Deleted: (c) .

Drafting Note: The wording of 11D(4)(b) does not preclude, for policies with significant tail risk, reflecting in the reserve conditions appropriately adverse to quantify the tail risk.

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

- (6) The data and form of the data required under Section 13, with whom the data must be submitted, and may specify other requirements including data analyses and reporting of analyses.
- E. In the absence of a specific valuation requirement or if a specific valuation requirement in the valuation manual is not, in the opinion of the commissioner, in compliance with this Act, then the company shall, with respect to such requirements, comply with minimum valuation standards prescribed by the commissioner by regulation.
- F. The commissioner may engage a qualified actuary, at the expense of the company, to perform an actuarial examination of the company and opine on the appropriateness of any reserve assumption or method used by the company, or to review and opine on a company's compliance with any requirement set forth in this Act. The commissioner may rely upon the opinion, regarding provisions contained within this Act, of a qualified actuary engaged by the commissioner of another State, district or territory of the United States. As used in this paragraph, term "engage" includes employment and contracting.

G. The commissioner may require a company to increase the reserves for policies issued after the effective date of the Valuation Manual if, in the opinion of the commissioner, they do not meet the minimum valuation standards defined in the Valuation Manual. The commissioner may take other disciplinary action as permitted pursuant to [insert applicable law].

Drafting Note: This section is intended to conform to the State's administrative procedures, including notice and due process.

Deleted: change any assumption or method that in the opinion of the commissioner is necessary in order to comply with the requirements of the valuation manual or this Act; and the company shall adjust the reserves as required by the commissioner

Drafting Note: Section 11 presumes that each State is permitted under their State laws to "adopt" the valuation manual in a manner similar to how the *Accounting Practices and Procedures Manual* becomes effective in many States, without a separate regulatory process such as adoption by regulation. It is desirable that all States adopt the valuation manual requirements and that such adoption be achieved without a separate State regulatory process in order to achieve uniformity of reserve standards in all States. However, to the extent that a State may need to adopt the valuation manual through a formal State regulatory process, Sections 11B and/or 11C may be amended to reflect any State's need to adopt the valuation manual through regulation.

Section 12. Requirements of a Principle-Based Valuation

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

- (1) Quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring during the lifetime of the contracts. For policies or contracts with significant tail risk, reflects conditions appropriately adverse to quantify the tail risk.
- (2) Incorporate assumptions, risk analysis methods and financial models and management techniques that are consistent with, but not necessarily identical to, those utilized within the company's overall risk assessment process, while recognizing potential differences in financial reporting structures and any prescribed assumptions or methods.
- (3) Incorporate assumptions that are derived in one of the following manners:
 - (a) The assumption is prescribed in the valuation manual.
 - (b) For assumptions that are not prescribed, the assumptions shall:
 - (i) Be established utilizing the company's available experience, to the extent it is relevant and statistically credible; or
 - (ii) To the extent that company data is not available, relevant, or statistically credible, be established utilizing other relevant, statistically credible experience.

(iii) For assumptions that are not prescribed and cannot be established on the basis of company or other relevant, statistically credible experience, the assumptions

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shall be established by the company using generally accepted actuarial methods and techniques or other methods as defined by in the Valuation Manual.

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- (4) Provide margins for uncertainty including adverse deviation and estimation error, such that the greater the uncertainty the larger the margin and resulting reserve.
- B. Notwithstanding the provisions of Section 12.A., a principle-based valuation shall not preclude a prescribed formulaic reserve component.
- C. A company using a principle-based valuation for one or more policies or contracts subject to this section as specified in the valuation manual shall:
- (1) Establish procedures for corporate governance and oversight of the actuarial valuation function consistent with those described in the valuation manual.
 - (2) Provide to the commissioner and the board of directors an annual certification of the effectiveness of the internal controls with respect to the principle-based valuation. Such controls shall be designed to assure that all material risks inherent in the liabilities and associated assets subject to such valuation are included in the valuation, and that valuations are made in accordance with the valuation manual. The certification shall be based on the controls in place as of the end of the preceding calendar year.
 - (3) Develop, and file with the commissioner upon request, a principle-based valuation report that complies with standards prescribed in the valuation manual.

Section 13. Experience Reporting for Policies In Force On or After the Operative Date of the Valuation Manual

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

Section 14. Confidentiality

- A. For purposes of this Section 14, "Confidential Information" shall mean:
- (1) A memorandum in support of an opinion submitted under Section 3 of this Act and any other documents, materials and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in connection with such memorandum;
 - (2) All documents, materials and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in the course of an examination made under Section 11F of this Act; *provided, however,* that if an examination report or other material prepared in connection with an examination made under the [insert reference to examination law] is not held as private and confidential information under the [insert reference to examination law], an examination report or other material prepared in connection with an examination made under Section 11F of this Act shall not be "Confidential Information" to the same extent as if such examination report or other material had been prepared under the [insert reference to examination law];
 - (3) Any reports, documents, materials and other information developed by a company in support of, or in connection with, an annual certification by the company under Section 12B(1) of this Act evaluating the effectiveness of the company's internal controls with respect to a principle-based valuation and any other documents, materials and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in connection with such reports, documents, materials and other information;

