WEST VIRGINIA LEGISLATURE
Regular Session, 2003

ENROLLED

SENATE BILL NO. 400

(By Senators Minard, Jenkins and Sharpe)

PASSED March 8, 2003

In Effect 90 days from Passage
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Senate Bill No. 400

(BY SENATORS MINARD, JENKINS AND SHARPE)

[Passed March 8, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact sections nine and nineteen, article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section nine, article seven of said chapter; and to amend and reenact section one, article thirty-nine of said chapter, all relating to authorizing limited disclosure of confidential information received by the insurance commissioner; making amendments regarding disclosure of confidential information by the insurance commissioner to federal banking agencies required by the federal Gramm-Leach-Bliley Act; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That sections nine and nineteen, article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section nine, article seven of said chapter be amended and reen-
acted; and that section one, article thirty-nine of said chapter be amended and reenacted, all to read as follows:

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-9. Examination of insurers, agents, brokers and solicitors; access to books, records, etc.

(a) The purpose of this section is to provide an effective and efficient system for examining the activities, operations, financial condition and affairs of all persons transacting the business of insurance in this state and all persons otherwise subject to the jurisdiction of the commissioner. The provisions of this section are intended to enable the commissioner to adopt a flexible system of examinations which directs resources as may be considered appropriate and necessary for the administration of the insurance and insurance-related laws of this state.

(b) For purposes of this section, the following definitions shall apply:

(1) "Commissioner" means the commissioner of insurance of this state;

(2) "Company" or "insurance company" means any person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative, regulatory or taxing authority of the commissioner, including, but not limited to, any domestic or foreign stock company, mutual company, mutual protective association, farmers mutual fire companies, fraternal benefit society, reciprocal or interinsurance exchange, nonprofit medical care corporation, nonprofit health care corporation, nonprofit hospital service association, nonprofit dental care corporation, health maintenance organization, captive insurance company, risk retention group or other insurer regardless of the type of coverage written, benefits provided or guarantees made by each;
(3) "Department" means the department of insurance of this state; and

(4) "Examiners" means the commissioner of insurance or any individual or firm having been authorized by the commissioner to conduct an examination pursuant to this section, including, but not limited to, the commissioner's deputies, other employees, appointed examiners or other appointed individuals or firms who are not employees of the department of insurance.

(c) The commissioner or his or her examiners may conduct an examination under this section of any company as often as the commissioner in his or her discretion considers appropriate. The commissioner or his or her examiners shall at least once every five years visit each domestic insurer and thoroughly examine its financial condition and methods of doing business and ascertain whether it has complied with all the laws and regulations of this state. The commissioner may also examine the affairs of any insurer applying for a license to transact any insurance business in this state.

(d) The commissioner or his or her examiners shall, at a minimum, conduct an examination of every foreign or alien insurer licensed in this state not less frequently than once every five years. The examination of an alien insurer may be limited to its United States business: Provided, That in lieu of an examination under this section of any foreign or alien insurer licensed in this state, the commissioner may accept an examination report on the company as prepared by the insurance department for the company's state of domicile or port-of-entry state until the first day of January, one thousand nine hundred ninety-four. Thereafter, the reports may only be accepted if:

(1) The insurance department was at the time of the examination accredited under the national association of insurance commissioners' financial regulation standards and accreditation program; or
(2) The examination is performed under the supervision of an accredited insurance department or with the participation of one or more examiners who are employed by an accredited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

(e) In scheduling and determining the nature, scope and frequency of examinations conducted pursuant to this section, the commissioner may consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants and other criteria as set forth in the examiners' handbook adopted by the national association of insurance commissioners and in effect when the commissioner exercises discretion under this section.

(f) For purposes of completing an examination of any company under this section, the commissioner may examine or investigate any person, or the business of any person, insofar as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company.

