VIRGINIA ACTS OF ASSEMBLY -- 2014 SESSION

CHAPTER 571

An Act to amend and reenact §§ 38.2-1315.1, 38.2-3101, 38.2-3209, 38.2-3723, and 38.2-4123 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 13 of Title 38.2 an article numbered 10, consisting of sections numbered 38.2-1365 through 38.2-1385; and to repeal Article 3 (§§ 38.2-3126 through 38.2-3144) of Chapter 31 of Title 38.2 of the Code of Virginia, relating to standards valuation for insurance companies; use of principle-based reserve basis for life, annuity, and accident and health insurance contracts.

[H 631]

Approved April 4, 2014

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1315.1, 38.2-3101, 38.2-3209, 38.2-3723, and 38.2-4123 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 13 of Title 38.2 an article numbered 10, consisting of sections numbered 38.2-1365 through 38.2-1385, as follows:

§ 38.2-1315.1. Actuarial statements of opinion, reports, memoranda, and summaries.

A. Effective December 31, 2004, and except as otherwise provided by this section or Article ~~3~~ *10* (§ ~~38.2-3126~~ *38.2-1365* et seq.) of Chapter ~~31~~ ~~of~~ ~~this~~ ~~title~~ *13*, every insurer doing business in the Commonwealth shall annually submit an actuarial opinion that has been prepared by an appointed actuary and that satisfies at a minimum the standards set forth in the appropriate National Association of Insurance Commissioners (NAIC) annual statement instructions.

B. Every insurer domiciled in the Commonwealth that is required to submit an actuarial opinion pursuant to subsection A ~~of~~ ~~this~~ ~~section~~ shall annually submit an actuarial opinion summary, also written by the insurer's appointed actuary. Every insurer domiciled in the Commonwealth that is required to submit an actuarial opinion pursuant to subsection A ~~of~~ ~~this~~ ~~section~~ or § ~~38.2-3127.1~~ *38.2-1367*, at the request of the Commission, shall submit underlying work papers and an actuarial report or memorandum that satisfies the minimum standards set forth in the appropriate NAIC annual statement instructions and complies with all additional standards or requirements established by statute or by the Commission in accordance with the provisions of this section or Article ~~3~~ *10* (§ ~~38.2-3126~~ *38.2-1365* et seq.) of Chapter ~~31~~ ~~of~~ ~~this~~ ~~title~~ *13*. A company licensed but not domiciled in the Commonwealth shall provide such summary, work papers, report, and memorandum upon request of the Commission. Any summary, work papers, report, or memorandum filed in accordance with the appropriate NAIC annual statement 13 instructions shall be considered as a document supporting the actuarial opinion required by subsection A ~~of~~ ~~this~~ ~~section~~ or § ~~38.2-3127.1~~ *38.2-1367*.

C. If the insurer fails to provide supporting work papers or a required report or memorandum at the request of the Commission, or the Commission determines that the work papers or report or memorandum are unacceptable, the Commission may engage a qualified actuary at the expense of the insurer to review the opinion and the basis for the opinion and to prepare supporting work papers, or a report or memorandum.

D. The appointed actuary shall not be liable for damages to any person, other than the insurer and the Commission for any act, error, omission, decision, or conduct with respect to the actuary's opinion, except in cases of fraud or willful misconduct on the part of the actuary.

E. An actuarial opinion provided with the annual statement in accordance with the appropriate NAIC annual statement instructions shall be open to public inspection in accordance with § 38.2-1306.

F. Documents, materials, or other information in the possession or control of the Commission that are considered an actuarial report, work papers, an actuarial opinion summary, or an actuarial opinion report or memorandum provided in support of the opinion, and any other material provided by the insurer to the Commission in connection with the report, work papers, or summary, shall be confidential by law and privileged, shall not be subject to inspection or review by the general public, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, this provision shall not be construed to limit the Commission's authority to release the documents to any actuarial board established for counseling or discipline so long as the material is required for the purpose of professional disciplinary proceedings and such board establishes procedures satisfactory to the Commission for preserving the confidentiality of the documents. Moreover, the Commission is authorized to use the documents, materials, or other information in furtherance of any regulatory or legal action brought as part of the Commission's official duties.

1. Neither the Commission nor any person who received documents, materials, or other information while acting under the authority of the Commission shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to this

subsection.

2. In order to assist in the performance of the Commission's duties under this section, the Commission:

a. May share documents, material, or other information, including the confidential and privileged documents, materials, or information subject to this subsection, with other state, federal, and international regulatory agencies, with the NAIC, its affiliates, or 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.

b. May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC, its affiliates, or 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.

G. The Commission may waive or modify submission requirements for a foreign insurer that has been exempted by its domiciliary commissioner from filing an actuarial opinion under a substantially similar law in its state of domicile. The Commission may modify requirements in any year for an insurer that makes application, with good cause shown, for exemption due to the nature of business written or the size and volume of business activity, or because the insurer is under supervision or an order of conservation, or if the imposition of an annual filing requirement would create a financial hardship.

Article 10.
Standard Valuation.

§ 38.2-1365. Definitions.

As used in this article, unless the context requires a different meaning:

"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.

"Appointed actuary" means a qualified actuary who is appointed in accordance with the valuation manual to prepare the actuarial opinion required in subsection B of § 38.2-1367.

"Deposit-type contract" means contracts that do not incorporate mortality or morbidity risks and as may be specified in the valuation manual.

"Insurance company" or "insurer" means an entity that (i) has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in the Commonwealth and has at least one such policy in force or on claim or (ii) 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 the Commonwealth.

