

By: Hancock  
(Sheets)

S.B. No. 1379

Substitute the following for S.B. No. 1379:

By: Sheets

C.S.S.B. No. 1379

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the standard valuation for life insurance, accident and  
3 health insurance, and annuities.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 425.052, Insurance Code, is amended by  
6 amending Subsection (a) and adding Subsection (c) to read as  
7 follows:

8 (a) In this subchapter:

9 (1) "Accident and health insurance" means contracts  
10 that incorporate morbidity risk and provide protection against  
11 economic loss resulting from accident, sickness, or medical  
12 conditions and as may be specified in the valuation manual.

13 (2) "Appointed actuary" means a qualified actuary who  
14 is appointed in accordance with the valuation manual to prepare the  
15 actuarial opinion required by Section 425.0545.

16 (3) "Company" means an entity that:

17 (A) has written, issued, or reinsured life  
18 insurance contracts, accident and health insurance contracts, or  
19 deposit-type contracts in this state and has at least one such  
20 policy in force or on claim; or

21 (B) has written, issued, or reinsured life  
22 insurance contracts, accident and health insurance contracts, or  
23 deposit-type contracts in any state and is required to hold a  
24 certificate of authority to write life insurance, accident and

1 health insurance, or deposit-type contracts in this state.

2 (4) "Deposit-type contract" means a contract that does  
3 not incorporate mortality or morbidity risk and as may be specified  
4 in the valuation manual.

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

8 (6) "Policyholder behavior" means any action a  
9 policyholder, a contract holder, or any other person with the right  
10 to elect options, such as a certificate holder, may take under a  
11 policy or contract subject to this subchapter, including lapse,  
12 withdrawal, transfer, deposit, premium payment, loan,  
13 annuitization, or benefit elections prescribed by the policy or  
14 contract but excluding events of mortality or morbidity that result  
15 in benefits prescribed in their essential aspects by the terms of  
16 the policy or contract.

17 (7) "Principle-based valuation" means the valuation  
18 described by Section 425.074.

19 (8) "Qualified actuary" means an individual who is  
20 qualified to sign the applicable statement of actuarial opinion in  
21 accordance with the American Academy of Actuaries' qualification  
22 standards for actuaries signing such statements and who meets the  
23 requirements specified in the valuation manual.

24 (9) "Reserves" [~~,"reserves"~~] means reserve  
25 liabilities.

26 (10) "Tail risk" means a risk that occurs either where  
27 the frequency of low probability events is higher than expected

1 under a normal probability distribution or where there are observed  
2 events of very significant size or magnitude.

3 (11) "Valuation manual" means the manual of valuation  
4 instructions adopted by the commissioner by order.

5 (c) The definitions under Subsection (a) of "accident and  
6 health insurance," "appointed actuary," "company," "deposit-type  
7 contract," "life insurance," "policyholder behavior,"  
8 "principle-based valuation," "qualified actuary," and "tail risk"  
9 apply only on and after the operative date of the valuation manual.

10 SECTION 2. The heading to Section 425.053, Insurance Code,  
11 is amended to read as follows:

12 Sec. 425.053. ANNUAL VALUATION OF RESERVES FOR POLICIES AND  
13 CONTRACTS ISSUED BEFORE OPERATIVE DATE OF VALUATION MANUAL.

14 SECTION 3. Section 425.053, Insurance Code, is amended by  
15 amending Subsections (a) and (c) and adding Subsections (d) and (e)  
16 to read as follows:

17 (a) The department shall annually value or cause to be  
18 ~~[have]~~ valued the reserves for all outstanding life insurance  
19 policies and annuity and pure endowment contracts of each life  
20 insurance company engaged in business in this state issued before  
21 the operative date of the valuation manual. ~~[The department may~~  
22 ~~certify the amount of those reserves, specifying the mortality~~  
23 ~~table or tables, rate or rates of interest, and methods, including~~  
24 ~~the net level premium method or another method, used in computing~~  
25 ~~those reserves.]~~

26 (c) Instead of valuing the reserves as required by  
27 Subsection (a) for a foreign or alien company, the department may

1 accept any valuation made by or for the insurance supervisory  
2 official of another state or jurisdiction if[+]

3 [~~(1)~~] the valuation complies with the minimum standard  
4 provided by this subchapter[+ and

5 [~~(2)~~ the official accepts as sufficient and valid for  
6 all legal purposes a certificate of valuation made by the  
7 department that states the valuation was made in a specified manner  
8 according to which the aggregate reserves would be at least as large  
9 as they would be if computed in the manner prescribed by the law of  
10 that state or jurisdiction].

11 (d) Except as otherwise provided by this subchapter,  
12 policies and contracts issued on or after the operative date of the  
13 valuation manual are governed by Section 425.0535.

14 (e) The minimum standards for the valuation of policies and  
15 contracts issued before the operative date of the valuation manual  
16 are as provided by Sections 425.058 through 425.071 and Section  
17 425.072(b), as applicable. Sections 425.072(a), 425.073, and  
18 425.074 do not apply to a policy or contract described by this  
19 subsection.

