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HOUSE DRH30135-MH-75A (03/04)

Short Title: Principle-Based Reserving. (Public)

Sponsors: Representatives Collins, Tine, and Setzer (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR PRINCIPLE-BASED VALUATION IN THE LIFE
3 INSURANCE STANDARD VALUATION LAW AND STANDARD NONFORFEITURE
4 PROVISIONS IN THE NORTH CAROLINA INSURANCE LAW.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 58-58-50 reads as rewritten:

7 "§ 58-58-50. Standard Valuation Law.

8 (a) This section shall be known as the Standard Valuation Law.

9 (a1) As used in this section:

10 (1) Appointed actuary. – A qualified actuary who is appointed in accordance
11 with the valuation manual to prepare the actuarial opinion required in
12 subsection (j1) of this section.

13 (2) Company. – An entity which has written, issued or reinsured life insurance
14 contracts, accident and health insurance contracts, annuity contracts, pure
15 endowment contracts or deposit type contracts (i) in this State and has at
16 least one such policy in force or on claim, or (ii) in any state and is required
17 to hold a certificate of authority to write life insurance, accident and health
18 insurance, annuity contract, pure endowment or deposit-type contracts in this
19 State.

20 (3) Deposit-type contract. – A contract that does not incorporate mortality or
21 morbidity risks and as may be specified in the valuation manual.

22 (4) Policyholder behavior. – Any action a policyholder, contract holder, or any
23 other person with the right to elect options, such as a certificate holder, may
24 take under a policy or contract subject to this section, including, but not
25 limited to, lapse, withdrawal, transfer, deposit, premium payment, loan,
26 annuitization, or benefit elections prescribed by the policy or contract but
27 excluding events of mortality or morbidity that result in benefits prescribed
28 in their essential aspects by the terms of the policy or contract.

29 (5) Principle-based valuation. – A reserve valuation that uses one or more
30 methods or one or more assumptions determined by the insurer and is
31 required to comply with subsection (n) of this section as specified in the
32 valuation manual.

33 (6) Qualified actuary. – An individual who is qualified to sign the applicable
34 statement of actuarial opinion in accordance with the American Academy of
35 Actuaries qualification standards for actuaries signing such statements and
36 who meets the requirements specified in the valuation manual.



1 (7) Reserves. – Reserve liabilities.

2 (8) Tail risk. – A risk that occurs either where the frequency of low probability
3 events is higher than expected under a normal probability distribution or
4 where there are observed events of very significant size or magnitude.

5 (9) Valuation manual. – The manual of valuation instructions adopted by the
6 NAIC as specified in this section or as subsequently amended.

7 (b) This subsection applies to policies and contracts issued prior to the operative date of
8 the valuation manual. Each year the Commissioner shall value or cause to be valued the reserve
9 liabilities ("reserves")reserves for all outstanding life insurance policies, annuity contracts, and
10 pure endowment contracts–contracts, accident and health insurance contracts, and deposit-type
11 contracts of every life insurance company doing business in this State. In the case of an alien
12 company, the valuation shall be limited to its United States business. The Commissioner may
13 certify the amount of each company's reserves, specifying the mortality or morbidity tables,
14 withdrawal rates, and other assumptions regarding when, and the degree to which,
15 policyholders exercise contract options, such as full or partial withdrawal, rate or rates of
16 interest, and methods, such as net level premium method or other, used in the Commissioner's
17 calculation of the company's reserves. Group methods and approximate averages for fractions
18 of a year or otherwise may be used by the Commissioner in calculating the company's reserves,
19 and the Commissioner may accept the valuation made by the company upon evidence of its
20 correctness that the Commissioner requires. For foreign or alien insurance companies, the
21 Commissioner may accept any valuation made or caused to be made by the insurance regulator
22 of any state or other jurisdiction if (†) that valuation complies with the minimum standard
23 provided in this section and (ii) that regulator accepts as legally sufficient and valid the
24 Commissioner's certificate of valuation when that certificate states that the valuation has been
25 made in a specified manner according to which the aggregate reserves would be at least as great
26 as if they had been computed in the manner prescribed by the law of that state or
27 jurisdiction.section.

28 (b1) The provisions set forth in subsections (c), (d), (d1), (e), (f), (g), (h), and (k) of this
29 section shall apply to all policies and contracts, as appropriate, subject to this section issued on
30 or after the effective date of this section and prior to the operative date of the valuation manual.
31 The provisions set forth in subsections (m) and (n) of this section shall not apply to policies
32 issued prior to the operative date of the valuation manual.

33 (b2) This subsection applies to policies and contracts issued on or after the operative date
34 of the valuation manual. The Commissioner shall annually value, or cause to be valued, the
35 reserves for all outstanding life insurance contracts, annuity contracts, pure endowment
36 contracts, accident and health insurance contracts, and deposit-type contracts of every company
37 issued on or after the operative date of the valuation manual. In lieu of the valuation of the
38 reserves required of a foreign or alien company, the Commissioner may accept a valuation
39 made, or caused to be made, by the insurance supervisory official of any State or other
40 jurisdiction when that valuation complies with the minimum standard provided in this section.

41 (b3) The provisions set forth in subsections (m) and (n) of this section shall apply to all
42 policies and contracts issued on or after the operative date of the valuation manual.

43 (c) (1) Except as otherwise provided in subdivisions (3) and (4) of this subsection,
44 or in subsection (k), the minimum standard for the valuation of all such
45 policies and contracts issued before the effective date of this section shall be
46 that provided by the laws in effect immediately before that date, except that
47 the minimum standard for the valuation of annuities and pure endowments
48 purchased under group annuity and pure endowment contracts issued before
49 that date shall be that provided by the laws in effect immediately before that
50 date but replacing the interest rates specified in such laws by an interest rate

1 of five percent (5%) per annum, and five and one-half percent (5 ½%)
 2 interest for single premium life insurance policies.

- 3 (2) Except as otherwise provided in subdivisions (3) and (4) of this subsection,
 4 or in subsection (k), the minimum standards for the valuation of all such
 5 policies and contracts issued on or after the effective date of this section
 6 shall be the Commissioner's reserve valuation methods defined in
 7 subsections (d), ~~(d-1)(d1)~~, ~~and (g)~~, and (k), five percent (5%) interest for
 8 group annuity and pure endowment contracts and three and one-half percent
 9 (3 ½%) interest for all other policies and contracts, or, in the case of policies
 10 and contracts other than annuity and pure endowment contracts, issued on or
 11 after July 1, 1975, four percent (4%) interest for such policies issued prior to
 12 April 19, 1979, and four and one-half percent (4 ½%) interest for such
 13 policies issued on or after April 19, 1979, and the following tables:

14 ...

