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**WEST VIRGINIA LEGISLATURE**

*Regular Session, 2003*

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**ENROLLED**

**SENATE BILL NO.** 400

**(By Senators** Minard, Jenkins and Sharpe **)**

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**PASSED** March 8, 2003

**In Effect** 90 days from **Passage**

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### Senate Bill No. 400

(BY SENATORS MINARD, JENKINS AND SHARPE)

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

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

*Be it enacted by the Legislature of West Virginia:*

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

acted; and that section one, article thirty-nine of said chapter be amended and reenacted, all to read as follows:

**ARTICLE 2. INSURANCE COMMISSIONER.**

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

1 (a) The purpose of this section is to provide an effective  
2 and efficient system for examining the activities, opera-  
3 tions, financial condition and affairs of all persons trans-  
4 acting the business of insurance in this state and all  
5 persons otherwise subject to the jurisdiction of the com-  
6 missioner. The provisions of this section are intended to  
7 enable the commissioner to adopt a flexible system of  
8 examinations which directs resources as may be consid-  
9 ered appropriate and necessary for the administration of  
10 the insurance and insurance-related laws of this state.

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

13 (1) "Commissioner" means the commissioner of insur-  
14 ance of this state;

15 (2) "Company" or "insurance company" means any  
16 person engaging in or proposing or attempting to engage  
17 in any transaction or kind of insurance or surety business  
18 and any person or group of persons who may otherwise be  
19 subject to the administrative, regulatory or taxing author-  
20 ity of the commissioner, including, but not limited to, any  
21 domestic or foreign stock company, mutual company,  
22 mutual protective association, farmers mutual fire compa-  
23 nies, fraternal benefit society, reciprocal or interinsurance  
24 exchange, nonprofit medical care corporation, nonprofit  
25 health care corporation, nonprofit hospital service associa-  
26 tion, nonprofit dental care corporation, health mainte-  
27 nance organization, captive insurance company, risk  
28 retention group or other insurer regardless of the type of  
29 coverage written, benefits provided or guarantees made by  
30 each;

31 (3) "Department" means the department of insurance of  
32 this state; and

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

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

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

63 (1) The insurance department was at the time of the  
64 examination accredited under the national association of  
65 insurance commissioners' financial regulation standards  
66 and accreditation program; or

67 (2) The examination is performed under the supervision  
68 of an accredited insurance department or with the partici-  
69 pation of one or more examiners who are employed by an  
70 accredited state insurance department and who, after a  
71 review of the examination work papers and report, state  
72 under oath that the examination was performed in a  
73 manner consistent with the standards and procedures  
74 required by their insurance department.

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

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

91 (g) The commissioner may also cause to be examined, at  
92 the times as he or she considers necessary, the books,  
93 records, papers, documents, correspondence and methods  
94 of doing business of any agent, broker, excess lines broker  
95 or solicitor licensed by this state. For these purposes, the  
96 commissioner or his or her examiners shall have free  
97 access to all books, records, papers, documents and  
98 correspondence of all the agents, brokers, excess lines  
99 brokers and solicitors wherever the books, records, papers,  
100 documents and records are situate. The commissioner may  
101 revoke the license of any agent, broker, excess lines broker  
102 or solicitor who refuses to submit to the examination.

103 (h) In addition to conducting an examination, the  
104 commissioner or his or her examiners may, as the commis-  
105 sioner considers necessary, analyze or review any phase of  
106 the operations or methods of doing business of an insurer,  
107 agent, broker, excess lines broker, solicitor or other  
108 individual or corporation transacting or attempting to  
109 transact an insurance business in the state of West Vir-  
110 ginia. The commissioner may use the full resources  
111 provided by this section in carrying out these responsibili-  
112 ties, including any personnel and equipment provided by  
113 this section as the commissioner considers necessary.

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

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

132 (2) Every company or person from whom information is  
133 sought, its officers, directors and agents shall provide to  
134 the examiners appointed under subdivision (1) of this  
135 subsection timely, convenient and free access at all  
136 reasonable hours at its offices to all books, records,  
137 accounts, papers, documents and any or all computer or  
138 other recordings relating to the property, assets, business  
139 and affairs of the company being examined. The officers,

140 directors, employees and agents of the company or person  
141 shall facilitate the examination and aid in the examination  
142 so far as it is in their power to do so;

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

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

159 (5) When making an examination, analysis or review  
160 under this section, the commissioner may retain attorneys,  
161 appraisers, independent actuaries, independent certified  
162 public accountants, professionals or specialists with  
163 training or experience in reinsurance, investments or  
164 information systems or other professionals and specialists  
165 as examiners, the cost of which shall be borne by the  
166 company which is the subject of the examination, analysis  
167 or review or, in the commissioner's discretion, paid from  
168 the commissioner's examination revolving fund. The  
169 commissioner may recover costs paid from the commis-  
170 sioner's examination revolving fund pursuant to this  
171 subdivision from the company upon which the examina-  
172 tion, analysis or review is conducted unless the subject of  
173 the examination, analysis or review is an individual  
174 described in subdivision (2), subsection (q) of this section;

175 (6) Nothing contained in this section may be construed  
176 to limit the commissioner's authority to terminate or  
177 suspend any examination, analysis or review in order to  
178 pursue other legal or regulatory action pursuant to the  
179 insurance laws of this state. The commissioner or his or  
180 her examiners may at any time testify and offer other  
181 proper evidence as to information secured during the  
182 course of an examination, analysis or review whether or  
183 not a written report of the examination has at that time  
184 either been made, served or filed in the commissioner's  
185 office;