(g) The commissioner may also cause to be examined, at the times as he or she considers necessary, the books, records, papers, documents, correspondence and methods of doing business of any agent, broker, excess lines broker or solicitor licensed by this state. For these purposes, the commissioner or his or her examiners shall have free access to all books, records, papers, documents and correspondence of all the agents, brokers, excess lines brokers and solicitors wherever the books, records, papers, documents and records are situate. The commissioner may revoke the license of any agent, broker, excess lines broker or solicitor who refuses to submit to the examination.
(h) In addition to conducting an examination, the commissioner or his or her examiners may, as the commissioner considers necessary, analyze or review any phase of the operations or methods of doing business of an insurer, agent, broker, excess lines broker, solicitor or other individual or corporation transacting or attempting to transact an insurance business in the state of West Virginia. The commissioner may use the full resources provided by this section in carrying out these responsibilities, including any personnel and equipment provided by this section as the commissioner considers necessary.

(i) Examinations made pursuant to this section shall be conducted in the following manner:

(1) Upon determining that an examination should be conducted, the commissioner or his or her designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. The appointment of any examiners pursuant to this section by the commissioner shall not be subject to the requirements of article three, chapter five-a of this code, except that the contracts and agreements shall be approved as to form and conformity with applicable law by the attorney general. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the examiners' handbook adopted by the national association of insurance commissioners. The commissioner may also employ any other guidelines or procedures as the commissioner may consider appropriate;

(2) Every company or person from whom information is sought, its officers, directors and agents shall provide to the examiners appointed under subdivision (1) of this subsection timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the company being examined. The officers,
directors, employees and agents of the company or person
shall facilitate the examination and aid in the examination
so far as it is in their power to do so;

(3) The refusal of any company, by its officers, directors,
employees or agents, to submit to examination or to
comply with any reasonable written request of the exam-
iners shall be grounds for suspension, revocation, refusal
or nonrenewal of any license or authority held by the
company to engage in an insurance or other business
subject to the commissioner's jurisdiction. Any proceed-
ings for suspension, revocation, refusal or nonrenewal of
any license or authority shall be conducted pursuant to
section eleven of this article;

(4) The commissioner or his or her examiners shall have
the power to issue subpoenas, to administer oaths and to
examine under oath any person as to any matter pertinent
to the examination, analysis or review. The subpoenas
shall be enforced pursuant to the provisions of section six
of this article;

(5) When making an examination, analysis or review
under this section, the commissioner may retain attorneys,
appraisers, independent actuaries, independent certified
public accountants, professionals or specialists with
training or experience in reinsurance, investments or
information systems or other professionals and specialists
as examiners, the cost of which shall be borne by the
company which is the subject of the examination, analysis
or review or, in the commissioner's discretion, paid from
the commissioner's examination revolving fund. The
commissioner may recover costs paid from the commis-
sioner's examination revolving fund pursuant to this
subdivision from the company upon which the examina-
tion, analysis or review is conducted unless the subject of
the examination, analysis or review is an individual
described in subdivision (2), subsection (q) of this section;
(6) Nothing contained in this section may be construed to limit the commissioner's authority to terminate or suspend any examination, analysis or review in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. The commissioner or his or her examiners may at any time testify and offer other proper evidence as to information secured during the course of an examination, analysis or review whether or not a written report of the examination has at that time either been made, served or filed in the commissioner's office;

(7) Nothing contained in this section may be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents or any other information discovered or developed during the course of any examination, analysis or review in the furtherance of any legal or regulatory action which the commissioner may, in his or her sole discretion, consider appropriate. An examination report, when filed, shall be admissible in evidence in any action or proceeding brought by the commissioner against an insurance company, its officers or agents and shall be prima facie evidence of the facts stated therein.

(j) Examination reports prepared pursuant to the provisions of this section shall comply with the following requirements:

(1) All examination reports shall be comprised of only facts appearing upon the books, records or other documents of the company, its agents or other persons examined or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs and any conclusions and recommendations the examiners find reasonably warranted from the facts;

(2) No later than sixty days following completion of the examination the examiner in charge shall file with the
commissioner a verified written report of examination under oath. Upon receipt of the verified report, the commissioner shall transmit the report to the company examined, together with a notice which shall afford the company examined a reasonable opportunity of not more than ten days to make a written submission or rebuttal with respect to any matters contained in the examination report;