- 15 (3) Except as provided in subdivision (4) of this subsection, the minimum
 16 standard ~~for the~~ of valuation ~~of all~~ for individual annuity and pure endowment
 17 contracts issued on or after the operative date of this subdivision (3), as
 18 defined herein, and for ~~all~~ annuities and pure endowments purchased on or
 19 after such operative date under group annuity and pure endowment
 20 contracts, shall be the Commissioner's reserve valuation methods defined in
 21 subsections (d) and ~~(d-1)(d1)~~ and the following tables and interest rates:

22 ...

23 After July 1, 1975, any company may file with the Commissioner a
 24 written notice of its election to comply with the provisions of this
 25 subdivision (3) after a specified date before January 1, 1979, which shall be
 26 the operative date of this subdivision for such company, provided, a
 27 company may elect a different operative date for individual annuity and pure
 28 endowment contracts from that elected for group annuity and pure
 29 endowment contracts. If a company makes no such election, the operative
 30 date of this subdivision for such company shall be January 1, 1979.

- 31 (4) a. ~~Applicability of This Subdivision~~ this subdivision. The interest rates
 32 used in determining the minimum standard for the valuation of:
- 33 1. ~~All life~~ Life insurance policies issued in a particular calendar
 34 year, on or after the operative date of subdivision (e)(4) of
 35 G.S. 58-58-55,
 - 36 2. ~~All individual~~ Individual annuity and pure endowment
 37 contracts issued in a particular calendar year on or after
 38 January 1, 1982,
 - 39 3. ~~All annuities~~ Annuities and pure endowments purchased in a
 40 particular calendar year on or after January 1, 1982, under
 41 group annuity and pure endowment contracts, and
 - 42 4. The net increase, if any, in a particular calendar year after
 43 January 1, 1982, in amounts held under guaranteed interest
 44 contracts
- 45 shall be the calendar year statutory valuation interest rates as defined
 46 in this subdivision.

47 ...

48 (d) Except as otherwise provided in subsections ~~(d-1) and (d1)~~, (g), and (k) reserves
 49 according to the Commissioner's reserve valuation method, for the life insurance and
 50 endowment benefits of policies providing for a uniform amount of insurance and requiring the
 51 payment of uniform premiums, shall be the excess, if any, of the present value, at the date of

1 valuation, of such future guaranteed benefits provided for by such policies, over the then
2 present value of any future modified net premiums therefor. The modified net premiums for
3 any such policy shall be such uniform percentage of the respective contract premiums for such
4 benefits that the present value, at the date of issue of the policy, of all such modified net
5 premiums shall be equal to the sum of the then present value of such benefits provided for by
6 the policy and the excess of (1) and (2), as follows:

7 (1) A net level annual premium equal to the present value, at the date of issue,
8 of such benefits provided for after the first policy year, divided by the
9 present value, at the date of issue, of an annuity of one per annum payable
10 on the first and each subsequent anniversary of such policy on which a
11 premium falls due; provided, however, that such net level annual premium
12 shall not exceed the net level annual premium on the 19-year premium
13 whole life plan for insurance of the same amount at an age one year higher
14 than the age at issue of such policy.

15 (2) A net one year term premium for such benefits provided for in the first
16 policy year.

17 Provided that for any life insurance policy issued on or after January 1, 1985, for which the
18 contract premium in the first policy year exceeds that of the second year and for which no
19 comparable additional benefits are provided in the first year for such excess and which provides
20 an endowment benefit or a cash surrender value of a combination thereof in an amount greater
21 than such excess premium, the reserve according to the Commissioner's reserve valuation
22 method as of any policy anniversary occurring on or before the assumed ending date defined
23 herein as the first policy anniversary on which the sum of any endowment benefit and any cash
24 surrender value then available is greater than such excess premium shall, except as otherwise
25 provided in subsection (g), be the greater of the reserve as of such policy anniversary calculated
26 as described in the first paragraph of this subsection and the reserve as of such policy
27 anniversary calculated as described in that paragraph, but with (i) the value defined in
28 subparagraph (1) of that paragraph being reduced by fifteen percent (15%) of the amount of
29 such excess first year premium, (ii) all present values of benefits and premiums being
30 determined without reference to premiums or benefits provided for by the policy after the
31 assumed ending date, (iii) the policy being assumed to mature on such date as an endowment,
32 and (iv) the cash surrender value provided on such date being considered as an endowment
33 benefit. In making the above comparison the mortality and interest bases stated in subdivisions
34 (2) and (4) of subsection (c) shall be used.

35 Reserves according to the Commissioner's reserve valuation method for: (i) life insurance
36 policies providing for a varying amount of insurance or requiring the payment of varying
37 premiums; (ii) group annuity and pure endowment contracts purchased under a retirement plan
38 or plan of deferred compensation, established or maintained by an employer (including a
39 partnership or sole proprietorship) or by an employee organization, or by both, other than a
40 plan providing individual retirement accounts or individual retirement annuities under section
41 408 of the Internal Revenue Code, as now or hereafter amended; (iii) disability and accidental
42 death benefits in all policies and contracts; and (iv) all other benefits, except life insurance and
43 endowment benefits in life insurance policies and benefits provided by all other annuity and
44 pure endowment contracts, shall be calculated by a method consistent with the principles of this
45 subsection except that any extra premiums charged because of impairments or special hazards
46 shall be disregarded in the determination of modified net premiums.

47 ~~(d-1)~~(d1) This subsection shall apply to all annuity and pure endowment contracts other
48 than group annuity and pure endowment contracts purchased under a retirement plan or plan of
49 deferred compensation, established or maintained by an employer (including a partnership or
50 sole proprietorship) or by an employee organization, or by both, other than a plan providing

1 individual retirement accounts or individual retirement annuities under section 408 of the
2 Internal Revenue Code, as now or hereafter amended.

3 Reserves according to the Commissioner's annuity reserve method for benefits under
4 annuity or pure endowment contracts, excluding any disability and accidental death benefits in
5 such contracts, shall be the greatest of the respective excesses of the present values, at the date
6 of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits,
7 provided for by such contracts at the end of each respective contract year, over the present
8 value, at the date of valuation, of any future valuation considerations derived from future gross
9 considerations, required by the terms of such contract, that become payable prior to the end of
10 such respective contract year. The future guaranteed benefits shall be determined by using the
11 mortality table, if any, and the interest rate, or rates, specified in such contracts for determining
12 guaranteed benefits. The valuation considerations are the portions of the respective gross
13 considerations applied under the terms of such contracts to determine nonforfeiture values.

14 (e) In no event shall a company's aggregate reserves for all life insurance policies,
15 excluding disability and accidental death benefits, issued on or after the effective date of this
16 section, be less than the aggregate reserves calculated in accordance with the methods set forth
17 in subsections (d), ~~(d-1)~~, (d1), (g) and (h) of this section and the mortality table or tables and
18 rate or rates of interest used in calculating nonforfeiture benefits for such policies. In no event
19 shall the aggregate reserves for all policies, contracts, and benefits be less than the aggregate
20 reserves determined by the ~~qualified~~ appointed actuary to be necessary to render the opinion
21 required by subsection (i) or subsection (j1) of this section.