186 (7) Nothing contained in this section may be construed  
187 to limit the commissioner's authority to use and, if appro-  
188 priate, to make public any final or preliminary examina-  
189 tion report, any examiner or company workpapers or other  
190 documents or any other information discovered or devel-  
191 oped during the course of any examination, analysis or  
192 review in the furtherance of any legal or regulatory action  
193 which the commissioner may, in his or her sole discretion,  
194 consider appropriate. An examination report, when filed,  
195 shall be admissible in evidence in any action or proceeding  
196 brought by the commissioner against an insurance com-  
197 pany, its officers or agents and shall be prima facie  
198 evidence of the facts stated therein.

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

202 (1) All examination reports shall be comprised of only  
203 facts appearing upon the books, records or other docu-  
204 ments of the company, its agents or other persons exam-  
205 ined or as ascertained from the testimony of its officers or  
206 agents or other persons examined concerning its affairs  
207 and any conclusions and recommendations the examiners  
208 find reasonably warranted from the facts;

209 (2) No later than sixty days following completion of the  
210 examination the examiner in charge shall file with the



211 commissioner a verified written report of examination  
212 under oath. Upon receipt of the verified report, the  
213 commissioner shall transmit the report to the company  
214 examined, together with a notice which shall afford the  
215 company examined a reasonable opportunity of not more  
216 than ten days to make a written submission or rebuttal  
217 with respect to any matters contained in the examination  
218 report;

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

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

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

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

241 (4) All orders entered pursuant to this subsection shall be  
242 accompanied by findings and conclusions resulting from  
243 the commissioner's consideration and review of the  
244 examination report, relevant examiner workpapers and  
245 any written submissions or rebuttals. Any order issued

246 pursuant to paragraph (A), subdivision (3) of this subsection  
247 tion shall be considered a final administrative decision and  
248 may be appealed pursuant to section fourteen of this  
249 article and shall be served upon the company by certified  
250 mail, together with a copy of the adopted examination  
251 report. Within thirty days of the issuance of the adopted  
252 report the company shall file affidavits executed by each  
253 of its directors stating under oath that they have received  
254 a copy of the adopted report and related orders.

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

257 (1) Any hearing conducted pursuant to this section by  
258 the commissioner or the commissioner's authorized  
259 representative shall be conducted as a nonadversarial  
260 confidential investigatory proceeding as necessary for the  
261 resolution of any inconsistencies, discrepancies or disputed  
262 issues apparent upon the face of the filed examination  
263 report or raised by or as a result of the commissioner's  
264 review of relevant workpapers or by the written submission  
265 or rebuttal of the company. Within twenty days of the  
266 conclusion of any hearing, the commissioner shall enter an  
267 order pursuant to paragraph (A), subdivision (3), subsection  
268 (j) of this section;

269 (2) The commissioner may not appoint an examiner as an  
270 authorized representative to conduct the hearing. The  
271 hearing shall proceed expeditiously with discovery by the  
272 company limited to the examiner's workpapers which tend  
273 to substantiate any assertions set forth in any written  
274 submission or rebuttal. The commissioner or the commissioner's  
275 representative may issue subpoenas for the  
276 attendance of any witnesses or the production of any  
277 documents considered relevant to the investigation  
278 whether under the control of the commissioner, the  
279 company or other persons. The documents produced shall  
280 be included in the record and testimony taken by the  
281 commissioner or the commissioner's representative shall  
282 be under oath and preserved for the record. Nothing

283 contained in this section shall require the commissioner to  
284 disclose any information or records which would indicate  
285 or show the existence or content of any investigation or  
286 activity of a criminal justice agency;

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

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

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

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

318 (3) In the event the commissioner determines that  
319 regulatory action is appropriate as a result of any exami-  
320 nation, analysis or review, he or she may initiate any  
321 proceedings or actions as provided by law;

322 (4) All workingpapers, recorded information, documents  
323 and copies thereof produced by, obtained by or disclosed  
324 to the commissioner or any other person in the course of an  
325 examination, analysis or review made under this section  
326 must be given confidential treatment and are not subject  
327 to subpoena and may not be made public by the commis-  
328 sioner or any other person, except to the extent provided  
329 in subdivision (5), subsection (i) of this section. Access  
330 may also be granted in accordance with section nineteen  
331 of this article. The parties must agree in writing prior to  
332 receiving the information to provide to it the same confi-  
333 dential treatment as required by this section unless the  
334 prior written consent of the company to which it pertains  
335 has been obtained.

336 (m) The commissioner may require any examiner to  
337 furnish a bond in such amount as the commissioner may  
338 determine to be appropriate and the bond shall be ap-  
339 proved, filed and premium paid, with suitable proof  
340 submitted to the commissioner, prior to commencement of  
341 employment by the commissioner. No examiner may be  
342 appointed by the commissioner if the examiner, either  
343 directly or indirectly, has a conflict of interest or is  
344 affiliated with the management of or owns a pecuniary  
345 interest in any person subject to examination under this  
346 section. This section shall not be construed to automati-  
347 cally preclude an examiner from being:

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

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

352 (3) An investment owner in shares of regulated diversi-  
353 fied investment companies; or

354 (4) A settlor or beneficiary of a "blind trust" into which  
355 any otherwise impermissible holdings have been placed;

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

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

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

379 (2) Travel and living expenses of all personnel, including  
380 those who are not employees of the department of insur-  
381 ance, directly engaged in the conduct of the examination,  
382 analysis or review calculated at the rates as hereinbefore  
383 provided for;

384 (3) All other incidental expenses incurred by or on behalf  
385 of the personnel in the conduct of any authorized exami-  
386 nation, analysis or review.