(3) Within thirty days of the end of the period allowed for the receipt of written submissions or rebuttals the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and enter an order:

(A) Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, rule or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure the violation; or

(B) Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information and refiling pursuant to subdivision (2) of this subsection; or

(C) Calling for an investigatory hearing with no less than twenty days' notice to the company for purposes of obtaining additional documentation, data, information and testimony;

(4) All orders entered pursuant to this subsection shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers and any written submissions or rebuttals. Any order issued
pursuant to paragraph (A), subdivision (3) of this subsec-
tion shall be considered a final administrative decision and
may be appealed pursuant to section fourteen of this
article and shall be served upon the company by certified
mail, together with a copy of the adopted examination
report. Within thirty days of the issuance of the adopted
report the company shall file affidavits executed by each
of its directors stating under oath that they have received
a copy of the adopted report and related orders.

(k) Hearings conducted pursuant to this section shall be
subject to the following requirements:

(1) Any hearing conducted pursuant to this section by
the commissioner or the commissioner’s authorized
representative shall be conducted as a nonadversarial
confidential investigatory proceeding as necessary for the
resolution of any inconsistencies, discrepancies or disputed
issues apparent upon the face of the filed examination
report or raised by or as a result of the commissioner’s
review of relevant workpapers or by the written submis-
sion or rebuttal of the company. Within twenty days of the
conclusion of any hearing, the commissioner shall enter an
order pursuant to paragraph (A), subdivision (3), subsec-
tion (j) of this section;

(2) The commissioner may not appoint an examiner as an
authorized representative to conduct the hearing. The
hearing shall proceed expeditiously with discovery by the
company limited to the examiner’s workpapers which tend
to substantiate any assertions set forth in any written
submission or rebuttal. The commissioner or the commis-
sioner’s representative may issue subpoenas for the
attendance of any witnesses or the production of any
documents considered relevant to the investigation
whether under the control of the commissioner, the
company or other persons. The documents produced shall
be included in the record and testimony taken by the
commissioner or the commissioner’s representative shall
be under oath and preserved for the record. Nothing
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283 contained in this section shall require the commissioner to
284 disclose any information or records which would indicate
285 or show the existence or content of any investigation or
286 activity of a criminal justice agency;

287 (3) The hearing shall proceed with the commissioner or
288 the commissioner’s representative posing questions to the
289 persons subpoenaed. Thereafter, the company and the
290 department may present testimony relevant to the investi-
291 gation. Cross-examination may be conducted only by the
292 commissioner or the commissioner’s representative. The
293 company and the commissioner shall be permitted to make
294 closing statements and may be represented by counsel of
295 their choice.

296 (1) Adoption of the examination report shall be subject to
297 the following requirements:

298 (1) Upon the adoption of the examination report under
299 paragraph (A), subdivision (3), subsection (j) of this
300 section, the commissioner may continue to hold the
301 content of the examination report as private and confiden-
302 tial information for a period of ninety days except to the
303 extent provided in subdivision (6), subsection (i) of this
304 section. Thereafter, the commissioner may open the report
305 for public inspection so long as no court of competent
306 jurisdiction has stayed its publication;

307 (2) Nothing contained in this section may prevent or be
308 construed as prohibiting the commissioner from disclosing
309 the content of an examination report, preliminary exami-
310 nation report or results or any matter relating thereto or
311 the results of any analysis or review to the insurance
312 department of this or any other state or country or to law-
313 enforcement officials of this or any other state or agency
314 of the federal government at any time, so long as the
315 agency or office receiving the report or matters relating
316 thereto agrees in writing to hold it confidential and in a
317 manner consistent with this section;
(3) In the event the commissioner determines that regulatory action is appropriate as a result of any examination, analysis or review, he or she may initiate any proceedings or actions as provided by law;

(4) All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination, analysis or review made under this section must be given confidential treatment and are not subject to subpoena and may not be made public by the commissioner or any other person, except to the extent provided in subdivision (5), subsection (i) of this section. Access may also be granted in accordance with section nineteen of this article. The parties must agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section unless the prior written consent of the company to which it pertains has been obtained.