22 (f) Reserves for all policies and contracts issued before the effective date of this section
23 may be calculated, at the option of the company, according to any standards that produce
24 greater aggregate reserves for those policies and contracts than the minimum reserves required
25 by the laws in effect immediately before that date.

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

33 Any such company that adopts any standard of valuation producing greater aggregate
34 reserves than those calculated according to the minimum standard herein provided may, with
35 the approval of the Commissioner, adopt any lower standard of valuation, but not lower than
36 the minimum ~~herein provided~~ provided in this section. Provided, however, that for the purposes
37 of this section, the holding of additional reserves previously determined by a ~~qualified~~ the
38 appointed actuary to be necessary to render the opinion required by subsection ~~(e)~~ (i) or (j1) of
39 this section shall not be deemed to be the adoption of a higher standard of valuation.

40 (g) If in any contract year the gross premium charged by any ~~life insurance~~ company on
41 any policy or contract is less than the valuation net premium for the policy or contract
42 calculated by the method used in calculating the reserve thereon but using the minimum
43 valuation standards of mortality and rate of interest, the minimum reserve required for such
44 policy or contract shall be the greater of either the reserve calculated according to the mortality
45 table, rate of interest, and method actually used for such policy or contract, or the reserve
46 calculated by the method actually used for such policy or contract but using the minimum
47 valuation standards of mortality and rate of interest and replacing the valuation net premium by
48 the actual gross premium in each contract year for which the valuation net premium exceeds
49 the actual gross premium. The minimum valuation standards of mortality and rate of interest
50 referred to in this subsection are those standards stated in subdivisions (1), (2) and (4) of
51 subsection (c).

1 Provided that for any life insurance policy issued on or after January 1, 1985, for which the
2 gross premium in the first policy year exceeds that of the second year and for which no
3 comparable additional benefit is provided in the first year for such excess and which provides
4 an endowment benefit or a cash surrender value or a combination thereof in an amount greater
5 than such excess premium, the foregoing provisions of this subsection ~~(g)~~ shall be applied as if
6 the method actually used in calculating the reserve for such policy were the method described
7 in subsection (d), ignoring the second paragraph of subsection (d). The minimum reserve at
8 each policy anniversary of such a policy shall be the greater of the minimum reserve calculated
9 in accordance with subsection (d), including the second paragraph of that subsection, and the
10 minimum reserve calculated in accordance with this ~~subsection (g)~~ subsection.

11 (h) In the case of any plan of life insurance which provides for future premium
12 determination, the amounts of which are to be determined by the insurance company based on
13 then estimates of future experience, or in the case of any plan of life insurance or annuity which
14 is of such a nature that the minimum reserves cannot be determined by the methods described
15 in subsections (d), ~~(d-1), (d1)~~ and (g), the reserves which are held under any such plan must:

- 16 (1) Be appropriate in relation to the benefits and the pattern of premiums for that
17 plan, and
- 18 (2) Be computed by a method which is consistent with the principles of this
19 Standard Valuation Law, as determined by regulations promulgated by the
20 Commissioner.

21 (i) ~~Every~~ Prior to the operative date of the valuation manual as specified in
22 G.S. 58-58-51, every life insurance company doing business in this State shall annually submit
23 the opinion of a qualified actuary as to whether the reserves and related actuarial items held in
24 support of the policies and contracts specified by the Commissioner by rule are computed
25 appropriately, are based on assumptions that satisfy contractual provisions, are consistent with
26 previously reported amounts, and comply with applicable laws of this State. The Commissioner
27 by rule shall define the specifics of this opinion and add any other items deemed to be
28 necessary to its scope. Every life insurance company, except as exempted by or pursuant to
29 rule, shall also annually include in the opinion required by this subsection, an opinion of the
30 same qualified actuary as to whether the reserves and related actuarial items held in support of
31 the policies and contracts specified by the Commissioner by rule, when considered in light of
32 the assets held by the company with respect to the reserves and related actuarial items,
33 including but not limited to the investment earnings on the assets and the considerations
34 anticipated to be received and retained under the policies and contracts, make adequate
35 provision for the company's obligations under the policies and contracts, including but not
36 limited to the benefits under and expenses associated with the policies and contracts. The
37 Commissioner may provide by rule for a transition period for establishing any higher reserves
38 that the qualified actuary may deem to be necessary in order to render the opinion required by
39 this subsection.

40 (j) Each opinion required by subsection (i) of this section shall be governed by the
41 following provisions:

- 42 ...
- 43 ~~(7) For the purposes of this section, "qualified actuary" means a member in good~~
44 ~~standing of the American Academy of Actuaries who meets the requirement~~
45 ~~set forth in such rules.~~

46 ...

47 (j1) On or after the operative date of the valuation manual, every company with
48 outstanding life insurance contracts, annuity contracts, pure endowment contracts, accident and
49 health insurance contracts or deposit-type contracts in this State and subject to regulation by the
50 Commissioner shall annually submit the opinion of the appointed actuary as to whether the
51 reserves and related actuarial items held in support of the policies and contracts are computed

1 appropriately, are based on assumptions that satisfy contractual provisions, are consistent with
2 previously reported amounts, and comply with applicable laws of this State. The valuation
3 manual shall prescribe the specifics of this opinion, including any items deemed to be
4 necessary to its scope. Every company with outstanding life insurance contracts, annuity
5 contracts, pure endowment contracts, accident and health insurance contracts or deposit-type
6 contracts in this State and subject to regulation by the Commissioner, except as exempted in the
7 valuation manual, shall also annually include in the opinion required by this subsection, an
8 opinion of the same appointed actuary as to whether the reserves and related actuarial items
9 held in support of the policies and contracts specified in the valuation manual, when considered
10 in light of the assets held by the company with respect to the reserves and related actuarial
11 items, including, but not limited to, the investment earnings on the assets and the considerations
12 anticipated to be received and retained under the policies and contracts, make adequate
13 provision for the company's obligations under the policies and contracts, including, but not
14 limited to, the benefits under and expenses associated with the policies and contracts.