387 (o) All insurers subject to the provisions of this section  
388 shall annually pay to the commissioner on or before the

389 first day of July, one thousand nine hundred ninety-one,  
390 and every first day of July thereafter an examination  
391 assessment fee of eight hundred dollars. Four hundred  
392 fifty dollars of this fee shall be paid to the treasurer of the  
393 state to the credit of a special revolving fund to be known  
394 as the "Commissioner's Examination Revolving Fund"  
395 which is hereby established and three hundred fifty dollars  
396 shall be paid to the treasurer of the state. The commis-  
397 sioner may at his or her discretion, upon notice to the  
398 insurers subject to this section, increase this examination  
399 assessment fee or levy an additional examination assess-  
400 ment fee of two hundred fifty dollars. In no event may the  
401 total examination assessment fee, including any additional  
402 examination assessment fee levied, exceed one thousand  
403 five hundred dollars per insurer in any calendar year.

404 (p) The moneys collected by the commissioner from an  
405 increase or additional examination assessment fee shall be  
406 paid to the treasurer of the state to be credited to the  
407 commissioner's examination revolving fund. Any funds  
408 expended or obligated by the commissioner from the  
409 commissioner's examination revolving fund may be  
410 expended or obligated solely for defrayment of the costs of  
411 examinations, analyses or reviews of the financial affairs  
412 and business practices of insurance companies, agents,  
413 brokers, excess lines brokers, solicitors or other individu-  
414 als or corporations transacting or attempting to transact  
415 an insurance business in this state made by the commis-  
416 sioner pursuant to this section or for the purchase of  
417 equipment and supplies, travel, education and training for  
418 the commissioner's deputies, other employees and ap-  
419 pointed examiners necessary for the commissioner to  
420 fulfill the statutory obligations created by this section.

421 (q) The commissioner may require other individuals who  
422 are not employees of the department of insurance who  
423 have been appointed by the commissioner to conduct or  
424 participate in the examination, analysis or review of  
425 insurers, agents, brokers, excess lines brokers, solicitors or

426 other individuals or corporations transacting or attempt-  
427 ing to transact an insurance business in this state to:

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

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

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

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

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

454 (3) The commissioner or any examiner shall be entitled  
455 to an award of attorney's fees and costs if he or she is the  
456 prevailing party in a civil cause of action for libel, slander  
457 or any other relevant tort arising out of activities in  
458 carrying out the provisions of this section and the party  
459 bringing the action was not substantially justified in doing  
460 so. For purposes of this section, a proceeding is "substan-

461 tially justified” if it had a reasonable basis in law or fact  
 462 at the time that it was initiated;

463 (4) This subsection does not abrogate or modify in any  
 464 way any constitutional immunity or common law or  
 465 statutory privilege or immunity heretofore enjoyed by any  
 466 person identified in subdivision (1) of this subsection.

**§33-2-19. Confidentiality of information.**

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

**ARTICLE 7. ASSETS AND LIABILITIES.**

**§33-7-9. Standard valuation law.**

1 (a) *Title.* — This section shall be known as the standard  
 2 valuation law.

3 (b) *Reserve valuation.* — The commissioner shall annu-  
 4 ally value, or cause to be valued, the reserve liabilities



5 (hereinafter called reserves) for all outstanding life  
6 insurance policies and annuity and pure endowment  
7 contracts of every life insurance company doing business  
8 in this state and may certify the amount of any such  
9 reserves specifying the mortality table or tables, rate or  
10 rates of interest and methods (net level premium method  
11 or other) used in the calculation of such reserves. In  
12 calculating such reserves, he or she may use group meth-  
13 ods and approximate averages for fractions of a year or  
14 otherwise. In lieu of the valuation of the reserves herein  
15 required of any foreign or alien company, he or she may  
16 accept any valuation made, or caused to be made, by the  
17 insurance supervisory official of any state or other juris-  
18 diction when such valuation complies with the minimum  
19 standard herein provided and if the official of such state  
20 or jurisdiction accepts as sufficient and for all valid legal  
21 purposes the certificate of valuation of the commissioner  
22 when such certificate states the valuation to have been  
23 made in a specified manner according to which the  
24 aggregate reserves would be at least as large as if they had  
25 been computed in the manner prescribed by the law of that  
26 state or jurisdiction.

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

30 (1) *General.* — Every life insurance company doing  
31 business in this state shall annually submit the opinion of  
32 a qualified actuary as to whether the reserves and related  
33 actuarial items held in support of the policies and con-  
34 tracts specified by the commissioner by regulation are  
35 computed appropriately, are based on assumptions which  
36 satisfy contractual provisions, are consistent with prior  
37 reported amounts and comply with applicable laws of this  
38 state. The commissioner by regulation shall define the  
39 specifics of this opinion and add any other item considered  
40 to be necessary to its scope.