"Life insurance" means contracts that incorporate mortality risk, including annuity and pure endowment contracts, and as may be specified in the valuation manual.

"NAIC" means the National Association of Insurance Commissioners.

"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 article, 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.

"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 § 38.2-1380 as specified in the valuation manual.

"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.

"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.

"Valuation manual" means the manual of valuation instructions adopted by the NAIC as specified in this article or as subsequently amended.

§ 38.2-1366. Reserve valuation.

A. For policies and contracts issued prior to the operative date of the valuation manual:

1. The Commission 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 the Commonwealth issued prior to the operative date of the valuation manual. In calculating reserves, the Commission 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 Commission 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 article.*

2. The provisions set forth in §§ 38.2-1368 through 38.2-1378 shall apply to all policies and contracts, as appropriate, subject to this article issued prior to the operative date of the valuation manual and the provisions set forth in §§ 38.2-1379 and 38.2-1380 shall not apply to any such policies and contracts.

B. For policies and contracts issued on or after the operative date of the valuation manual:

1. The Commission 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 insurance 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 Commission 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 article.

2. The provisions set forth in §§ 38.2-1379 and 38.2-1380 shall apply to all policies and contracts issued on or after the operative date of the valuation manual.

C. On or before the last day of February of each year, every domestic incorporated life insurer shall furnish the Commission the necessary data for determining the valuation of all of its policies outstanding on the last preceding December 31. For good cause shown, the Commission may extend an insurer's deadline for submitting this data.

§ 38.2-1367. Actuarial opinion of reserves.

A. The actuarial opinion prior to the operative date of the valuation manual shall require:

1. Every life insurance company doing business in the Commonwealth to 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 Commission 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 the Commonwealth. The Commission shall define by regulation the specifics of this opinion and add any other items deemed to be necessary to its scope.

2. Every life insurance company, except as exempted by regulation, to annually include in the opinion required by subdivision 1, 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 Commission by regulation, when considered in light of the assets held by the insurer 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 insurer's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts. The Commission shall specify by regulation the types of reserves and related actuarial items on which the opinion is to be expressed.

The Commission 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. Each opinion required by subdivision 2 to be governed by the following provisions:

a. A memorandum, in form and substance acceptable to the Commission as specified by regulation, shall be prepared to support each actuarial opinion; and

b. If the insurance company fails to provide a supporting memorandum at the request of the Commission within a period specified by regulation or the Commission 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 Commission, the Commission may engage a qualified actuary at the expense of the insurance company to review the opinion and the basis for the opinion and prepare the supporting memorandum required by the Commission.

4. Every opinion required by this subsection to be governed by the following provisions:

a. The opinion shall be submitted with the annual statement filed pursuant to § 38.2-1300 and shall reflect the valuation of such reserve liabilities for each year ending on or after December 31, 1992.

b. The opinion shall apply to all business in force including individual and group health insurance plans, in form and substance acceptable to the Commission 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 Commission may by regulation prescribe.

d. In the case of an opinion required to be submitted by a foreign or alien insurer, the Commission may accept the opinion filed by that insurer with the insurance supervisory official of another state if the Commission determines that the opinion reasonably meets the requirements applicable to an insurer domiciled in the Commonwealth.

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 regulations adopted by the

Commission.

f. Except in cases of fraud or willful misconduct, the qualified actuary shall not be liable for damages to any person, other than the insurer and the Commission, for any act, error, omission, decision, or conduct with respect to the actuary's opinion.

g. Disciplinary action by the Commission against the insurer or the qualified actuary shall be defined in regulations adopted by the Commission.

h. Except as provided in subdivisions 4 l, m, and n, documents, materials, or other information in the possession or control of the Commission that is a memorandum in support of the opinion, and any other material provided by the insurer to the Commission in connection with the memorandum, shall be confidential by law and privileged, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the Commission 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 Commission's official duties.

i. Neither the Commission nor any person who received documents, materials, or other information while acting under the authority of the Commission shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subdivision 4 h.

j. In order to assist in the performance of the Commission's duties, the Commission:

(1) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subdivision 4 h, with other state, federal, and international regulatory agencies, with the NAIC 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;

(2) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC 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

(3) May enter into agreements governing sharing and use of information consistent with subdivisions 4 h, i, and j.

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 Commission under this section or as a result of sharing as authorized in subdivision 4 j.

l. A memorandum in support of the opinion, and any other material provided by the insurer to the Commission 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 adopted hereunder.

m. The memorandum or other material may otherwise be released by the Commission with the written consent of the insurer 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 Commission for preserving the confidentiality of the memorandum or other material.

n. Once any portion of the confidential memorandum is cited by the insurer in its marketing, is cited before a governmental agency other than a state insurance department, or is released by the insurer to the news media, all portions of the confidential memorandum shall be no longer confidential.

B. The actuarial opinion of reserves after the operative date of the valuation manual shall require:

1. Every insurer with outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in the Commonwealth and subject to regulation by the Commission to 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 the Commonwealth. The valuation manual will prescribe the specifics of this opinion, including any items deemed to be necessary to its scope.

2. Every insurer with outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in the Commonwealth and subject to regulation by the Commission, except as exempted in the valuation manual, to annually include in the opinion required by subdivision 1 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 insurer 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 insurer's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts.

3. Each opinion required by subdivision 2 to be governed by the following provisions:

a. A memorandum, in form and substance as specified in the valuation manual, and acceptable to the Commission, shall be prepared to support each actuarial opinion.

b. If the insurance company fails to provide a supporting memorandum at the request of the Commission within a period specified in the valuation manual or the Commission 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 Commission, the Commission may engage a qualified actuary at the expense of the insurer to review the opinion and the basis for the opinion and prepare the supporting memorandum required by the Commission.