15 (j2) Each opinion required by subsection (j1) of this section shall be governed by the
16 following provisions:

- 17 (1) A memorandum, in form and substance as specified in the valuation manual
18 and acceptable to the Commissioner, shall be prepared to support each
19 actuarial opinion.
- 20 (2) If the company fails to provide a supporting memorandum at the request of
21 the Commissioner within a period specified in the valuation manual or the
22 Commissioner determines that the supporting memorandum provided by the
23 company fails to meet the standards prescribed by the valuation manual or is
24 otherwise unacceptable to the Commissioner, the Commissioner may engage
25 a qualified actuary at the expense of the company to review the opinion and
26 the basis for the opinion and prepare such supporting memorandum as is
27 required by the Commissioner.
- 28 (3) The opinion shall be in form and substance as specified in the valuation
29 manual and acceptable to the Commissioner.
- 30 (4) The opinion shall be submitted with the annual statement reflecting the
31 valuation of such reserve liabilities for each year ending on or after the
32 operative date of the valuation manual.
- 33 (5) The opinion shall apply to all policies and contracts subject to subsection
34 (j1) of this section plus other actuarial liabilities as specified in the valuation
35 manual.
- 36 (6) The opinion shall be based on standards adopted from time to time by the
37 Actuarial Standards Board or its successor and on such additional standards
38 as may be prescribed in the valuation manual.
- 39 (7) In the case of an opinion required to be submitted by a foreign or alien
40 company, the Commissioner may accept the opinion filed by that company
41 with the insurance supervisory official of another state if the Commissioner
42 determines that the opinion reasonably meets the requirements applicable to
43 a company domiciled in this State.
- 44 (8) Except in cases of fraud or willful misconduct, the appointed actuary shall
45 not be liable for damages to any person (other than the company and the
46 Commissioner) for any act, error, omission, decision, or conduct with
47 respect to the appointed actuary's opinion.
- 48 (9) Disciplinary action by the Commissioner against the company or the
49 appointed actuary shall be defined in rules by the Commissioner.

50 (k) The Commissioner shall adopt rules containing the minimum standards applicable
51 to the valuation of accident and health plans-insurance contracts issued prior to the operative

1 date of the valuation manual. The Commissioner may also adopt rules for the purpose of
2 recognizing new annuity mortality tables for use in determining reserve liabilities for annuities
3 and may adopt rules that govern minimum valuation standards for reserves of life insurance
4 companies. In adopting these rules, the Commissioner may consider model laws and
5 regulations promulgated and amended from time to time by the NAIC.

6 (l) The Commissioner may adopt rules for life insurers for the following matters:

- 7 (1) Reserves for contracts issued by insurers.
- 8 (2) Optional smoker-nonsmoker mortality tables permitted for use in
9 determining minimum reserve liabilities and nonforfeiture benefits.
- 10 (3) Optional blended gender mortality tables permitted for use in determining
11 nonforfeiture benefits for individual life policies.
- 12 (4) Optional tables acceptable for use in determining reserves and minimum
13 cash surrender values and amounts of paid-up nonforfeiture benefits.
- 14 (5) Assumptions for policyholder withdrawal rates for use in determining
15 minimum reserve liabilities.

16 In adopting these rules, the Commissioner may consider model laws and regulations
17 promulgated and amended from time to time by the NAIC.

18 (m) The valuation manual shall apply as described in this subsection.

19 (1) For policies issued on or after the operative date of the valuation manual, the
20 standard prescribed in the valuation manual is the minimum standard of
21 valuation required under subsections (b2) and (b3) of this section, except as
22 provided under subdivisions (5) or (7) of this subsection.

23 (2) The operative date of the valuation manual is specified in G.S. 58-58-51(b).

24 (3) Unless a change in the valuation manual specifies a later effective date,
25 changes to the valuation manual shall be effective on January 1 of the year
26 following the date when the change to the valuation manual has been
27 adopted by the NAIC by an affirmative vote representing each of the
28 following:

29 a. At least three-fourths of the members of the NAIC voting, but not
30 less than a majority of the total membership.

31 b. Members of the NAIC representing jurisdictions totaling more than
32 seventy-five percent (75%) of the direct premiums written as
33 reported in the following annual statements most recently available
34 prior to the vote described in this subdivision: life, accident and
35 health annual statements; health annual statements; and fraternal
36 annual statements.

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

38 a. Minimum valuation standards for and definitions of the policies or
39 contracts subject to subsections (b2) and (b3) of this section. Such
40 minimum valuation standards shall be as follows:

41 1. The Commissioner's reserve valuation method for life
42 insurance contracts subject to subsections (b2) and (b3) of
43 this section.

44 2. The Commissioner's annuity reserve valuation method for
45 annuity contracts subject to subsections (b2) and (b3) of this
46 section.

47 3. Minimum reserves for all other policies or contracts subject
48 to subsections (b2) and (b3) of this section.

49 b. The policies or contracts or types of policies or contracts that are
50 subject to the requirements of a principle-based valuation as

- 1 described in subsection (n) of this section and the minimum valuation
2 standards consistent with those requirements.
- 3 c. For policies and contracts subject to a principle-based valuation
4 under subsection (n) of this section, each of the following:
- 5 1. Requirements for the format of reports to the Commissioner
6 under sub-subdivision (2)(c) of subsection (n) of this section.
7 Such reports shall include information necessary to determine
8 if the valuation is appropriate and in compliance with this
9 section.
- 10 2. Assumptions shall be prescribed for risks over which the
11 company does not have significant control or influence.
- 12 3. Procedures for corporate governance and oversight of the
13 actuarial function, and a process for appropriate waiver or
14 modification of such procedures.
- 15 d. For policies not subject to a principle-based valuation under
16 subsection (n) of this section, the minimum valuation standard shall
17 either:
- 18 1. Be consistent with the minimum standard of valuation prior
19 to the operative date of the valuation manual; or
- 20 2. Develop reserves that quantify the benefits and guarantees,
21 and the funding, associated with the contracts and their risks
22 at a level of conservatism that reflects conditions that include
23 unfavorable events that have a reasonable probability of
24 occurring.
- 25 e. Other requirements, including, but not limited to, those relating to
26 reserve methods, models for measuring risk, generation of economic
27 scenarios, assumptions, margins, use of company experience, risk
28 measurement, disclosure, certifications, reports, actuarial opinions
29 and memorandums, transition rules and internal controls.
- 30 f. The data and form of the data required under subsection (o) of this
31 section, to whom the data must be submitted, and may specify other
32 requirements, including data analyses and reporting of analyses.
- 33 (5) In the absence of a specific valuation requirement, or if a specific valuation
34 requirement in the valuation manual is not, in the opinion of the
35 Commissioner, in compliance with this section, then the company shall, with
36 respect to such requirements, comply with minimum valuation standards
37 prescribed by the Commissioner by rule.
- 38 (6) The Commissioner may engage a qualified actuary, at the expense of the
39 company, to perform an actuarial examination of the company and opine on
40 the appropriateness of any reserve assumption or method used by the
41 company, or to review and opine on a company's compliance with any
42 requirement set forth in this section. The Commissioner may rely upon the
43 opinion, regarding provisions contained in this section, of a qualified actuary
44 engaged by the insurance regulator of another state, district, or territory of
45 the United States. As used in this subdivision, the term "engage" includes
46 employment and contracting.
- 47 (7) The Commissioner may require a company to change any assumption or
48 method that in the opinion of the Commissioner is necessary in order to
49 comply with the requirements of the valuation manual or this section; and
50 the company shall adjust the reserves as required by the Commissioner. The

1 Commissioner may take other disciplinary action as specified in rules
2 adopted by the Commissioner.

3 (n) The requirements of this subsection shall apply to any principle-based valuation of
4 policies issued on or after the operative date of the valuation manual.