41 (2) *Actuarial analysis of reserves and assets supporting*  
42 *such reserves.* —

43 (A) Every life insurance company, except as exempted by  
44 or pursuant to regulation, shall also annually include in  
45 the opinion required by subdivision (1) of this subsection  
46 an opinion of the same qualified actuary as to whether the  
47 reserves and related actuarial items held in support of the  
48 policies and contracts specified by the commissioner by  
49 regulation, when considered in light of the assets held by  
50 the company with respect to the reserves and related  
51 actuarial items, including, but not limited to, the invest-  
52 ment earnings on the assets and the considerations antici-  
53 pated to be received and retained under the policies and  
54 contracts, make adequate provision for the company's  
55 obligations under the policies and contracts, including, but  
56 not limited to, the benefits under and expenses associated  
57 with the policies and contracts.

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

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

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

68 (B) If the insurance company fails to provide a support-  
69 ing memorandum at the request of the commissioner  
70 within a period specified by regulation or the commis-  
71 sioner determines that the supporting memorandum  
72 provided by the insurance company fails to meet the  
73 standards prescribed by the regulations or is otherwise  
74 unacceptable to the commissioner, the commissioner may  
75 engage a qualified actuary at the expense of the company  
76 to review the opinion and the basis for the opinion and

77 prepare such supporting memorandum as is required by  
78 the commissioner.

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

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

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

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

93 (D) In the case of an opinion required to be submitted by  
94 a foreign or alien company, the commissioner may accept  
95 the opinion filed by that company with the insurance  
96 supervisory official of another state if the commissioner  
97 determines that the opinion reasonably meets the require-  
98 ments applicable to a company domiciled in this state.

99 (E) For the purposes of this section, “qualified actuary”  
100 means a member in good standing of the American acad-  
101 emy of actuaries who meets the requirements set forth in  
102 such regulations.

103 (F) Except in cases of fraud or willful misconduct, the  
104 qualified actuary shall not be liable for damages to any  
105 person (other than the insurance company and the com-  
106 missioner) for any act, error, omission, decision or conduct  
107 with respect to the actuary’s opinion.

108 (G) Disciplinary action by the commissioner against the  
109 company or the qualified actuary shall be defined in  
110 regulations by the commissioner.

111 (H) Any memorandum in support of the opinion and any  
112 other material provided by the company to the commis-  
113 sioner in connection therewith shall be kept confidential  
114 by the commissioner and shall not be made public and  
115 shall not be subject to subpoena, other than for the  
116 purpose of defending an action seeking damages from any  
117 person by reason of any action required by this section or  
118 by regulations promulgated hereunder: *Provided*, That the  
119 memorandum or other material may otherwise be released  
120 by the commissioner: (i) With the written consent of the  
121 company; (ii) to the American academy of actuaries upon  
122 request stating that the memorandum or other material is  
123 required for the purpose of professional disciplinary  
124 proceedings and setting forth procedures satisfactory to  
125 the commissioner for preserving the confidentiality of the  
126 memorandum or other material; or (iii) in accordance with  
127 section nineteen, article two of this chapter. Once any  
128 portion of the confidential memorandum is cited by the  
129 company in its marketing or is cited by the company  
130 before any governmental agency other than a state insur-  
131 ance department or is released by the company to the news  
132 media, all portions of the confidential memorandum shall  
133 be no longer confidential.

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

149 percent interest for such policies issued prior to the sixth  
150 day of April, one thousand nine hundred seventy-seven,  
151 five and one-half percent interest for single premium life  
152 insurance policies and four and one-half percent interest  
153 for all other such policies issued on and after the sixth day  
154 of April, one thousand nine hundred seventy-seven, and  
155 the following tables:

156 (1) For all ordinary policies of life insurance issued on  
157 the standard basis, excluding any disability and accidental  
158 death benefits in such policies: The commissioners 1941  
159 standard ordinary mortality table for such policies issued  
160 prior to the operative date of subsection (4a), section  
161 thirty, article thirteen of this chapter; the commissioners  
162 1958 standard ordinary mortality table for such policies  
163 issued on or after the operative date of said subsection and  
164 prior to the operative date of subsection (4c) of said  
165 section: *Provided*, That for any category of such policies  
166 issued on female risks, all modified net premiums and  
167 present values referred to in this section may be calculated  
168 according to an age not more than six years younger than  
169 the actual age of the insured; and for such policies issued  
170 on or after the operative date of subsection (4c), section  
171 thirty, article thirteen of this chapter: (i) The commission-  
172 ers 1980 standard ordinary mortality table; or (ii) at the  
173 election of the company for any one or more specified  
174 plans of life insurance, the commissioners 1980 standard  
175 ordinary mortality table with ten-year select mortality  
176 factors; or (iii) any ordinary mortality table adopted after  
177 the year one thousand nine hundred eighty by the national  
178 association of insurance commissioners that is approved  
179 by regulation promulgated by the commissioner for use in  
180 determining the minimum standard of valuation for such  
181 policies.

182 (2) For all industrial life insurance policies issued on the  
183 standard basis, excluding any disability and accidental  
184 death benefits in such policies: The 1941 standard indus-  
185 trial mortality table for such policies issued prior to the

186 operative date of subdivision (4), subsection (b), section  
187 thirty, article thirteen of this chapter and for such policies  
188 issued on or after such operative date, the commissioners  
189 1961 standard industrial mortality table or any industrial  
190 mortality table adopted after the year one thousand nine  
191 hundred eighty by the national association of insurance  
192 commissioners that is approved by regulation promulgated  
193 by the commissioner for use in determining the minimum  
194 standard of valuation for such policies.