4. Every opinion required by this subsection to 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 Commission;

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 subdivision 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 insurer, the Commission may accept the opinion filed by that insurer with the insurance supervisory official of another state if the Commission determines that the opinion reasonably meets the requirements applicable to an insurer domiciled in the Commonwealth;

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 Commission, for any act, error, omission, decision, or conduct with respect to the appointed actuary's opinion; and

g. Disciplinary action by the Commission against the insurer or the appointed actuary shall be defined in regulations adopted by the Commission.

§ 38.2-1368. Minimum valuation standard for policies issued prior to certain dates.

The following provisions of this section shall apply only to those policies and contracts issued prior to the operative date stated in § 38.2-3214:

1. The legal minimum standard for the valuation of life insurance contracts issued prior to January 1, 1937, shall be on the basis of the American Experience Table of Mortality, with interest at four percent per year, and strictly in accordance with the terms and conditions of such contracts, and for life insurance contracts issued on and after that date shall be the one-year preliminary term method of valuation, as hereinafter modified, on the basis of the American Experience Table of Mortality or, at the option of the insurer, the American Men Ultimate Table of Mortality with interest at three and one-half percent per year.

2. If the net renewal premium under a limited payment life preliminary term policy providing for the payment of less than 20 annual premiums under the policy, or under an endowment preliminary term policy, exceeds that under a 20-payment life preliminary term policy, the reserve for that policy at the end of any year, including the first, shall be at least the reserve on a 20-payment life preliminary term policy issued in the same year and at the same age, together with an amount equivalent to the accumulation of a net level premium sufficient to provide for a pure endowment maturing one year after the date on which the last annual premium is due, or at the end of 20 years if the policy provides for the payment of premiums for more than 20 years, equal to the difference between the value on the maturity date of a 20-payment life preliminary term policy and the full net level premium reserve at such time of such a limited payment life or endowment policy. Policies valued by the above method shall contain a clause specifying either that the reserve of the policies shall be computed in accordance with the 20-payment life modification of the preliminary term method of valuation or that the first year's insurance is term insurance.

3. Except as otherwise provided in § 38.2-1370 for group annuity and pure endowment contracts, the legal minimum standard for the valuation of annuities issued on and after January 1, 1937, shall be the Combined Annuity Table, with interest at four percent per year, but annuities deferred 10 or more years and written in connection with life insurance shall be valued on the same basis as that used in computing the consideration or premium for the life insurance, or upon any higher standard, at the insurer's option.

4. The legal minimum standard for the calculation of the reserve liability for insurance against disability incorporated in life insurance policies issued on and after January 1, 1937, shall be on the basis of any table adopted by the insurer and approved by the Commission, with interest at three and one-half percent per year. However, in no case shall such liability be less than one-half of the net annual premium for the disability benefit computed by the table.

5. The legal standard for the valuation of group insurance written as yearly renewable term insurance issued on and after January 1, 1937, shall be on the basis of the American Men Ultimate Table of Mortality with interest at three and one-half percent per year.

6. The legal minimum standard for the valuation of industrial policies issued on and after January 1, 1937, shall be the American Experience Table of Mortality, with interest at three and one-half percent per year; however, any insurer may voluntarily value its industrial policies on the basis of the standard industrial mortality table or the substandard industrial mortality table, and by the level net premium method or in accordance with their terms by the modified preliminary term method as described in subdivision 2, or the full preliminary term method.

All industrial policies issued on and after January 1, 1937, shall be valued under the rules set forth in this section, whether or not the policies provide for surrender values, either in cash, paid-up insurance, or extended insurance.

7. The Commission may vary the standards of interest and mortality in the case of alien insurers as to contracts issued by those insurers in countries other than the United States, and in particular cases of invalid lives and other extra hazards.

8. If the actual annual premium charged for insurance is less than the net annual premium for the insurance, computed as specified in this section, the insurer shall set up an additional reserve equal to the value of an annuity of the difference between the actual premium charged and the net premium required by this section, and the term of which at the date of the valuation shall equal the period during which future premium payments are to become due on the insurance. The annuity shall be valued according to the table of mortality with the rate of interest at which the net annual premium is calculated.

9. Reserves for all of these policies and contracts, or all of any class of these policies and contracts, may be calculated, at the insurer's option, according to any standards that produce greater aggregate reserves for all the policies and contracts, or all of the class of the policies and contracts so valued, than the minimum reserves required by this section; and in each case the insurer shall report to the Commission in its annual statement the standards it used in making the valuation.

§ 38.2-1369. Computation of minimum standard.

Except as otherwise provided in §§ 38.2-1370, 38.2-1371, and 38.2-1378, the minimum standard for the valuation of all policies and contracts issued on or after the operative date stated in § 38.2-3214 shall be the Commissioners reserve valuation methods defined in §§ 38.2-1372, 38.2-1373, 38.2-1376, and 38.2-1378, 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 July 1, 1975, four percent interest for policies issued prior to July 1, 1979, five and one-half percent interest for single premium life insurance policies and four and one-half percent interest for all other policies issued on and after July 1, 1979, and the following tables:

1. 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 § 38.2-3215; the Commissioners 1958 Standard Ordinary Mortality Table for policies issued on or after the operative date of § 38.2-3215 and prior to the operative date of § 38.2-3209, provided that for any category of policies issued on female risks, all modified net premiums and present values referred to in this article may be calculated according to an age not more than six years younger than the actual age of the insured; and for policies issued on or after the operative date of § 38.2-3209:

a. The Commissioners 1980 Standard Ordinary Mortality Table;

b. At the election of the insurer for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; or

c. Any ordinary mortality table, adopted after 1980 by the NAIC, that is approved by regulation adopted by the Commission for use in determining the minimum standard of valuation for those policies;