- (4) Any principle-based valuation report developed under Section 12B(2) of this Act and any other documents, materials and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in connection with such report; and
- (5) Any documents, materials, data and other information submitted by a company under Section 13 of this Act (collectively, “experience data”) and any other documents, materials, data and other information, including, but not limited to, all working papers, and copies thereof, created or produced in connection with such experience data, in each case that include any potentially company-identifying or personally identifiable information, that is provided to or obtained by the commissioner (together with any “experience data”, the “experience materials”) and any other documents, materials, data and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in connection with such experience materials.

B. Privilege for, and Confidentiality of, Confidential Information

- (1) Except as provided in this Section 14, a company’s Confidential Information is confidential by law and privileged, and shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action; provided, however, that the commissioner is authorized to use the Confidential Information in the furtherance of any regulatory or legal action brought against the company as a part of the commissioner’s official duties.
- (2) Neither the commissioner nor any person who received Confidential Information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any Confidential Information.
- (3) In order to assist in the performance of the commissioner’s duties, the commissioner may share Confidential Information (a) with other state, federal and international regulatory agencies and with the NAIC and its affiliates and subsidiaries and (b) in the case of Confidential Information specified in Sections 14A(1) and 14A(4) only, with the Actuarial Board for Counseling and Discipline or its successor upon request stating that the Confidential Information is required for the purpose of professional disciplinary proceedings and with state, federal and international law enforcement officials; in the case of (a) and (b), provided that such recipient agrees, and has the legal authority to agree, to maintain the confidentiality and privileged status of such documents, materials, data and other information in the same manner and to the same extent as required for the commissioner.

Drafting Note: Subsection B(3) assumes the recipient has the authority to protect the applicable confidentiality or privilege, but does not address the verification of that authority, which would presumably occur in the context of a broader information sharing agreement.

- (4) The commissioner may receive documents, materials, data and other information, including otherwise confidential and privileged documents, materials, data or information, from the NAIC and its affiliates and subsidiaries, from regulatory or law enforcement officials of other foreign or domestic jurisdictions and from the Actuarial Board for Counseling and Discipline or its successor and shall maintain as confidential or privileged any document, material, data or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.
- (5) The commissioner may enter into agreements governing sharing and use of information consistent with this Section 14B.
- (6) No waiver of any applicable privilege or claim of confidentiality in the Confidential Information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in Section 14B(3).

- (7) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this Section 14B shall be available and enforced in any proceeding in, and in any court of, this State.
 - (8) In this Section 14 “regulatory agency,” “law enforcement agency” and the “NAIC” include, but are not limited to, their employees, agents, consultants and contractors.
- C. Notwithstanding Section 14B, any Confidential Information specified in Sections 14A(1) and 14A(4):
- (1) May be subject to subpoena for the purpose of defending an action seeking damages from the appointed actuary submitting the related memorandum in support of an opinion submitted under Section 3 of this Act or principle-based valuation report developed under Section 12B(2) of this Act by reason of an action required by this Act or by regulations promulgated hereunder;
 - (2) May otherwise be released by the commissioner with the written consent of the company; and
 - (3) Once any portion of a memorandum in support of an opinion submitted under Section 3 of this Act or a principle-based valuation report developed under Section 12B(2) of this Act is cited by the company in its marketing or is publicly volunteered to or before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of such memorandum or report shall no longer be confidential.

Drafting Note: The following section is optional:

[Section 15. Single State Exemption

- A. The commissioner may exempt specific product forms or product lines of a domestic company that is licensed and doing business only in [Name of State] from the requirements of Section 11 provided:
 - (1) The commissioner has issued an exemption in writing to the company and has not subsequently revoked the exemption in writing; and
 - (2) The company computes reserves using assumptions and methods used prior to the operative date of the valuation manual in addition to any requirements established by the commissioner and promulgated by regulation.
- B. For any company granted an exemption under this section, Sections 3, 4, 4a, 4b, 5, 5a, 6, 7, 8, 9 and 10 shall be applicable. With respect to any company applying this exemption, any reference to Section 11 found in Sections 3, 4, 4a, 4b, 5, 5a, 6, 7, 8, 9 and 10 shall not be applicable.]

Section [15 or 16]. Effective Date

All acts and parts of acts inconsistent with the provision of this Act are hereby repealed as of [insert original effective date of the Standard Valuation Law in this State]. This Act shall take effect [insert original effective date of the Standard Valuation Law in this State].

Drafting Note: A state that has adopted specific valuation standards, other than the SVL, will need to review those standards and make changes if needed in order for the valuation manual standards to apply (such as sunseting the specific State standard on the operative date of the valuation manual or subsequent changes to the valuation manual).

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