195 (3) For individual annuity and pure endowment con-  
196 tracts, excluding any disability and accidental death  
197 benefits in such policies: The 1937 standard annuity  
198 mortality table or, at the option of the company, the  
199 annuity mortality table for 1949, ultimate, or any modifi-  
200 cation of either of these tables approved by the commis-  
201 sioner.

202 (4) For group annuity and pure endowment contracts,  
203 excluding any disability and accidental death benefits in  
204 such policies: The group annuity mortality table for 1951,  
205 any modification of such table approved by the commis-  
206 sioner, or at the option of the company, any of the tables  
207 or modifications of tables specified for individual annuity  
208 and pure endowment contracts.

209 (5) For total and permanent disability benefits in or  
210 supplementary to ordinary policies or contracts: For  
211 policies or contracts issued on or after the first day of  
212 January, one thousand nine hundred sixty-six, the tables  
213 of period two disablement rates and the 1930 to 1950  
214 termination rates of the 1952 disability study of the society  
215 of actuaries, with due regard to the type of benefit or any  
216 tables of disablement rates and termination rates adopted  
217 after the year one thousand nine hundred eighty by the  
218 national association of insurance commissioners that are  
219 approved by regulation promulgated by the commissioner  
220 for use in determining the minimum standard of valuation  
221 for such policies; for policies or contracts issued on or after  
222 the first day of January, one thousand nine hundred sixty-

223 one, and prior to the first day of January, one thousand  
224 nine hundred sixty-six, either such tables or, at the option  
225 of the company, the Class (3) disability table (1926); and  
226 for policies issued prior to the first day of January, one  
227 thousand nine hundred sixty-one, the Class (3) disability  
228 table (1926).

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

232 (6) For accidental death benefits in or supplementary to  
233 policies issued on or after the first day of January, one  
234 thousand nine hundred sixty-six, the 1959 accidental  
235 death benefits table or any accidental death benefits table  
236 adopted after the year one thousand nine hundred eighty  
237 by the national association of insurance commissioners,  
238 that is approved by regulation promulgated by the com-  
239 missioner for use in determining the minimum standard of  
240 valuation for such policies, for policies issued on or after  
241 the first day of January, one thousand nine hundred sixty-  
242 one, and prior to the first day of January, one thousand  
243 nine hundred sixty-six, either such table or, at the option  
244 of the company, the intercompany double indemnity  
245 mortality table; and for policies issued prior to the first  
246 day of January, one thousand nine hundred sixty-one, the  
247 intercompany double indemnity mortality table. Either  
248 table shall be combined with a mortality table for calcu-  
249 lating the reserves for life insurance policies.

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

253 (e) *Computation of minimum standard for annuities.* –  
254 Except as provided in subsection (f) of this section, the  
255 minimum standard for the valuation of all individual  
256 annuity and pure endowment contracts issued on or after  
257 the operative date of this subsection, as defined herein,  
258 and for all annuities and pure endowments purchased on

259 or after such operative date under group annuity and pure  
260 endowment contracts shall be the commissioner's reserve  
261 valuation methods defined in subsections (g) and (h) of this  
262 section and the following tables and interest rates:

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

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

284 (3) For individual annuity and pure endowment con-  
285 tracts issued on or after the sixth day of April, one thou-  
286 sand nine hundred seventy-seven, other than single  
287 premium immediate annuity contracts, excluding any  
288 disability and accidental death benefits in such contracts:  
289 The 1971 individual annuity mortality table or any  
290 individual annuity mortality table adopted after the year  
291 one thousand nine hundred eighty by the national associa-  
292 tion of insurance commissioners that is approved by  
293 regulation promulgated by the commissioner for use in  
294 determining the minimum standard of valuation for such  
295 contracts or any modification of these tables approved by



296 the commissioner and five and one-half percent interest  
297 for single premium deferred annuity and pure endowment  
298 contracts and four and one-half percent interest for all  
299 other such individual annuity and pure endowment  
300 contracts;

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

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

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

331 (f) *Computation of minimum standard by calendar year*  
332 *of issue. -*

333 (1) *Applicability of this section.* — The interest rates used  
334 in determining the minimum standard for the valuation of:

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

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

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

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

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

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

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

357 (ii) For single premium immediate annuities and for  
358 annuity benefits involving life contingencies arising from  
359 other annuities with cash settlement options and from  
360 guaranteed interest contracts with cash settlement options,  
361  $I = .03 + W(R -.03)$  where R1 is the lesser of R and .09, R2 is  
362 the greater of R and .09, R is the reference interest rate  
363 defined in this subsection and W is the weighting factor  
364 defined in this section;

365 (iii) For other annuities with cash settlement options and  
366 guaranteed interest contracts with cash settlement options,  
367 valued on an issue year basis, except as stated in subpara-  
368 graph (ii) of this paragraph, the formula for life insurance  
369 stated in subparagraph (i) of this paragraph shall apply to  
370 annuities and guaranteed interest contracts with guaran-  
371 tee durations in excess of ten years and the formula for  
372 single premium immediate annuities stated in subpara-  
373 graph (ii) of this paragraph shall apply to annuities and  
374 guaranteed interest contracts with guarantee duration of  
375 ten years or less;