5 (1) A company using a principle-based valuation for one or more policies or
6 contracts subject to this subsection as specified in the valuation manual must
7 establish, for those policies and contracts, reserves that meet all of the
8 following:

9 a. Quantify the benefits and guarantees, and the funding, associated
10 with the contracts and their risks at a level of conservatism that
11 reflects conditions that include unfavorable events that have a
12 reasonable probability of occurring during the lifetime of the
13 contracts. For policies or contracts with significant tail risk, the
14 reserves shall reflect conditions appropriately adverse to quantify the
15 tail risk.

16 b. Incorporate assumptions, risk analysis methods and financial models
17 and management techniques that are consistent with, but not
18 necessarily identical to, those utilized within the company's overall
19 risk assessment process, while recognizing potential differences in
20 financial reporting structures and any prescribed assumptions or
21 methods.

22 c. Incorporate assumptions that are derived in one of the following
23 manners:

24 1. The assumption is prescribed in the valuation manual.

25 2. For assumptions that are not prescribed, the assumptions shall
26 (i) be established utilizing the company's available
27 experience, to the extent it is relevant and statistically
28 credible; or (ii) to the extent that company data is not
29 available, relevant, or statistically credible, be established
30 utilizing other relevant, statistically credible experience.

31 d. Provide margins for uncertainty, including adverse deviation and
32 estimation error, such that the greater the uncertainty, the larger the
33 margin and resulting reserve.

34 (2) A company using a principle-based valuation for one or more policies or
35 contracts subject to this subsection as specified in the valuation manual shall
36 do the following:

37 a. Establish procedures for corporate governance and oversight of the
38 actuarial valuation function consistent with those described in the
39 valuation manual.

40 b. Provide to the Commissioner and the board of directors an annual
41 certification of the effectiveness of the internal controls with respect
42 to the principle-based valuation. Such controls shall be designed to
43 assure that all material risks inherent in the liabilities and associated
44 assets subject to such valuation are included in the valuation, and that
45 valuations are made in accordance with the valuation manual. The
46 certification shall be based on the controls in place as of the end of
47 the preceding calendar year.

48 c. Develop, and file with the Commissioner upon request, a
49 principle-based valuation report that complies with standards
50 prescribed in the valuation manual.

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

3 (p) The confidentiality of documents, materials, and other information provided to the
4 Commissioner under this section shall be maintained as described in this subsection.

5 (1) For purposes of this subsection, "confidential information" shall include all
6 of the following:

7 a. A memorandum in support of an opinion submitted under
8 subsections (i) or (j1) of this section and any other documents,
9 materials, and other information, including, but not limited to, all
10 working papers, and copies thereof, created, produced, or obtained
11 by or disclosed to the Commissioner or any other person in
12 connection with such memorandum.

13 b. All documents, materials, and other information, including, but not
14 limited to, all working papers and copies thereof, created, produced
15 or obtained by or disclosed to the Commissioner or any other person
16 in the course of an examination made under subdivision (6) of
17 subsection (m) of this section; provided, however, that if an
18 examination report or other material prepared in connection with an
19 examination made under the Examination Law (G.S. 58-2-131
20 through G.S. 58-2-134) is not held as private and confidential
21 information under the Examination Law, an examination report or
22 other material prepared in connection with an examination made
23 under subdivision (6) of subsection (m) of this section shall not be
24 "confidential information" to the same extent as if such examination
25 report or other material had been prepared under the Examination
26 Law.

27 c. Any reports, documents, materials and other information developed
28 by a company in support of, or in connection with, an annual
29 certification by the company under sub-subdivision (2)b. of
30 subsection (n) of this section evaluating the effectiveness of the
31 company's internal controls with respect to a principle-based
32 valuation and any other documents, materials and other information,
33 including, but not limited to, all working papers, and copies thereof,
34 created, produced or obtained by or disclosed to the Commissioner or
35 any other person in connection with such reports, documents,
36 materials and other information.

37 d. Any principle-based valuation report developed under
38 sub-subdivision (2)c. of subsection (n) of this section and any other
39 documents, materials and other information, including, but not
40 limited to, all working papers, and copies thereof, created, produced,
41 or obtained by or disclosed to the Commissioner or any other person
42 in connection with such report.

43 e. Any documents, materials, data and other information submitted by a
44 company under subsection (o) of this section (collectively,
45 "experience data") and any other documents, materials, data and
46 other information, including, but not limited to, all working papers,
47 and copies thereof, created or produced in connection with such
48 experience data, in each case that includes any potentially
49 company-identifying or personally identifiable information, that is
50 provided to or obtained by the Commissioner (together with any
51 "experience data," the "experience materials") and any other

1 documents, materials, data and other information, including, but not
2 limited to, all working papers, and copies thereof, created, produced,
3 or obtained by or disclosed to the Commissioner or any other person
4 in connection with such experience materials.

5 (2) Except as provided in this subsection, a company's confidential information
6 is confidential by law and privileged, shall not be subject to or considered
7 public record under G.S. 58-2-100 or Chapter 132 of the General Statutes,
8 shall not be subject to subpoena, and shall not be subject to discovery or
9 admissible in evidence in any private civil action. However, the
10 Commissioner is authorized to use the confidential information in the
11 furtherance of any regulatory or legal action brought as a part of the
12 Commissioner's official duties.

13 (3) Neither the Commissioner nor any person who received confidential
14 information while acting under the authority of the Commissioner shall be
15 permitted or required to testify in any private civil action concerning any
16 confidential information.

17 (4) In order to assist in the performance of the Commissioner's duties, the
18 Commissioner may share confidential information (i) with other state,
19 federal, and international regulatory agencies and with the NAIC and its
20 affiliates and subsidiaries and (ii) in the case of confidential information
21 specified in sub-subdivisions (1)a. and (1)d. of this subsection only, with the
22 Actuarial Board for Counseling and Discipline or its successor upon request
23 stating that the confidential information is required for the purpose of
24 professional disciplinary proceedings and with state, federal, and
25 international law enforcement officials; in the case of (i) and (ii), provided
26 that such recipient agrees, and has the legal authority to agree, to maintain
27 the confidentiality and privileged status of such documents, materials, data
28 and other information in the same manner and to the same extent as required
29 for the Commissioner.

30 (5) The Commissioner may receive documents, materials, data and other
31 information, including otherwise confidential and privileged documents,
32 materials, data or information, from the NAIC and its affiliates and
33 subsidiaries, from regulatory or law enforcement officials of other foreign or
34 domestic jurisdictions and from the Actuarial Board for Counseling and
35 Discipline or its successor and shall maintain as confidential or privileged
36 any document, material, data or other information received with notice or the
37 understanding that it is confidential or privileged under the laws of the
38 jurisdiction that is the source of the document, material, or other
39 information.