2. For industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in those policies: The 1941 Standard Industrial Mortality Table for policies issued prior to the operative date of § 38.2-3216, and for policies issued on or after the operative date of § 38.2-3216, the Commissioners 1961 Standard Industrial Mortality Table or any industrial mortality table adopted after 1980 by the NAIC and approved by regulation adopted by the Commission for use in determining the minimum standard of valuation for the policies;

3. For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in those contracts: The 1937 Standard Annuity Mortality Table or, at the insurer's option, the Annuity Mortality Table for 1949 Ultimate, or any modification of either of these tables approved by the Commission;

4. For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in those contracts: The Group Annuity Mortality Table for 1951, any modification of that table approved by the Commission, or, at the insurer's option, 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 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, and approved by regulation adopted by the Commission 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 insurer's option, 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;

6. 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 and approved by regulation adopted by the Commission 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 insurer's option, 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

7. For group life insurance, life insurance issued on the substandard basis, and other special benefits: Any table approved by the Commission.

§ 38.2-1370. Computation of minimum standard for annuities.

A. Except as provided in § 38.2-1371, the minimum standard of valuation for individual annuity and pure endowment contracts issued on or after the operative date of this section 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 §§ 38.2-1372 and 38.2-1373 and the following tables and interest rates:

1. For individual annuity and pure endowment contracts issued prior to July 1, 1979, excluding any disability and accidental death benefits in those contracts: The 1971 Individual Annuity Mortality Table, or any modification of that table approved by the Commission, 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 July 1, 1979, 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 and approved by regulation adopted by the Commission for use in determining the minimum standard of valuation for these contracts, or any modification of those tables approved by the Commission, and seven and one-half percent interest;

3. For individual annuity and pure endowment contracts issued on or after July 1, 1979, 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 and approved by regulation adopted by the Commission for use in determining the minimum standard of valuation for those contracts, or any modification of those tables approved by the Commission, and five and one-half percent interest for single premium deferred annuity and pure endowment contracts and four and one-half percent interest for all other individual annuity and pure endowment contracts;

4. For annuities and pure endowments purchased prior to July 1, 1979, 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 that table approved by the Commission, and six percent interest; and

5. For annuities and pure endowments purchased on or after July 1, 1979, 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 and approved by regulation adopted by the Commission for use in determining the minimum standard of valuation for those annuities and pure endowments, or any modification of those tables approved by the Commission, and seven and one-half percent interest.

B. After July 1, 1975, any insurer may file with the Commission 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 insurer. However, an insurer may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If an insurer makes no election, the operative date of this section for that insurer shall be January 1, 1979.

§ 38.2-1371. 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 determined as provided in subsection B:

1. Life insurance policies issued in a particular calendar year on or after the operative date of § 38.2-3209;

2. Individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1983, except that an insurer may elect for this to apply to all individual annuity and pure endowment contracts issued after July 1, 1982;

3. Annuities and pure endowments purchased in a particular calendar year on or after January 1, 1983, under group annuity and pure endowment contracts; and

4. The net increase, if any, in a particular calendar year after January 1, 1983, in amounts held under guaranteed interest contracts.

B. The calendar year statutory valuation interest rates, referred to in this section as "I," shall be determined as follows and the results rounded to the nearer one-quarter of one percent:

1. For life insurance:

$I = .03 + W(R1 - .03) + (W/2)(R2 - .09)$;

2. 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:

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

For purposes of subdivisions 1 and 2:

R1 is the lesser of R and .09;

R2 is the greater of R and .09;

R is the reference interest rate defined in this section; and

W is the weighting factor defined in this section;

3. 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 subdivision 2, the formula for life insurance stated in subdivision 1 shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of 10 years, and the formula for single premium immediate annuities stated in subdivision 2 shall apply to annuities and guaranteed interest contracts with guarantee duration of 10 years or less;

4. 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 subdivision 2 shall apply; and

5. 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 subdivision 2 shall apply.

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, 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 § 38.2-3209 becomes operative.

C. The weighting factors referred to in the formulas stated in subsection B are given in the following tables:

1. 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, that are guaranteed in the original policy.

2. 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

3. Weighting factors for other annuities and for guaranteed interest contracts, except as stated in subdivision 2, shall be as specified in tables a, b, and c of this subdivision, according to the rules and definitions in subdivisions d, e, and f of this subdivision:

a. For annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee	Weighting
Factor	
Duration	For Plan Type

(Years)	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

b. For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in table a increased by:

Plan Type		
A	B	C
.15	.25	.05

c. 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 12 months beyond the valuation date, the factors shown in table a or derived in table b increased by:

Plan Type		
A	B	C
.05	.05	.05

d. 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 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.

e. "Plan Type" as used in tables a, b, and c is defined as follows:

Plan Type A: At any time policyholder (i) may withdraw funds only with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, (ii) may withdraw funds without an adjustment but in installments over five years or more, (iii) may withdraw funds as an immediate life annuity, or (iv) is not permitted to withdraw funds.

Plan Type B: Before expiration of the interest rate guarantee, policyholder may withdraw funds only (i) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, (ii) without an adjustment but in installments over five years or more, or (iii) 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 (i) without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company or (ii) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

f. An insurer 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. The reference interest rate referred to in subsection B shall be defined as follows:

1. For life insurance, the lesser of the average over a period of 36 months and the average over a period of 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.

2. 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 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.