20 SECTION 4. Subchapter B, Chapter 425, Insurance Code, is  
21 amended by adding Section 425.0535 to read as follows:

22 Sec. 425.0535. ANNUAL VALUATION OF RESERVES FOR POLICIES  
23 AND CONTRACTS ISSUED ON OR AFTER OPERATIVE DATE OF VALUATION  
24 MANUAL. (a) The commissioner shall annually value, or cause to be  
25 valued, the reserves for all outstanding life insurance contracts,  
26 annuity and pure endowment contracts, accident and health  
27 contracts, and deposit-type contracts of each company issued on or

1 after the operative date of the valuation manual as provided by this  
2 section.

3 (b) In lieu of the valuation of the reserves required of a  
4 foreign or alien company, the commissioner may accept a valuation  
5 made, or caused to be made, by the insurance supervisory official of  
6 another state if the valuation complies with the minimum standard  
7 provided by this subchapter.

8 (c) Sections 425.072(a), 425.073, and 425.074 apply to all  
9 policies and contracts issued on or after the operative date of the  
10 valuation manual.

11 SECTION 5. The heading to Section 425.054, Insurance Code,  
12 is amended to read as follows:

13 Sec. 425.054. ACTUARIAL OPINION OF RESERVES BEFORE  
14 OPERATIVE DATE OF VALUATION MANUAL [~~REQUIRED~~].

15 SECTION 6. Section 425.054, Insurance Code, is amended by  
16 amending Subsection (a) and adding Subsections (a-1), (j), (k),  
17 (l), (m), (n), (o), (p), and (q) to read as follows:

18 (a) This section applies only to an actuarial opinion of  
19 reserves before the operative date of the valuation manual.

20 (a-1) For purposes of this section, "qualified actuary"  
21 means:

22 (1) a qualified actuary, as that term is defined by  
23 Section 802.002; or

24 (2) a person who, before September 1, 1993, satisfied  
25 the requirements of the former State Board of Insurance to submit an  
26 opinion under former Section 2A(a)(1), Article 3.28.

27 (j) Except as provided by Subsections (l), (n), (o), and

1 (p), any document or other information in the possession or control  
2 of the department that is a memorandum in support of the opinion or  
3 other material provided by the company to the commissioner in  
4 connection with a memorandum is confidential and not subject to:

5 (1) disclosure under Chapter 552, Government Code;

6 (2) subpoena;

7 (3) discovery; or

8 (4) admissibility as evidence in a private civil  
9 action.

10 (k) The commissioner or any person who receives a document  
11 or other information described by Subsection (j) while acting under  
12 the authority of the commissioner may not testify and may not be  
13 compelled to testify in a private civil action concerning the  
14 document or other information.

15 (1) The commissioner may:

16 (1) share documents or other information, including  
17 the confidential and privileged documents or information described  
18 by Subsection (j), with another state, federal, or international  
19 regulatory agency, with the National Association of Insurance  
20 Commissioners and its affiliates and subsidiaries, and with state,  
21 federal, and international law enforcement authorities, provided  
22 that the recipient agrees to maintain the confidentiality of the  
23 document or information;

24 (2) receive documents or other information, including  
25 confidential documents or information, from the National  
26 Association of Insurance Commissioners and its affiliates and  
27 subsidiaries, and from regulatory and law enforcement officials of

1 other foreign or domestic jurisdictions, provided that the  
2 commissioner shall maintain as confidential any document or  
3 information received with notice or understanding that it is  
4 confidential under the laws of the jurisdiction that is the source  
5 of the document or information; and

6 (3) enter into agreements governing sharing and use of  
7 documents and other information consistent with this section.

8 (m) Disclosing information or providing a document to the  
9 commissioner under this section, or sharing information as  
10 authorized under this section, does not result in a waiver of any  
11 applicable privilege or claim of confidentiality that may apply to  
12 the document or information.

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

19 (o) The memorandum or other material provided by the company  
20 to the commissioner in connection with the memorandum may otherwise  
21 be released by the commissioner with the written consent of the  
22 company, or to the Actuarial Board for Counseling and Discipline or  
23 its successor on receipt of a request stating that the memorandum or  
24 other material is required for the purpose of professional  
25 disciplinary proceedings and setting forth procedures satisfactory  
26 to the commissioner for preserving the confidentiality of the  
27 memorandum or other material.

1       (p) The memorandum ceases to be confidential if:

2               (1) any portion of the memorandum is cited by the  
3 company in its marketing;

4               (2) the memorandum is cited by the company before a  
5 government agency other than a state insurance department; or

6               (3) the memorandum is released by the company to the  
7 news media.

8       (q) This section does not prohibit the commissioner from  
9 using information acquired under this section in the furtherance of  
10 a legal or regulatory action relating to the administration of this  
11 code.