40 (6) The Commissioner may enter into agreements governing the sharing and use
41 of information consistent with this subsection.

42 (7) No waiver of any applicable privilege or claim of confidentiality in the
43 confidential information shall occur as a result of disclosure to the
44 Commissioner under this subsection or as a result of sharing as authorized in
45 subdivision (4) of this subsection.

46 (8) A privilege established under the law of any state or jurisdiction that is
47 substantially similar to the privilege established under this subsection shall
48 be available and enforced in any proceeding in, and in any court of, this
49 State.

1 (9) In this subsection, "regulatory agency," "law enforcement agency" and the
2 "NAIC" include, but are not limited to, their employees, agents, consultants,
3 and contractors.

4 (10) Notwithstanding subdivisions (2) through (9) of this subsection, confidential
5 information specified in sub-subdivisions (1)a. and (1)d. of this subsection
6 may be subject to subpoena for the purpose of defending an action seeking
7 damages from the appointed actuary submitting the related memorandum in
8 support of an opinion submitted under subsection (i) or (j1) of this section or
9 principle-based valuation report developed under sub-subdivision (2)c. of
10 subsection (n) of this section by reason of an action required by this section
11 or by rules promulgated by the Commissioner. Such confidential information
12 may otherwise be released by the Commissioner with the written consent of
13 the company. Once any portion of a memorandum in support of an opinion
14 submitted under subsection (i) or (j1) of this section or a principle-based
15 valuation report developed under sub-subdivision (2)c. of subsection (n) of
16 this section is cited by the company in its marketing or is publicly
17 volunteered to or before a governmental agency other than a state insurance
18 department or is released by the company to the news media, all portions of
19 such memorandum or report shall no longer be confidential.

20 (q) The Commissioner may exempt specific product forms or product lines of a
21 domestic company that is licensed and doing business only in this State from the requirements
22 of subsection (m) of this section provided (i) the Commissioner has issued an exemption in
23 writing to the company and has not subsequently revoked the exemption in writing; and (ii) the
24 company computes reserves using assumptions and methods used prior to the operative date of
25 the valuation manual in addition to any requirements established by the Commissioner by rule.
26 For any company granted an exemption under this subsection, the following subsections of this
27 section shall be applicable: (c), (d), (d1), (e), (f), (g), (h), (i), (j), (j1), (j2) and (k), excluding
28 any references to subsection (m) found therein.

29 (r) The Department shall have full authority to enter into contracts or other agreements
30 with the National Association of Insurance Commissioners, or any other state, entity, or person
31 to fulfill the requirements of this section. Such contracts shall not be subject to Articles 3, 3C,
32 and 8 of Chapter 143 of the General Statutes, or any rules and procedures adopted under those
33 Articles concerning procurement, contracting, and contract review."

34 **SECTION 2.** G.S. 58-58-55 reads as rewritten:

35 **"§ 58-58-55. Standard nonforfeiture provisions.**

36 ...

37 (e) (1) This subdivision (1) of subsection (e) shall not apply to policies issued on or
38 after the operative date of subdivision (4) of subsection (e) as defined
39 therein. Except as provided in the third paragraph of this subdivision, the
40 adjusted premiums for any policy shall be calculated on an annual basis and
41 shall be such uniform percentage of the respective premiums specified in the
42 policy for each policy year, excluding any extra premiums charged because
43 of impairments or special hazards, that the present value, at the date of issue
44 of the policy, of all such adjusted premiums shall be equal to the sum of (i)
45 the then present value of the future guaranteed benefits provided for by the
46 policy; (ii) two percent (2%) of the amount of insurance, if the insurance be
47 uniform in amount, or of the equivalent uniform amount, as hereinafter
48 defined, if the amount of insurance varies with duration of the policy; (iii)
49 forty percent (40%) of the adjusted premium for the first policy year; (iv)
50 twenty-five percent (25%) of either the adjusted premium for the first policy
51 year or the adjusted premium for a whole life policy of the same uniform or

1 equivalent uniform amount with uniform premiums for the whole of life
2 issued at the same age for the same amount of insurance, whichever is less.
3 Provided, however, that in applying the percentages specified in (iii) and (iv)
4 above, no adjusted premium shall be deemed to exceed four percent (4%) of
5 the amount of insurance or uniform amount equivalent thereto. The date of
6 issue of a policy for the purpose of this subsection shall be the date as of
7 which the rated age of the insured is determined.

8 In the case of a policy providing an amount of insurance varying with
9 duration of the policy, the equivalent uniform amount thereof for the purpose
10 of this section shall be deemed to be the uniform amount of insurance
11 provided by an otherwise similar policy containing the same endowment
12 benefit or benefits, if any, issued at the same age and for the same term, the
13 amount of which does not vary with duration and the benefits under which
14 have the same present value at the date of issue as the benefits under the
15 policy, provided, however, that in the case of a policy providing a varying
16 amount of insurance issued on the life of a child under age 10, the equivalent
17 uniform amount may be computed as though the amount of insurance
18 provided by the policy prior to the attainment of age 10 were the amount
19 provided by such policy at age 10.

20 The adjusted premiums for any policy providing term insurance benefits
21 by rider or supplemental policy provision shall be equal to (i) the adjusted
22 premiums for an otherwise similar policy issued at the same age without
23 such term insurance benefits, increased, during the period for which
24 premiums for such term insurance benefits are payable, by (ii) the adjusted
25 premiums for such term insurance, the foregoing items (i) and (ii) being
26 calculated separately and as specified in the first two paragraphs of this
27 subsection except that, for the purposes of (ii), (iii) and (iv) of the first such
28 paragraph, the amount of insurance or equivalent uniform amount of
29 insurance used in the calculation of the adjusted premiums referred to in (ii)
30 of this paragraph shall be equal to the excess of the corresponding amount
31 determined for the entire policy over the amount used in the calculation of
32 the adjusted premiums in (i).

33 Except as otherwise provided in subdivisions (2) and (3) of this
34 subsection, all adjusted premiums and present values referred to in this
35 section shall for all policies of ordinary insurance be calculated on the basis
36 of the Commissioner's 1941 Standard Ordinary Mortality Table, provided
37 that for any category of ordinary insurance issued on female risks, adjusted
38 premiums and present values may be calculated according to an age not
39 more than three years younger than the actual age of the insured, and such
40 calculations for all policies of industrial insurance shall be made on the basis
41 of the 1941 Standard Industrial Mortality Table. All calculations shall be
42 made on the basis of the rate of interest, not exceeding three and one-half
43 percent (3 1/2%) per annum, specified in the policy for calculating cash
44 surrender values and paid-up nonforfeiture benefits. Provided, however, that
45 in calculating the present value of any paid-up term insurance with
46 accompanying pure endowment, if any, offered as a nonforfeiture benefit,
47 the rates of mortality assumed may not be more than one hundred and thirty
48 percent (130%) of the rates of mortality according to such applicable table.
49 Provided, further, that for insurance issued on a substandard basis, the
50 calculation of any such adjusted premiums and present values may be based

1 on such other table of mortality as may be specified by the company and
2 approved by the Commissioner.