(m) The commissioner may require any examiner to furnish a bond in such amount as the commissioner may determine to be appropriate and the bond shall be approved, filed and premium paid, with suitable proof submitted to the commissioner, prior to commencement of employment by the commissioner. No examiner may be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this section. This section shall not be construed to automatically preclude an examiner from being:

(1) A policyholder or claimant under an insurance policy;

(2) A grantor of a mortgage or similar instrument on the examiner’s residence to a regulated entity if done under customary terms and in the ordinary course of business;

(3) An investment owner in shares of regulated diversified investment companies; or
(4) A settlor or beneficiary of a “blind trust” into which any otherwise impermissible holdings have been placed;

(5) Notwithstanding the requirements of this subsection, the commissioner may retain, from time to time, on an individual basis qualified actuaries, certified public accountants or other similar individuals who are independently practicing their professions even though these persons may, from time to time, be similarly employed or retained by persons subject to examination under this section.

(n) Personnel conducting examinations, analyses or reviews of either a domestic, foreign or alien insurer shall be compensated for each day worked at a rate set by the commissioner. The personnel shall also be reimbursed for their travel and living expenses at the rate set by the commissioner. Other individuals who are not employees of the department of insurance shall all be compensated for their work, travel and living expenses at rates approved by the commissioner or as otherwise provided by law. As used in this section, the costs of an examination, analysis or review means:

(1) The entire compensation for each day worked by all personnel, including those who are not employees of the department of insurance, the conduct of the examination, analysis or review calculated as hereinbefore provided;

(2) Travel and living expenses of all personnel, including those who are not employees of the department of insurance, directly engaged in the conduct of the examination, analysis or review calculated at the rates as hereinbefore provided for;

(3) All other incidental expenses incurred by or on behalf of the personnel in the conduct of any authorized examination, analysis or review.

(o) All insurers subject to the provisions of this section shall annually pay to the commissioner on or before the
first day of July, one thousand nine hundred ninety-one, and every first day of July thereafter an examination assessment fee of eight hundred dollars. Four hundred fifty dollars of this fee shall be paid to the treasurer of the state to the credit of a special revolving fund to be known as the “Commissioner’s Examination Revolving Fund” which is hereby established and three hundred fifty dollars shall be paid to the treasurer of the state. The commissioner may at his or her discretion, upon notice to the insurers subject to this section, increase this examination assessment fee or levy an additional examination assessment fee of two hundred fifty dollars. In no event may the total examination assessment fee, including any additional examination assessment fee levied, exceed one thousand five hundred dollars per insurer in any calendar year.

(p) The moneys collected by the commissioner from an increase or additional examination assessment fee shall be paid to the treasurer of the state to be credited to the commissioner’s examination revolving fund. Any funds expended or obligated by the commissioner from the commissioner’s examination revolving fund may be expended or obligated solely for defrayment of the costs of examinations, analyses or reviews of the financial affairs and business practices of insurance companies, agents, brokers, excess lines brokers, solicitors or other individuals or corporations transacting or attempting to transact an insurance business in this state made by the commissioner pursuant to this section or for the purchase of equipment and supplies, travel, education and training for the commissioner’s deputies, other employees and appointed examiners necessary for the commissioner to fulfill the statutory obligations created by this section.

(q) The commissioner may require other individuals who are not employees of the department of insurance who have been appointed by the commissioner to conduct or participate in the examination, analysis or review of insurers, agents, brokers, excess lines brokers, solicitors or
other individuals or corporations transacting or attempting to transact an insurance business in this state to:

(1) Bill and receive payments directly from the insurance company being examined, analyzed or reviewed for their work, travel and living expenses as previously provided for in this section; or

(2) If an individual agent, broker or solicitor is being examined, analyzed or reviewed, bill and receive payments directly from the commissioner's examination revolving fund for their work, travel and living expenses as previously provided for in this section. The commissioner may recover costs paid from the commissioner's examination revolving fund pursuant to this subdivision from the person upon whom the examination, analysis or review is conducted.