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

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

386 (B) However, if the calendar year statutory valuation  
387 interest rate for any life insurance policies issued in any  
388 calendar year determined without reference to this sen-  
389 tence differs from the corresponding actual rate for similar  
390 policies issued in the immediately preceding calendar year  
391 by less than one half of one percent, the calendar year  
392 statutory valuation interest rate for such life insurance  
393 policies shall be equal to the corresponding actual rate for  
394 the immediately preceding calendar year. For purposes of  
395 applying the immediately preceding sentence, the calendar  
396 year statutory valuation interest rate for life insurance  
397 policies issued in a calendar year shall be determined for  
398 the year one thousand nine hundred eighty (using the  
399 reference interest rate defined for the year one thousand  
400 nine hundred seventy-nine) and shall be determined for  
401 each subsequent calendar year regardless of when subdivi-

402 sion (4), subsection (c), section thirty, article thirteen of  
403 this chapter, as amended, becomes operative.

404 (3) *Weighting factors.* –

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

407 (i) Weighting Factors for Life Insurance:

408	Guarantee	
409	Duration	Weighting
410	(Years)	Factors
411		
412	10 or less	.50
413	More than 10, but not more than 20	.45
414	More than 20	.35

415 For life insurance, the guarantee duration is the maxi-  
416 mum number of years the life insurance can remain in  
417 force on a basis guaranteed in the policy or under options  
418 to convert to plans of life insurance with premium rates or  
419 nonforfeiture values or both which are guaranteed in the  
420 original policy;

421 (ii) Weighting factor for single premium immediate  
422 annuities and for annuity benefits involving life contin-  
423 gencies arising from other annuities with cash settlement  
424 options and guaranteed interest contracts with cash  
425 settlement options: .80;

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

432 (I) For annuities and guaranteed interest contracts  
433 valued on an issue year basis:

434	Guaranteed	Weighting Factor		
435	Duration	for Plan Type		
436	(Years)	A	B	C
437				

438	5 or less:	.80	.60	.50
-----	------------	-----	-----	-----

439	More than 5, but not more than 10:	.75	.60	.50
-----	------------------------------------	-----	-----	-----

440	More than 10, but not more than 20:	.65	.50	.45
-----	-------------------------------------	-----	-----	-----

441	More than 20:	.45	.35	.35
-----	---------------	-----	-----	-----

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

445		Weighting Factor		
446		for Plan Type		
447		A	B	C1
448				

449		.15	.25	.05
-----	--	-----	-----	-----

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

460		Weighting Factor for Plan Type		
461		A	B	C1
462				

463		.05	.05	.05
-----	--	-----	-----	-----

464 (IV) For other annuities with cash settlement options and  
 465 guaranteed interest contracts with cash settlement options,

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

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

477 Plan Type A:

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

484 Plan Type B:

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

494 Plan Type C:

495 Policyholder may withdraw funds before expiration of  
496 interest rate guarantee in a single sum or installments over  
497 less than five years either: (1) Without adjustment to  
498 reflect changes in interest rates or asset values since receipt  
499 of the funds by the insurance company; or (2) subject only

500 to a fixed surrender charge stipulated in the contract as a  
501 percentage of the fund.

502 (VI) A company may elect to value guaranteed interest  
503 contracts with cash settlement options and annuities with  
504 cash settlement options on either an issue year basis or on  
505 a change in fund basis. Guaranteed interest contracts with  
506 no cash settlement options and other annuities with no cash  
507 settlement options must be valued on an issue year basis.  
508 As used in this section, an issue year basis of valuation  
509 refers to a valuation basis under which the interest rate  
510 used to determine the minimum valuation standard for the  
511 entire duration of the annuity or guaranteed interest  
512 contract is the calendar year valuation interest rate for the  
513 year of issue or year of purchase of the annuity or guaran-  
514 teed interest contract and the change in fund basis of  
515 valuation refers to a valuation basis under which the  
516 interest rate used to determine the minimum valuation  
517 standard applicable to each change in the fund held under  
518 the annuity or guaranteed interest contract is the calendar  
519 year valuation interest rate for the year of the change in the  
520 fund.

521 (4) *Reference interest rate.* —

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

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

532 (ii) For single premium immediate annuities and for  
533 annuity benefits involving life contingencies arising from  
534 other annuities with cash settlement options and guaran-

535 teed interest contracts with cash settlement options, the  
536 average over a period of twelve months, ending on the  
537 thirtieth day of June of the calendar year of issue or year of  
538 purchase, of the monthly average of the composite yield on  
539 seasoned corporate bonds as published by Moody's inves-  
540 tors service, inc.

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

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

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

567 (vi) For other annuities with cash settlement options and  
568 guaranteed interest contracts with cash settlement options,  
569 valued on a change in fund basis, except as stated in  
570 subparagraph (ii) of this paragraph, the average over a



571 period of twelve months, ending on the thirtieth day of  
572 June of the calendar year of the change in the fund, of the  
573 monthly average of the composite yield on seasoned  
574 corporate bonds as published by Moody's investors service,  
575 inc.