- 3 ...
4 (4) a. This subdivision shall apply to all policies issued on or after the
5 operative date of this subdivision (4) of subsection (e) as defined
6 herein. Except as provided in paragraph g of this subdivision, the
7 adjusted premiums for any policy shall be calculated on an annual
8 basis and shall be such uniform percentage of the respective
9 premiums specified in the policy for each policy year, excluding
10 amounts payable as extra premiums to cover impairments or special
11 hazards and also excluding any uniform annual contract charge or
12 policy fee specified in the policy in a statement of the method to be
13 used in calculating the cash surrender values and paid-up
14 nonforfeiture benefits, that the present value, at the date of issue of
15 the policy, of all adjusted premiums shall be equal to the sum of (i)
16 the then present value of the future guaranteed benefits provided for
17 by the policy; (ii) one percent (1%) of either the amount of insurance,
18 if the insurance be uniform in amount, or the average amount of
19 insurance at the beginning of each of the first 10 policy years; and
20 (iii) one hundred twenty-five percent (125%) of the nonforfeiture net
21 level premium as hereinafter defined. Provided, however, that in
22 applying the percentage specified in (iii) above no nonforfeiture net
23 level premium shall be deemed to exceed four percent (4%) of either
24 the amount of insurance, if the insurance be uniform in amount, or
25 the average amount of insurance at the beginning of each of the first
26 10 policy years. The date of issue of a policy for the purpose of this
27 subdivision shall be the date as of which the rated age of the insured
28 is determined.

- 29 ...
30 h. All adjusted premiums and present values referred to in this section
31 shall for all policies of ordinary insurance be calculated on the basis
32 of (i) the Commissioner's 1980 Standard Ordinary Mortality Table or
33 (ii) at the election of the company for any one or more specified
34 plans of life insurance, the Commissioner's 1980 Standard Ordinary
35 Mortality Table with Ten-Year Select Mortality Factors; shall for all
36 policies of industrial insurance be calculated on the basis of the
37 Commissioner's 1961 Standard Industrial Mortality Table; and shall
38 for all policies issued in a particular calendar year be calculated on
39 the basis of a rate of interest not exceeding the nonforfeiture interest
40 rate as defined in this subdivision for policies issued in that calendar
41 year. Provided, however, that:

- 42 ...
43 6. Any ~~For~~ policies issued prior to the operative date of the
44 valuation manual, which is defined in G.S. 58-58-51, any
45 Commissioners Standard ordinary mortality tables, adopted
46 after 1980 by the NAIC, that are approved by regulation
47 promulgated by the Commissioner for use in determining the
48 minimum nonforfeiture standard may be substituted for the
49 Commissioner's 1980 Standard Ordinary Mortality Table with
50 or without Ten-Year Select Mortality Factors or for the
51 Commissioner's 1980 Extended Term Insurance Table. For

1 policies issued on or after the operative date of the valuation
 2 manual, the valuation manual shall provide the
 3 Commissioners Standard mortality table for use in
 4 determining the minimum nonforfeiture standard that may be
 5 substituted for the Commissioners 1980 Standard Ordinary
 6 Mortality Table with or without Ten-Year Select Mortality
 7 Factors or for the Commissioners 1980 Extended Term
 8 Insurance Table. If the Commissioner approves by regulation
 9 any Commissioners Standard ordinary mortality table adopted
 10 by the NAIC for use in determining the minimum
 11 nonforfeiture standard for policies issued on or after the
 12 operative date of the valuation manual, then that minimum
 13 nonforfeiture standard supersedes the minimum nonforfeiture
 14 standard provided by the valuation manual.

15 7. ~~Any~~ For policies issued prior to the operative date of the
 16 valuation manual, any Commissioners Standard industrial
 17 mortality tables, adopted after 1980 by the NAIC, that are
 18 approved by regulation promulgated by the Commissioner for
 19 use in determining the minimum nonforfeiture standard may
 20 be substituted for the Commissioner's 1961 Standard
 21 Industrial Mortality Table or the Commissioner's 1961
 22 Industrial Extended Term Insurance Table. For policies
 23 issued on or after the operative date of the valuation manual,
 24 the valuation manual shall provide the Commissioners
 25 Standard mortality table for use in determining the minimum
 26 nonforfeiture standard that may be substituted for the
 27 Commissioners 1961 Industrial Extended Term Insurance
 28 Table. If the Commissioner approves by regulation any
 29 Commissioners Standard industrial mortality table adopted by
 30 the NAIC for use in determining the minimum nonforfeiture
 31 standard for policies issued on or after the operative date of
 32 the valuation manual, then that minimum nonforfeiture
 33 standard supersedes the minimum nonforfeiture standard
 34 provided by the valuation manual.

35 i. ~~The~~ For policies issued prior to the operative date of the valuation
 36 manual, the nonforfeiture interest rate per annum for any policy
 37 issued in a particular calendar year shall be equal to one hundred and
 38 twenty-five percent (125%) of the calendar year statutory valuation
 39 interest rate for such policy as defined in the Standard Valuation
 40 Law, rounded to the nearer one quarter of one percent (~~1/4 of~~
 41 ~~1%~~), (1/4 of 1%), but not less than four percent (4%). For policies
 42 issued on or after the operative date of the valuation manual, the
 43 nonforfeiture interest rate per annum for any policy issued in a
 44 particular calendar year shall be provided by the valuation manual.

45"

46 **SECTION 3.** Article 58 of Chapter 58 of the General Statutes is amended by
 47 adding a new section to read:

48 "**§ 58-58-51. NAIC valuation manual operative date.**

49 (a) As used in the section, "valuation manual" means the manual of valuation
 50 instructions adopted by the NAIC or as subsequently amended.

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

3 (1) The valuation manual has been adopted by the NAIC by an affirmative vote
4 of at least 42 members, or three-fourths of the members voting, whichever is
5 greater.

6 (2) The model Standard Valuation Law, as amended by the NAIC in 2009, or
7 legislation including substantially similar terms and provisions, has been
8 enacted by states representing more than seventy-five percent (75%) of the
9 direct premiums written as reported in the following annual statements
10 submitted for 2008: life, accident and health annual statements; health
11 annual statements; and fraternal annual statements.

12 (3) The model Standard Valuation Law, as amended by the NAIC in 2009, or
13 legislation including substantially similar terms and provisions, has been
14 enacted by at least 42 of the following 55 jurisdictions: the 50 states of the
15 United States, American Samoa, the American Virgin Islands, the District of
16 Columbia, Guam, and Puerto Rico."