(r) The commissioner and his or her examiners shall be entitled to immunity to the following extent:

(1) No cause of action shall arise nor shall any liability be imposed against the commissioner or his or her examiners for any statements made or conduct performed in good faith while carrying out the provisions of this section;

(2) No cause of action shall arise, nor shall any liability be imposed, against any person for the act of communicating or delivering information or data to the commissioner or his or her examiners pursuant to an examination, analysis or review made under this section if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive;

(3) The commissioner or any examiner shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this section and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is "substan-
461 tially justified” if it had a reasonable basis in law or fact
462 at the time that it was initiated;
463 (4) This subsection does not abrogate or modify in any
464 way any constitutional immunity or common law or
465 statutory privilege or immunity heretofore enjoyed by any
466 person identified in subdivision (1) of this subsection.


1 In order to assist the commissioner in the regulation of
2 insurers in this state, it is the duty of the commissioner to
3 maintain, as confidential, and to take all reasonable steps
4 to oppose any effort to secure disclosure of, any documents
5 or information received from the national association of
6 insurance commissioners, federal banking agencies or
7 insurance departments of other states which is confiden-
8 tial in such other jurisdictions. It is within the power of
9 the commissioner to share information, including other-
10 wise confidential information, with the national associa-
11 tion of insurance commissioners, the board of governors of
12 the federal reserve system or other appropriate federal
13 banking agency or insurance departments of other states:
14 Provided, That such other jurisdictions agree to maintain
15 the same level of confidentiality as is available under this
16 statute and to take all reasonable steps to oppose any
17 effort to secure disclosure of the information. “Federal
18 banking agency” means the comptroller of the currency,
19 the director of the office of thrift supervision, the board of
20 governors of the federal reserve system or the federal
21 deposit insurance corporation as set forth in section three
22 of the federal deposit insurance act.

ARTICLE 7. ASSETS AND LIABILITIES.


1 (a) Title. — This section shall be known as the standard
2 valuation law.
3 (b) Reserve valuation. — The commissioner shall annu-
4 ally value, or cause to be valued, the reserve liabilities
(hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state and may certify the amount of any such reserves specifying the mortality table or tables, rate or rates of interest and methods (net level premium method or other) used in the calculation of such reserves. In calculating such reserves, he or she may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien company, he or she may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and for all valid legal purposes the certificate of valuation of the commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

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

(1) General. — Every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The commissioner by regulation shall define the specifics of this opinion and add any other item considered to be necessary to its scope.
(2) Actuarial analysis of reserves and assets supporting such reserves. —

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

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

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

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

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

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

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

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

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

(D) In the case of an opinion required to be submitted by
a foreign or alien company, the commissioner may accept
the opinion filed by that company with the insurance
supervisory official of another state if the commissioner
determines that the opinion reasonably meets the require-
ments 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 acad-
emy of actuaries who meets the requirements set forth in
such regulations.

(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 com-
missioner) for any act, error, omission, decision or conduct
with respect to the actuary’s opinion.

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

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

day of April, one thousand nine hundred seventy-seven,
five and one-half percent interest for single premium life
insurance policies and four and one-half percent interest
for all other such policies issued on and after the sixth day
of April, one thousand nine hundred seventy-seven, and
the following tables:

(1) For all ordinary policies of life insurance issued on
the standard basis, excluding any disability and accidental
death benefits in such policies: The commissioners 1941
standard ordinary mortality table for such policies issued
prior to the operative date of subsection (4a), section
thirty, article thirteen of this chapter; the commissioners
1958 standard ordinary mortality table for such policies
issued on or after the operative date of said subsection and
prior to the operative date of subsection (4c) of said
section: Provided, That for any category of such policies
issued on female risks, all modified net premiums and
present values referred to in this section may be calculated
according to an age not more than six years younger than
the actual age of the insured; and for such policies issued
on or after the operative date of subsection (4c), section
thirty, article thirteen of this chapter: (i) The commission-
ers 1980 standard ordinary mortality table; or (ii) 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 (iii) any ordinary mortality table adopted after
the year one thousand nine hundred eighty by the national
association of insurance commissioners that is approved
by regulation promulgated by the commissioner for use in
determining the minimum standard of valuation for such
policies.