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

578 In the event that the monthly average of the composite  
579 yield on seasoned corporate bonds is no longer published  
580 by Moody's investors service, inc., or in the event that the  
581 national association of insurance commissioners deter-  
582 mines that the monthly average of the composite yield on  
583 seasoned corporate bonds as published by Moody's inves-  
584 tors service, inc., is no longer appropriate for the determi-  
585 nation of the reference interest rate, then an alternative  
586 method for determination of the reference interest rate,  
587 which is adopted by the national association of insurance  
588 commissioners and approved by regulation promulgated by  
589 the commissioner, may be substituted.

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

592 Except as otherwise provided in subsections (h), (k) and  
593 (m) of this section, reserves according to the commissioners  
594 reserve valuation method for the life insurance and endow-  
595 ment benefits of policies providing for a uniform amount of  
596 insurance and requiring the payment of uniform premiums  
597 shall be the excess, if any, of the present value, at the date  
598 of valuation, of such future guaranteed benefits provided  
599 for by such policies, over the then present value of any  
600 future modified net premiums therefor. The modified net  
601 premiums for any such policy shall be such uniform  
602 percentage of the respective contract premiums for such  
603 benefits that the present value, at the date of issue of the  
604 policy, of all such modified net premiums shall be equal to  
605 the sum of the then present value of such benefits provided  
606 for by the policy and the excess of subdivision (1) of this

607 subsection over subdivision (2) of this subsection, as  
608 follows:

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

619 (2) A net one-year term premium for such benefits  
620 provided for in the first policy year: *Provided*, That for any  
621 life insurance policy issued on or after the first day of  
622 January, one thousand nine hundred eighty-five, for which  
623 the contract premium in the first policy year exceeds that  
624 of the second year and for which no comparable additional  
625 benefit is provided in the first year for such excess and  
626 which provides an endowment benefit or a cash surrender  
627 value or a combination thereof in an amount greater than  
628 such excess premium, the reserve according to the commis-  
629 sioners' reserve valuation method as of any policy anniver-  
630 sary occurring on or before the assumed ending date  
631 defined herein as the first policy anniversary on which the  
632 sum of any endowment benefit and any cash surrender  
633 value then available is greater than such excess premium  
634 shall, except as otherwise provided in subsection (k) of this  
635 section, be the greater of the reserve as of such policy  
636 anniversary calculated as described in the preceding  
637 paragraph and the reserve as of such policy anniversary  
638 calculated as described in that paragraph, but with: (i) The  
639 value defined in subdivision (1) of that paragraph being  
640 reduced by fifteen percent of the amount of such excess  
641 first-year premium; (ii) all present values of benefits and  
642 premiums being determined without reference to premiums  
643 or benefits provided for by the policy after the assumed

644 ending date; (iii) the policy being assumed to mature on  
645 such date as an endowment; and (iv) the cash surrender  
646 value provided on such date being considered as an endow-  
647 ment benefit. In making the above comparison, the  
648 mortality and interest bases stated in subsections (d) and (f)  
649 of this section shall be used.

650 Reserves according to the commissioners' reserve valua-  
651 tion method for: (i) Life insurance policies providing for a  
652 varying amount of insurance or requiring the payment of  
653 varying premiums; (ii) group annuity and pure endowment  
654 contracts purchased under a retirement plan or plan of  
655 deferred compensation, established or maintained by an  
656 employer (including a partnership or sole proprietorship)  
657 or by an employee organization, or by both, other than a  
658 plan providing individual retirement accounts or individual  
659 retirement annuities under section 408 of the Internal  
660 Revenue Code (26 U. S. C. §408) as now or hereafter  
661 amended; (iii) disability and accidental death benefits in all  
662 policies and contracts; and (iv) all other benefits, except life  
663 insurance and endowment benefits in life insurance policies  
664 and benefits provided by all other annuity and pure  
665 endowment contracts, shall be calculated by a method  
666 consistent with the principles of the preceding paragraphs  
667 of this section.

668 (h) *Reserve valuation method.* — Annuity and pure  
669 endowment benefits. This subsection shall apply to all  
670 annuity and pure endowment contracts other than group  
671 annuity and pure endowment contracts purchased under a  
672 retirement plan or plan of deferred compensation estab-  
673 lished or maintained by an employer (including a part-  
674 nership or sole proprietorship) or by an employee organization,  
675 or by both, other than a plan providing individual retire-  
676 ment accounts or individual retirement annuities under  
677 section 408 of the Internal Revenue Code (26 U. S. C. §408)  
678 as now or hereafter amended.

679 Reserves according to the commissioners' annuity reserve  
680 method for benefits under annuity or pure endowment

681 contracts, excluding any disability and accidental death  
682 benefits in such contracts, shall be the greatest of the  
683 respective excesses of the present values, at the date of  
684 valuation, of the future guaranteed benefits, including  
685 guaranteed nonforfeiture benefits, provided for by such  
686 contracts at the end of each respective contract year over  
687 the present value, at the date of valuation, of any future  
688 valuation considerations derived from future gross consid-  
689 erations, required by the terms of such contract, that  
690 become payable prior to the end of such respective contract  
691 year.

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

698 (i) *Minimum reserves.* –

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

707 (2) In no event shall the aggregate reserves for all poli-  
708 cies, contracts and benefits be less than the aggregate  
709 reserves determined by the qualified actuary to be neces-  
710 sary to render the opinion required by subsection (c) of this  
711 section.