3. 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 subdivision 2, with guarantee duration in excess of 10 years, the lesser of the average over a period of 36 months and the average

over a period of 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.

4. 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 subdivision 2, with guarantee duration of 10 years or less, the average over a period of 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.

5. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of 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.

6. 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 subdivision 2, the average over a period of 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. 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 adopted by the Commission may be substituted.

§ 38.2-1372. Reserve valuation method; life insurance and endowment benefits.

A. Except as otherwise provided in §§ 38.2-1373, 38.2-1376, and 38.2-1378, reserves according to the Commissioners reserve valuation method for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of the future guaranteed benefits provided for by those policies, over the then-present value of any future modified net premiums for those policies. The modified net premiums for a policy shall be the uniform percentage of the respective contract premiums for the benefits, excluding any extra premiums charged because of impairments or special hazards, 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 subdivision 1 over subdivision 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, 1986, 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 that 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 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 the excess premium, shall, except as otherwise provided in § 38.2-1376, be the greater of the reserve as of the policy anniversary calculated as described in subsection A and the reserve as of the policy anniversary calculated as described in that subsection but with (i) the value defined in subdivision A 1 being reduced by 15 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 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 §§ 38.2-1369 and 38.2-1371 shall be used.

C. Reserves according to the Commissioners reserve valuation method shall be calculated by a method consistent with the principles of the preceding subsections 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 § 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.

§ 38.2-1373. 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 both, other than a plan providing individual retirement accounts or individual retirement annuities under § 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 those contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of those contracts to determine nonforfeiture values.

§ 38.2-1374. Minimum reserves.

A. In no event shall an insurer's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, be less than the aggregate reserves calculated in accordance with the methods set forth in §§ 38.2-1372, 38.2-1373, 38.2-1376, and 38.2-1377 and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for those 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 § 38.2-1367.

§ 38.2-1375. Optional reserve calculation.

A. Reserves for any category of policies, contracts, or benefits as established by the Commission may be calculated, at the insurer's option, according to any standards that produce greater aggregate reserves for the category than those calculated according to the minimum standard provided in this article, 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 for in those policies and contracts.

B. An insurer that adopts at any time a standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided under this article may adopt a lower standard of valuation with the approval of the Commission, 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 § 38.2-1367 shall not be deemed to be the adoption of a higher standard of valuation.

§ 38.2-1376. Reserve calculation; valuation net premium exceeding the gross premium charged.

A. If in any contract year the gross premium charged by an insurer 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 §§ 38.2-1369 and 38.2-1371.

B. For a life insurance policy issued on or after January 1, 1986, 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 § 38.2-1372, ignoring subsection B of § 38.2-1372. The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with § 38.2-1372, including subsection B of that section, and the minimum reserve calculated in accordance with this section.

§ 38.2-1377. 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 §§ 38.2-1372, 38.2-1373, and 38.2-1376, the reserves that are held under the plan shall:*

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

2. Be computed by a method that is consistent with the principles of this article, as determined by regulations adopted by the Commission.

§ 38.2-1378. 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 subsection B of § 38.2-1366. For disability and accident and sickness insurance contracts issued on or after January 1, 1937, and prior to the operative date of the valuation manual, the minimum standard of valuation is the standard adopted by the Commission by regulation.

§ 38.2-1379. 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 subsection B of § 38.2-1366, except as provided under subsection E or subsection G.

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 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 percent 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 42 of the following 55 jurisdictions: The 50 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 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-quarters 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 percent of the direct premiums written as reported in the following annual statements most recently available prior to the vote in subdivision C 1 a: life, accident and health annual statements, health annual statements, or fraternal annual statements; or

2. The valuation manual becomes effective pursuant to an order of regulation adopted by the Commission.

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

1. Minimum valuation standards for and definitions of the policies or contracts subject to subsection B of § 38.2-1366. Such minimum valuation standards shall be:

a. The Commissioners reserve valuation method for life insurance contracts, other than annuity contracts, subject to subsection B of § 38.2-1366;

b. The Commissioners annuity reserve valuation method for annuity contracts subject to subsection B of § 38.2-1366; and

c. Minimum reserves for all other policies or contracts subject to subsection B of § 38.2-1366.

2. Which policies or contracts or types of policies or contracts are subject to the requirements of a principle-based valuation in subsection A of § 38.2-1380 and the minimum valuation standards consistent with those requirements;

3. For policies and contracts subject to a principle-based valuation under § 38.2-1380:

a. Requirements for the format of reports to the commissioner under subdivision B 3 of § 38.2-1380 and which reports shall include information necessary to determine if the valuation is appropriate and in compliance with this article.

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

c. 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 § 38.2-1380, 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.

5. Other requirements, including 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 § 38.2-1381 and to whom the data is required to be submitted.

The valuation manual may specify other requirements, including those for data analyses and reporting of analyses.

E. If a specific valuation requirement is absent or if a specific valuation requirement in the valuation manual is not, in the opinion of the Commission, in compliance with this article, then the insurer shall, with respect to such requirements, comply with minimum valuation standards prescribed by the Commission by regulation.

F. The Commission may engage a qualified actuary, at the expense of the insurer, to perform an actuarial examination of the insurer and opine on the appropriateness of any reserve assumption or method used by the insurer, or to review and opine on an insurer's compliance with any requirement set forth in this article. The Commission may rely upon the opinion, regarding provisions contained within this article, of a qualified actuary engaged by the Commissioner of another state, district, or territory of the United States. As used in this subsection, the term "engage" includes employment and contracting.

G. The Commission may require an insurer to change any assumption or method that in the opinion of the Commission is necessary in order to comply with the requirements of the valuation manual or this article; and the insurer shall adjust the reserves as required by the Commission. The Commission may take other disciplinary action as permitted pursuant to § 38.2-219.