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

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

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

(5) For total and permanent disability benefits in or supplementary to ordinary policies or contracts: For policies or contracts issued on or after the first day of January, one thousand nine hundred sixty-six, the tables of period two disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates adopted after the year one thousand nine hundred eighty by the national association of insurance commissioners that are approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies; for policies or contracts issued on or after the first day of January, one thousand nine hundred sixty-
one, and prior to the first day of January, one thousand nine hundred sixty-six, either such tables or, at the option of the company, the Class (3) disability table (1926); and for policies issued prior to the first day of January, one thousand nine hundred sixty-one, the Class (3) disability table (1926).

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

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

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

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

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

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

(3) For individual annuity and pure endowment con-
tracts issued on or after the sixth day of April, one thou-
sand nine hundred seventy-seven, other than single
premium immediate annuity contracts, excluding any
disability and accidental death benefits in such contracts:
The 1971 individual annuity mortality table or any
individual annuity mortality table adopted after the year
one thousand nine hundred eighty by the national associa-
tion of insurance commissioners that is approved by
regulation promulgated by the commissioner for use in
determining the minimum standard of valuation for such
contracts or any modification of these tables approved by
the commissioner and five and one-half percent interest
for single premium deferred annuity and pure endowment
contracts and four and one-half percent interest for all
other such individual annuity and pure endowment
contracts;

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

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

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

(f) Computation of minimum standard by calendar year
of issue. –
Applicability of this section. — The interest rates used in determining the minimum standard for the valuation of:

(A) All life insurance policies issued in a particular calendar year, on or after the operative date of subdivision (4), subsection (c), section thirty, article thirteen of this chapter as amended;

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

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

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

(2) Calendar year statutory valuation interest rates. —

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

(i) For life insurance, \( I = 0.03 + W(R_1 - 0.03) + \frac{W}{2}(R_2 - 0.09) \);

(ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options, \( I = 0.03 + W(R - 0.03) \) where \( R_1 \) is the lesser of \( R \) and \( 0.09 \), \( R_2 \) is the greater of \( R \) and \( 0.09 \), \( R \) is the reference interest rate defined in this subsection and \( W \) is the weighting factor defined in this section;
(iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in subparagraph (ii) of this paragraph, the formula for life insurance stated in subparagraph (i) of this paragraph shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten years and the formula for single premium immediate annuities stated in subparagraph (ii) of this paragraph shall apply to annuities and guaranteed interest contracts with guarantee duration of ten years or less;

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

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

(B) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one half of one percent, the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for the year one thousand nine hundred eighty (using the reference interest rate defined for the year one thousand nine hundred seventy-nine) and shall be determined for each subsequent calendar year regardless of when subdivi-
(3) Weighting factors. —

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

(i) Weighting Factors for Life Insurance:

<table>
<thead>
<tr>
<th>Guarantee Duration (Years)</th>
<th>Weighting Factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 or less</td>
<td>.50</td>
</tr>
<tr>
<td>More than 10, but not more than 20</td>
<td>.45</td>
</tr>
<tr>
<td>More than 20</td>
<td>.35</td>
</tr>
</tbody>
</table>

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

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

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

(I) For annuities and guaranteed interest contracts valued on an issue year basis.
Guaranteed Duration Weighting Factor for Plan Type
(Years)  A  B  C

<table>
<thead>
<tr>
<th>Duration</th>
<th>Weighting Factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 or less</td>
<td>.80 .60 .50</td>
</tr>
<tr>
<td>More than 5, but not more than 10</td>
<td>.75 .60 .50</td>
</tr>
<tr>
<td>More than 10, but not more than 20</td>
<td>.65 .50 .45</td>
</tr>
<tr>
<td>More than 20</td>
<td>.45 .35 .35</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Weighting Factor for Plan Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
</tr>
<tr>
<td>.15</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Weighting Factor for Plan Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
</tr>
<tr>
<td>.05</td>
</tr>
</tbody>
</table>

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

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

Plan Type A:

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

Plan Type B:

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

Plan Type C:

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

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

(4) Reference interest rate. –

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

(i) For all life insurance, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on the thirtieth day of June of the calendar year next preceding the year of issue, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody’s investors service, inc.

(ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaran-
teed interest contracts with cash settlement options, the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of issue or year of purchase, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody's investors service, inc.

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

(iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subparagraph (ii) of this paragraph, with guarantee duration of ten years or less, the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody's investors service, inc.

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

(vi) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in subparagraph (ii) of this paragraph, the average over a
period of twelve months, ending on the thirtieth day of June of the calendar year of the change in the fund, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody's investors service, inc.

(5) Alternative method for determining reference interest rates. –

In the event that the monthly average of the composite yield on seasoned corporate bonds is no longer published by Moody's investors service, inc., or in the event that the national association of insurance commissioners determines that the monthly average of the composite yield on seasoned corporate bonds as published by Moody's investors service, inc., is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the national association of insurance commissioners and approved by regulation promulgated by the commissioner, may be substituted.

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

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

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

(2) A net one-year term premium for such benefits provided for in the first policy year: Provided, That for any life insurance policy issued on or after the first day of January, one thousand nine hundred eighty-five, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the commissioners' reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in subsection (k) of this section, be the greater of the reserve as of such policy anniversary calculated as described in the preceding paragraph and the reserve as of such policy anniversary calculated as described in that paragraph, but with: (i) The value defined in subdivision (1) of that paragraph being reduced by fifteen percent of the amount of such excess first-year premium; (ii) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed
Reserves according to the commissioners' reserve valuation method for: (i) Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums; (ii) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code (26 U.S.C. §408) as now or hereafter amended; (iii) disability and accidental death benefits in all policies and contracts; and (iv) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of the preceding paragraphs of this section.

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

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

The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

(i) Minimum reserves. –

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

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

(j) Optional reserve calculation. –

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

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

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

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

If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest and method actually used for such
policy or contract or the reserve calculated by the method
actually used for such policy or contract but using the
minimum valuation standards of mortality and rate of
interest and replacing the valuation net premium by the
actual gross premium in each contract year for which the
valuation net premium exceeds the actual gross premium.
The minimum valuation standards of mortality and rate of
interest referred to in this section are those standards
stated in subsections (d) and (f) of this section: Provided,
That for any life insurance policy issued on or after the first
day of January, one thousand nine hundred eighty-five, for
which the gross premium in the first policy year exceeds
that of the second year and for which no comparable
additional benefit is provided in the first year for such
excess and which provides an endowment benefit or a cash
surrender value or a combination thereof in an amount
greater than such excess premium, the foregoing provisions
of this subsection shall be applied as if the method actually
used in calculating the reserve for such policy were the
method described in subsection (g) of this section, ignoring
the second paragraph of said subsection.

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

(l) Reserve calculation. – Indeterminate premium plans.

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

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

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

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

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

(o) Effective date. –

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

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

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

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

ARTICLE 39. DISCLOSURE OF MATERIAL TRANSACTIONS.


(a) Every insurer domiciled in this state shall file a report with the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance programs unless the acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance programs have been submitted to the commissioner for review, approval or information purposes pursuant to other provisions of this chapter.

(b) The report required in subsection (a) of this section is due within fifteen days after the end of the calendar month in which any of the foregoing transactions occur.

(c) One complete copy of the report, including any exhibits or other attachments filed as part thereof, shall be filed with:

(1) The insurance commissioner; and

(2) The national association of insurance commissioners.
(d) All reports obtained by or disclosed to the commissioner pursuant to this article shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner, the national association of insurance commissioners or any other person in accordance with section nineteen, article two of this chapter without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer who would be affected thereby notice and an opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event the commissioner may publish all or any part thereof in such manner as he or she may consider appropriate.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee  
Greg Butler  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate  
Speaker House of Delegates

The within is approved this the 1st Day of April 2003.

Governor
PRESENTED TO THE GOVERNOR

Date 3/20/03
Time 9:30 AM