712 (j) *Optional reserve calculation.* –

713 Reserves for all policies and contracts issued prior to the  
714 effective date of this section may be calculated, at the  
715 option of the company, according to any standards which

716 produce greater aggregate reserves for all such policies and  
717 contracts than the minimum reserves required by the laws  
718 in effect immediately prior to such date.

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

730 Any such company which at any time shall have adopted  
731 any standard of valuation producing greater aggregate  
732 reserves than those calculated according to the minimum  
733 standard herein provided may, with the approval of the  
734 commissioner, adopt any lower standard of valuation, but  
735 not lower than the minimum herein provided: *Provided,*  
736 That for the purposes of this section, the holding of addi-  
737 tional reserves previously determined by a qualified  
738 actuary to be necessary to render the opinion required by  
739 subsection (c) of this section shall not be considered to be  
740 the adoption of a higher standard of valuation.

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

743 If in any contract year the gross premium charged by any  
744 life insurance company on any policy or contract is less  
745 than the valuation net premium for the policy or contract  
746 calculated by the method used in calculating the reserve  
747 thereon but using the minimum valuation standards of  
748 mortality and rate of interest, the minimum reserve  
749 required for such policy or contract shall be the greater of  
750 either the reserve calculated according to the mortality  
751 table, rate of interest and method actually used for such

752 policy or contract or the reserve calculated by the method  
753 actually used for such policy or contract but using the  
754 minimum valuation standards of mortality and rate of  
755 interest and replacing the valuation net premium by the  
756 actual gross premium in each contract year for which the  
757 valuation net premium exceeds the actual gross premium.  
758 The minimum valuation standards of mortality and rate of  
759 interest referred to in this section are those standards  
760 stated in subsections (d) and (f) of this section: *Provided*,  
761 That for any life insurance policy issued on or after the first  
762 day of January, one thousand nine hundred eighty-five, for  
763 which the gross premium in the first policy year exceeds  
764 that of the second year and for which no comparable  
765 additional benefit is provided in the first year for such  
766 excess and which provides an endowment benefit or a cash  
767 surrender value or a combination thereof in an amount  
768 greater than such excess premium, the foregoing provisions  
769 of this subsection shall be applied as if the method actually  
770 used in calculating the reserve for such policy were the  
771 method described in subsection (g) of this section, ignoring  
772 the second paragraph of said subsection.

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

778 (l) *Reserve calculation.* – Indeterminate premium plans.

779 In the case of any plan of life insurance which provides  
780 for future premium determination, the amounts of which  
781 are to be determined by the insurance company based on  
782 then estimates of future experience, or in the case of any  
783 plan of life insurance or annuity which is of such a nature  
784 that the minimum reserves cannot be determined by the  
785 methods described in subsections (g), (h) and (k) of this  
786 section, the reserves which are held under any such plan  
787 must:

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

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

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

795 The commissioner shall promulgate a regulation contain-  
796 ing the minimum standards applicable to the valuation of  
797 health (disability, sickness and accident) plans.

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

808 (o) *Effective date.* –

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

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

815 (1) The commissioner may, by rule, establish alternative  
816 methods of calculating reserve liabilities, which methods  
817 shall be used to calculate reserve liabilities for the types of  
818 policies, annuities or other contracts identified in the rule:  
819 *Provided*, That the method specified in the rule shall be one  
820 which, in the opinion of the commissioner and in light of  
821 the methods applied to such contracts by the insurance

822 regulators of other states, is appropriate to such contracts.  
823 This power shall be in addition to, and in no way diminish,  
824 rule-making power granted to the commissioner elsewhere  
825 in this code.

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

#### ARTICLE 39. DISCLOSURE OF MATERIAL TRANSACTIONS.

##### §33-39-1. Report.

1 (a) Every insurer domiciled in this state shall file a report  
2 with the commissioner disclosing material acquisitions and  
3 dispositions of assets or material nonrenewals, cancella-  
4 tions or revisions of ceded reinsurance programs unless  
5 the acquisitions and dispositions of assets or material  
6 nonrenewals, cancellations or revisions of ceded reinsur-  
7 ance programs have been submitted to the commissioner  
8 for review, approval or information purposes pursuant to  
9 other provisions of this chapter.

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

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

16 (1) The insurance commissioner; and

17 (2) The national association of insurance commissioners.



18 (d) All reports obtained by or disclosed to the commis-  
19 sioner pursuant to this article shall be given confidential  
20 treatment and shall not be subject to subpoena and shall  
21 not be made public by the commissioner, the national  
22 association of insurance commissioners or any other person  
23 in accordance with section nineteen, article two of this  
24 chapter without the prior written consent of the insurer to  
25 which it pertains unless the commissioner, after giving the  
26 insurer who would be affected thereby notice and an  
27 opportunity to be heard, determines that the interest of  
28 policyholders, shareholders or the public will be served by  
29 the publication thereof, in which event the commissioner  
30 may publish all or any part thereof in such manner as he or  
31 she may consider appropriate.

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

*Curry P. Moore*  
.....  
Chairman Senate Committee

*Greg Butcher*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Dorell Eldredge*  
.....  
Clerk of the Senate

*Bryan W. Bant*  
.....  
Clerk of the House of Delegates

*Carl Ray Tompkins*  
.....  
President of the Senate

*Mark Stiss*  
.....  
Speaker House of Delegates

The within is approved this the 1<sup>st</sup>  
Day of April, 2003.  
*Bob Wise*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3-20-03

Time 9:50 AM