§ 38.2-1380. Requirements of a principle-based valuation.

A. An insurer shall 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 insurer'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:

(1) Be established utilizing the insurer's available experience, to the extent it is relevant and statistically credible; or

(2) To the extent that insurer data is not available, relevant, or statistically credible, be established utilizing other relevant, statistically credible experience; and

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. An insurer 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 Commission 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 Commission upon request, a principle-based valuation report that complies with standards prescribed in the valuation manual.

C. A principle-based valuation may include a prescribed formulaic reserve component.

§ 38.2-1381. Experience reporting for policies in force on or after the operative date of the valuation manual.

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

§ 38.2-1382. Confidentiality.

A. For purposes of this section, "confidential information" means:

1. A memorandum in support of an opinion submitted under § 38.2-1367 and any other documents, materials, and other information, including all working papers, and copies thereof, created, produced, or obtained by or disclosed to the Commission or any other person in connection with such memorandum;

2. All documents, materials, and other information, including all working papers and copies thereof created, produced, or obtained by or disclosed to the Commission or any other person in the course of an examination made under subsection F of § 38.2-1379, provided, however, that if an examination report or other material prepared in connection with an examination made under Article 4 (§ 38.2-1317 et seq.) of Chapter 13 is not held as private and confidential information under Article 4, an examination report or other material prepared in connection with an examination made under subsection F of § 38.2-1379 shall not be "confidential information" to the same extent as if such examination report or other material had been prepared under Article 4;

3. Any reports, documents, materials, and other information developed by an insurer in support of, or in connection with, an annual certification by the insurer under subdivision B 2 of § 38.2-1380 evaluating the effectiveness of the insurer's internal controls with respect to a principle-based valuation and any other documents, materials, and other information, including all working papers and copies thereof created, produced, or obtained by or disclosed to the Commission or any other person in connection with such reports, documents, materials, and other information;

4. Any principle-based valuation report developed under subdivision B 3 of § 38.2-1380 and any other documents, materials, and other information, including all working papers and copies thereof created, produced, or obtained by or disclosed to the Commission or any other person in connection with such report; and

5. Any documents, materials, data, and other information submitted by an insurer under § 38.2-1381 (which are collectively referred to in this section as "experience data") and any other documents, materials, data, and other information, including all working papers and copies thereof created or produced in connection with such experience data, in each case that includes any potentially company-identifying or personally identifiable information, that is provided to or obtained by the Commission (which, together with any experience data, are referred to in this section as the "experience materials"), and any other documents, materials, data, and other information, including all working papers and copies thereof created, produced, or obtained by or disclosed to the Commission or any other person in connection with such experience materials.

B. Privilege for, and confidentiality of, confidential information shall be governed by the following provisions:

1. Except as provided in this section, an insurer's confidential information is confidential by law and privileged, and 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 Commission is authorized to use the confidential information in the furtherance of any regulatory or legal action brought against an insurer as a part of the Commission's official duties;

2. Neither the Commission nor any person who received confidential information while acting under the authority of the Commission 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 Commission's duties, the Commission may share confidential information (i) with other state, federal, and international regulatory agencies and with the NAIC and its affiliates and subsidiaries and (ii) in the case of confidential information specified in subdivisions A 1 and A 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 clauses (i) and (ii), 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 Commission;

4. The Commission 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 Commission may enter into agreements governing sharing and use of information consistent with this subsection;

6. No waiver of any applicable privilege or claim of confidentiality in the confidential information shall occur as a result of disclosure to the Commission under this section or as a result of sharing as authorized in subdivision 3;

7. A privilege established under the law of any state or jurisdiction that is substantially similar to *the privilege established under this subsection shall be available and enforced in any proceeding in, and in any court of, the Commonwealth; and*

8. As used in this section, "regulatory agency," "law-enforcement agency," and "NAIC" include their employees, agents, consultants, and contractors.

C. Notwithstanding subsection B, any confidential information specified in subdivisions A 1 and A 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 § 38.2-1367 or principle-based valuation report developed under subdivision B 3 § 38.2-1380 by reason of an action required by this article or by regulations adopted hereunder;

2. May otherwise be released by the Commission with the written consent of the insurer; and

3. Once any portion of a memorandum in support of an opinion submitted under § 38.2-1367 or a principle-based valuation report developed under subdivision B 3 § 38.2-1380 is cited by an insurer in its marketing or is publicly volunteered to or before a governmental agency other than a state insurance department or is released by an insurer to the news media, all portions of such memorandum or report shall no longer be confidential.

§ 38.2-1383. Single state exemption.

A. The Commission may exempt specific product forms or product lines of a domestic insurer that is licensed and doing business only in the Commonwealth from the requirements of § 38.2-1379 provided:

1. The Commission has issued an exemption in writing to the insurer and has not subsequently revoked the exemption in writing; and

2. The insurer computes reserves using assumptions and methods used prior to the operative date of the valuation manual in addition to any requirements established by the Commission and adopted by regulation.

B. For any insurance company granted an exemption under this section, §§ 38.2-1367 through 38.2-1378 shall be applicable. With respect to any insurance company applying this exemption, any reference to § 38.2-1379 found in §§ 38.2-1367 through 38.2-1378 shall not be applicable.

§ 38.2-1384. Assessment against insurers whose policies are valued.

The Commission is hereby authorized to assess against every insurer whose policies are valued a sum equal to the cost of valuation, which shall be collected by the Commission and paid directly into the state treasury and credited to the "Bureau of Insurance Special Fund - State Corporation Commission" for the maintenance of the Bureau of Insurance as provided in subsection B of § 38.2-400.