17 **SECTION 4.** G.S. 58-50-50(j) reads as rewritten:

18 "(j) Each opinion required by subsection (i) of this section shall be governed by the
19 following provisions:

20 (1) A memorandum, in form and substance acceptable to the Commissioner as
21 specified by rule, shall be prepared to support each actuarial opinion.

22 (2) If the insurance company fails to provide a supporting memorandum at the
23 request of the Commissioner within a period specified by rule or the
24 Commissioner determines that the supporting memorandum provided by the
25 insurance company fails to meet the standards prescribed by the rules or is
26 otherwise unacceptable to the Commissioner, the Commissioner may engage
27 a qualified actuary at the expense of the company to review the opinion and
28 the basis for the opinion and prepare such supporting memorandum as is
29 required by the Commissioner.

30 (3) The opinion shall be submitted with the annual statement reflecting the
31 valuation of such reserve liabilities for each year ending on or after
32 December 31, 1994.

33 (4) The opinion shall apply to all business in force including individual and
34 group health insurance plans, in form and substance acceptable to the
35 Commissioner as specified by rule.

36 (5) The opinion shall be based on standards adopted from time to time by the
37 actuarial standards board and on such additional standards as the
38 Commissioner may by rule prescribe.

39 (6) In the case of an opinion required to be submitted by a foreign or alien
40 company, the Commissioner may accept the opinion filed by that company
41 with the insurance supervisory official of another state if the Commissioner
42 determines that the opinion reasonably meets the requirements applicable to
43 a company domiciled in this State.

44 (7) For the purposes of this section, "qualified actuary" means a member in good
45 standing of the American Academy of Actuaries who meets the requirement
46 set forth in such rules.

47 (8) Except in cases of fraud or willful misconduct, the qualified actuary shall not
48 be liable for damages to any person (other than the insurance company and
49 the Commissioner) for any act, error, omission, decision, or conduct with
50 respect to the actuary's opinion.

- 1 (9) Disciplinary action by the Commissioner against the company or the
2 qualified actuary shall be defined in rules by the Commissioner.
- 3 ~~(10) Any memorandum in support of the opinion, and any other material~~
4 ~~provided by the company to the Commissioner in connection therewith, shall~~
5 ~~be kept confidential by the Commissioner and shall not be made public and~~
6 ~~shall not be subject to subpoena, other than for the purpose of defending an~~
7 ~~action seeking damages from any person by reason of any action required by~~
8 ~~this section or by rules adopted under this section; provided, however, that~~
9 ~~the memorandum or other material may otherwise be released by the~~
10 ~~Commissioner (i) with the written consent of the company or (ii) to the~~
11 ~~American Academy of Actuaries upon request stating the memorandum or~~
12 ~~other material is required for the purpose of professional disciplinary~~
13 ~~proceedings and setting forth procedures satisfactory to the Commissioner~~
14 ~~for preserving the confidentiality of the memorandum or other material.~~
15 ~~Once any portion of the confidential memorandum is cited by the company~~
16 ~~in its marketing or is cited before any governmental agency other than a state~~
17 ~~insurance department or is released by the company to the news media, all~~
18 ~~portions of the confidential memorandum shall be no longer~~
19 ~~confidential. Except as provided in subdivisions (14), (15), and (16) of this~~
20 ~~subsection, documents, materials, or other information in the possession or~~
21 ~~control of the Commissioner that are included in a memorandum in support~~
22 ~~of the opinion, and any other material provided by the company to the~~
23 ~~Commissioner in connection with the opinion, shall be confidential by law~~
24 ~~and privileged, shall not be subject to or public records under G.S. 58-2-100~~
25 ~~or Chapter 132 of the General Statutes, shall not be subject to subpoena, and~~
26 ~~shall not be subject to discovery or admissible in evidence in any private~~
27 ~~civil action. However, the Commissioner is authorized to use the documents,~~
28 ~~materials or other information in the furtherance of any regulatory or legal~~
29 ~~action brought as part of the Commissioner's official duties.~~
- 30 (11) Neither the Commissioner nor any person who received documents,
31 materials or other information while acting under the authority of the
32 Commissioner shall be permitted or required to testify concerning any
33 confidential documents, materials or information subject to subdivision (10)
34 of this subsection in any private civil action.
- 35 (12) In order to assist in the performance of the Commissioner's duties, the
36 Commissioner may do any of the following:
- 37 a. Share documents, materials or other information, including the
38 confidential and privileged documents, materials, or information
39 subject to subdivision (10) of this subsection, with other state, federal
40 and international regulatory agencies, with the National Association
41 of Insurance Commissioners and its affiliates and subsidiaries, and
42 with state, federal and international law enforcement authorities,
43 provided that the recipient agrees to maintain the confidentiality and
44 privileged status of the document, material or other information.
- 45 b. Receive documents, materials, or information, including otherwise
46 confidential and privileged documents, materials or information,
47 from the National Association of Insurance Commissioners and its
48 affiliates and subsidiaries, and from regulatory and law enforcement
49 officials of other foreign or domestic jurisdictions, and shall maintain
50 as confidential or privileged any document, material, or information
51 received with notice or the understanding that it is confidential or

1 privileged under the laws of the jurisdiction that is the source of the
2 document, material or information.

3 c. Enter into agreements governing sharing and use of information
4 consistent with subdivisions (10) through (12) of this subsection.

5 (13) No waiver of any applicable privilege or claim of confidentiality in the
6 documents, materials or information shall occur as a result of disclosure to
7 the Commissioner under this section or as a result of sharing authorized by
8 subdivision (12) of this subsection.

9 (14) A memorandum in support of an opinion, and any other material provided
10 by the company in connection with the memorandum, may be subject to
11 subpoena for the purpose of defending an action seeking damages from the
12 actuary submitting the memorandum by reason of any action required by this
13 section or by rules adopted under this section.

14 (15) The memorandum or other material may otherwise be released by the
15 Commissioner (i) with the written consent of the company or (ii) to the
16 American Academy of Actuaries upon request stating the memorandum or
17 other material is required for the purpose of professional disciplinary
18 proceedings and setting forth procedures satisfactory to the Commissioner
19 for preserving the confidentiality of the memorandum or other material.

20 (16) Once any portion of the confidential memorandum is cited by the company
21 in its marketing or is cited before any governmental agency other than a state
22 insurance department or is released by the company to the news media, all
23 portions of the confidential memorandum shall no longer be confidential."

24 **SECTION 5.** If any section or provision of this act is declared unconstitutional,
25 preempted, or otherwise invalid by the courts, it does not affect the validity of the act as a
26 whole or any part other than the part so declared to be unconstitutional, preempted, or
27 otherwise invalid.

28 **SECTION 6.** Sections 1 and 2 of this act become effective on the operative date of
29 the manual of valuation instructions adopted by the National Association of Insurance
30 Commissioners as provided in G.S. 58-58-51. The remainder of this act is effective when it
31 becomes law.