§ 38.2-1385. Article not applicable in certain cases.

Nothing in this article shall be construed to apply to any insurer in the transaction of industrial sick benefit insurance as defined in § 38.2-3544, nor to fraternal benefit societies, except for § 38.2-1367.

§ 38.2-3101. Legal reserve insurers.

Any life insurer, association or society whose policies or certificates are required to contain any provision that a person insured shall, upon surrender of the policy during his lifetime, receive a surrender value, either in cash, paid-up insurance, or extended insurance, shall be regarded as a "legal reserve insurer," and shall maintain a reserve calculated in accordance with the provisions of Article ~~3~~ *10* (§ ~~38.2-3126~~ *38.2-1365* et seq.) of ~~this chapter~~ *Chapter 13*. Nothing in this section shall be construed to apply to any insurer in the transaction of industrial sick benefit insurance as defined in § 38.2-3544, nor to fraternal benefit societies.

§ 38.2-3209. Same; adjusted premiums for policies.

A. This section shall apply to all policies issued on or after the operative date as defined in this section. Except as provided in subsection G of this section, the adjusted premiums for any policy shall be calculated on an annual basis and shall be a uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, so that the present value at the date of issue of the policy of all adjusted premiums shall equal the sum of (i) the then present value of the future guaranteed benefits provided for by the policy; (ii) 1 percent of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years; and (iii) 125 percent of the nonforfeiture net level premium as defined in subsection B of this section. However, in applying the percentage specified in (iii) of this subsection no nonforfeiture net level premium shall be deemed to exceed four percent of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years. The date of issue of a policy for the purpose of this section shall be the date as of which the rated age of the insured is determined.

B. The nonforfeiture net level premium shall equal the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annual annuity of one dollar payable on the date of issue of the policy and on each anniversary of the policy on which a premium falls due.

C. For a policy that provides, on a basis guaranteed in the policy, unscheduled changes in benefits or premiums, or both, or that provides an option for changes in benefits or premiums, or both, other than a change to a new policy, the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any change in the benefits or premiums, the future adjusted premiums, nonforfeiture net level premiums and present values shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.

D. Except as otherwise provided in subsection G of this section, the recalculated future adjusted premiums for any policy referred to in subsection C of this section shall be a uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, so that the present value at the time of change to the newly defined benefits or premiums of all future adjusted premiums shall equal the excess of (1) over (2), where (1) is (i) the then present value of the then future guaranteed benefits provided for by the policy plus (ii) any additional expense allowance and (2) is the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

E. The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of (i) 1 percent of the excess, if positive, of the average amount of insurance at the beginning of each of the first 10 policy years after the change over the average amount of insurance before the change at the beginning of each of the first 10 policy years after the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy and (ii) 125 percent of the increase, if positive, in the nonforfeiture net level premium.

F. The recalculated nonforfeiture net level premium shall equal (1) divided by (2), where (1) is the sum of (i) the nonforfeiture net level premium applicable before the change times the present value of an annual annuity of one dollar payable on each anniversary of the policy on or after the date of the change on which a premium would have fallen due had the change not occurred, and (ii) the present value of the increase in future guaranteed benefits provided by the policy, and (2) is the present value of an annual annuity of one dollar payable on each anniversary of the policy on or after the date of change on which a premium falls due.

G. Notwithstanding any other provisions of this section, for a policy issued on a substandard basis that provides reduced graded amounts of insurance so that, in each policy year, the policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis that provides higher uniform amounts of insurance, adjusted premiums and present values for the substandard policy may be calculated as if it were issued to provide the higher uniform amounts of insurance on the standard basis.

H. All adjusted premiums and present values referred to in §§ 38.2-3202 through 38.2-3213 shall for all policies of ordinary insurance be calculated on the basis of (i) the Commissioners 1980 Standard Ordinary Mortality Table or (ii) at the election of the insurer for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors. The premiums and values shall for all policies of industrial insurance be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table. The premiums and values shall for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this section for policies issued in that calendar year, provided that:

1. At the insurer's option, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this section, for policies issued in the immediately preceding calendar year;

2. Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by § 38.2-3202, shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of the paid-up nonforfeiture benefit and any paid-up dividend additions;

3. An insurer may calculate the amount of any guaranteed paid-up nonforfeiture benefit, including any paid-up additions, under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values;

4. In calculating the present value of any paid-up term insurance with any accompanying pure endowment offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1980 Extended Term Insurance Table for policies of ordinary insurance and not more than the Commissioners 1961 Industrial Extended Term Insurance Table for policies of industrial insurance;

5. For insurance issued on a substandard basis, the calculation of any adjusted premiums and present values may be based on appropriate modifications of the tables referred to in this section;

6. ~~Any~~ *For policies issued prior to the operative date of the valuation manual, any Commissioners Standard* ordinary mortality tables adopted after 1980 by the National Association of Insurance Commissioners *(NAIC)* and approved by the Commission for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1980 Standard Ordinary Mortality

Table with or without Ten-Year Select Mortality Factors or for the Commissioners 1980 Extended Term Insurance Table. *"Operative date of the valuation manual" means the January 1 of the first calendar year that the valuation manual as defined in § 38.2-1365 is effective.*

For policies issued on or after the operative date of the valuation manual, the valuation manual shall provide the Commissioners Standard mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the Commissioners 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioners 1980 Extended Term Insurance Table. If the Commission approves by regulation any Commissioners Standard ordinary mortality table adopted by the NAIC for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual, then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual; and

7. ~~Any~~ *For policies issued prior to the operative date of the valuation manual, any Commissioners Standard* industrial mortality tables adopted after 1980 by the National Association of Insurance Commissioners and approved by the Commission for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1961 Standard Industrial Mortality Table or the Commissioners 1961 Industrial Extended Term Insurance Table.

For policies issued on or after the operative date of the valuation manual, the valuation manual shall provide the Commissioners Standard mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the Commissioners 1961 Standard Industrial Mortality Table or the Commissioners 1961 Industrial Extended Term Insurance Table. If the Commission approves by regulation any Commissioners Standard industrial mortality table adopted by the NAIC for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual, then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.

I. The nonforfeiture annual interest rate for any policy issued in a particular calendar year ~~shall~~*:*

1. For policies issued prior to the operative date of the valuation manual, shall equal 125 percent of the calendar year statutory valuation interest rate for the policy as defined in ~~§§ 38.2-3130 through 38.2-3142~~ *Article 10 (§ 38.2-1365 et seq.) of Chapter 13*, rounded to the nearest one-quarter percent*, provided, however, that the nonforfeiture annual interest rate shall not be less than four percent; and*

2. For policies issued on or after the operative date of the valuation manual, shall be provided by the valuation manual.

J. Any refiling of nonforfeiture values or their methods of computation for any previously approved policy form that involves only a change in the interest rate or mortality table used to compute nonforfeiture values shall not require refiling of any other provisions of that policy form.

K. After July 1, 1982, any insurer may file with the Commission a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1989, which shall be the operative date of this section for that insurer. If an insurer makes no election, the operative date of this section for that insurer shall be January 1, 1989.

§ 38.2-3723. Reserves.

A. Each insurer licensed to write credit life insurance in the Commonwealth shall establish and maintain reserves on all its credit life insurance. The minimum standard for the valuation for such reserves:

1. For both male and female insureds shall be the 2001 Commissioners' Standard Ordinary (CSO) Male Composite Ultimate Mortality Table as adopted by the National Association of Insurance Commissioners;

2. Where the credit life policy or certificate insures two lives shall be twice the 2001 CSO Male Composite Ultimate Mortality Table based on the age of the older insured;

3. Shall use, for the interest rate calculation, the calendar year statutory valuation interest rates determined pursuant to §~~§ 38.2-3132 through 38.2-3136~~ *38.2-1371*; and

4. Shall use, as the method of valuation, the Commissioners reserve valuation method set forth in § ~~38.2-3137~~ *38.2-1372*.

Reserves may be calculated on an annual or a monthly basis with a reasonable assumption, subject to statistical proof, as to average ages at issue or at expiration.

B. Each insurer licensed to write credit accident and sickness insurance in the Commonwealth shall establish and maintain reserves on all its credit accident and sickness insurance. For contracts other than single premium credit disability contracts, the minimum standard for the valuation of such reserves shall be the total gross unearned premiums calculated by the actuarial method, but not less than the aggregate amounts calculated as of the valuation date by the refund formulas approved for the policies by the Commission pursuant to subsection C of § 38.2-3729. For single premium credit disability contracts, the minimum standard for valuation of such reserves:

1. For plans having less than a 15-day elimination period, the morbidity standard shall be the 1985 Commissioners' Individual Disability Table A as adopted by the NAIC (85CIDA) with claim incidence rates increased by 12 percent;

2. For plans having a greater than 14-day elimination period, the morbidity standard shall be the

85CIDA for a 14-day elimination period with claim incidence rates increased by 12 percent; and

3. The interest rate used shall be the calendar year statutory valuation interest rate for valuation of whole life insurance determined pursuant to §~~§ 38.2-3132~~ ~~through~~ ~~38.2-3136~~ *38.2-1371*.

It may be assumed that all business written in any calendar month was written as of the fifteenth of such month.

C. For all credit life and disability contracts in the aggregate, if the net premium refund liability exceeds the aggregate recorded contract reserve, the insurer shall establish an additional reserve liability that is equal to the excess of the net refund liability over the contract reserve recorded. The net refund liability may include consideration of commission, premium tax, and other expenses recoverable. In all cases, such amounts shall be evaluated for probability of recovery.

D. In no event shall the aggregate reserves for all policies, contracts and benefits be less than the aggregate reserves determined by a qualified actuary to be necessary to support fully the insurer's obligations under its policies, certificates and contracts.

§ 38.2-4123. Exemptions.

Except as herein provided, societies shall be governed by this chapter and §§ 38.2-100 through 38.2-134, Chapters 2 (§ 38.2-200 et seq.) through 9 (§ 38.2-900 et seq.), §§ 38.2-1300 through 38.2-1315, 38.2-1315.1, ~~and~~ 38.2-1317 through 38.2-1340, *and 38.2-1367*, Chapters 14 (§ 38.2-1400 et seq.), 15 (§ 38.2-1500 et seq.), and 18 (§ 38.2-1800 et seq.), §§ 38.2-3100 through 38.2-3125~~,~~ ~~38.2-3127.1,~~ and 38.2-3300 through 38.2-3317, Chapter 34 (§ 38.2-3400 et seq.), §§ 38.2-3500 through 38.2-3520, Chapter 36 (§ 38.2-3600 et seq.), Chapter 52 (§ 38.2-5200 et seq.), and Chapter 55 (§ 38.2-5500 et seq.), and shall be exempt from all other provisions of this title unless expressly designated therein, or unless they are specifically made applicable by this chapter.

2. That Article 3 (§§ 38.2-3126 through 38.2-3144) of Chapter 31 of Title 38.2 of the Code of Virginia is repealed.

3. That the provisions of this act shall become effective on January 1, 2015.