12       SECTION 7. Subchapter B, Chapter 425, Insurance Code, is  
13 amended by adding Section 425.0545 to read as follows:

14       Sec. 425.0545. ACTUARIAL OPINION OF RESERVES AFTER  
15 OPERATIVE DATE OF VALUATION MANUAL. (a) A company that has  
16 outstanding life insurance contracts, accident and health  
17 insurance contracts, or deposit-type contracts in this state and is  
18 subject to regulation by the department shall annually submit the  
19 opinion of the appointed actuary as to whether the reserves and  
20 related actuarial items held in support of the policies and  
21 contracts are computed appropriately, are based on assumptions that  
22 satisfy contractual provisions, are consistent with prior reported  
23 amounts, and are in compliance with applicable laws of this state.  
24 An opinion under this section must comply with provisions of the  
25 valuation manual, including in regard to any items necessary to its  
26 scope.

27       (b) Unless exempted by the valuation manual, a company



1 described by Subsection (a) shall include with the opinion required  
2 by that subsection an opinion of the same appointed actuary  
3 concerning whether the reserves and related actuarial items held in  
4 support of the policies and contracts specified in the valuation  
5 manual, when considered in light of the assets held by the company  
6 with respect to the reserves and related actuarial items, including  
7 investment earnings on the assets and considerations anticipated to  
8 be received and retained under the policies and contracts, make  
9 adequate provision for the company's obligations under the policies  
10 and contracts, including benefits under and expenses associated  
11 with the policies and contracts.

12 (c) Each opinion required by this section must:

13 (1) be in the form and contain the substance that is  
14 specified by the valuation manual and is acceptable to the  
15 commissioner;

16 (2) be submitted with the annual statement reflecting  
17 the valuation of reserves for each year ending on or after the  
18 operative date of the valuation manual;

19 (3) apply to all policies and contracts subject to  
20 this section, plus other actuarial liabilities specified by the  
21 valuation manual; and

22 (4) be based on standards adopted from time to time by  
23 the Actuarial Standards Board or its successor, and on any  
24 additional standards prescribed by the valuation manual.

25 (d) In the case of an opinion required to be submitted by a  
26 foreign or alien company, the commissioner may accept the opinion  
27 filed by the company with the insurance supervisory official of

1 another state if the commissioner determines that the opinion  
2 reasonably meets the requirements applicable to a company domiciled  
3 in this state.

4 SECTION 8. Section 425.055(a), Insurance Code, is amended  
5 to read as follows:

6 (a) A memorandum [~~that, in form and substance, complies with~~  
7 ~~the commissioner's rules~~] shall be prepared to support each  
8 actuarial opinion required by Section 425.054 or 425.0545. The  
9 form and substance of each supporting memorandum must comply with  
10 the commissioner's rules for memorandums subject to Section  
11 425.054, or the valuation manual for memorandums subject to Section  
12 425.0545.

13 SECTION 9. Section 425.056(a), Insurance Code, is amended  
14 to read as follows:

15 (a) Except in cases of fraud or wilful misconduct or as  
16 provided by Subsection (b), a person who certifies an opinion under  
17 Section 425.054 or 425.0545 is not liable for damages to a person,  
18 other than the life insurance company covered by the opinion, for an  
19 act, error, omission, decision, or other conduct with respect to  
20 the person's opinion.

21 SECTION 10. Section 425.057, Insurance Code, is amended to  
22 read as follows:

23 Sec. 425.057. DISCIPLINARY ACTION: COMPANY OR PERSON  
24 CERTIFYING OPINION. A company or person that certifies an opinion  
25 under Section 425.054 or 425.0545 and that violates Section  
26 425.054, 425.0545, or 425.055 or rules adopted or orders issued  
27 under those sections is subject to disciplinary action under

1 Chapter 82.

2 SECTION 11. The heading to Section 425.058, Insurance Code,  
3 is amended to read as follows:

4 Sec. 425.058. COMPUTATION [VALUATION] OF MINIMUM STANDARD  
5 [POLICY OR CONTRACT]: GENERAL RULE.

6 SECTION 12. The heading to Section 425.059, Insurance Code,  
7 is amended to read as follows:

8 Sec. 425.059. COMPUTATION [VALUATION] OF MINIMUM STANDARD  
9 FOR CERTAIN ANNUITIES AND PURE ENDOWMENT CONTRACTS.

10 SECTION 13. The heading to Section 425.064, Insurance Code,  
11 is amended to read as follows:

12 Sec. 425.064. COMMISSIONERS RESERVE VALUATION METHOD FOR  
13 LIFE INSURANCE AND ENDOWMENT BENEFITS.

14 SECTION 14. The heading to Section 425.065, Insurance Code,  
15 is amended to read as follows:

16 Sec. 425.065. COMMISSIONERS ANNUITY RESERVE VALUATION  
17 METHOD FOR ANNUITY AND PURE ENDOWMENT BENEFITS.

18 SECTION 15. Subchapter B, Chapter 425, Insurance Code, is  
19 amended by adding Sections 425.072, 425.073, 425.074, 425.075,  
20 425.076, and 425.077 to read as follows:

21 Sec. 425.072. MINIMUM STANDARD FOR ACCIDENT AND HEALTH  
22 INSURANCE CONTRACTS. (a) The standard prescribed by the valuation  
23 manual for accident and health insurance contracts issued on or  
24 after the operative date of the valuation manual is the minimum  
25 standard of valuation required under Section 425.0535.

26 (b) For disability, accident and sickness, and accident and  
27 health insurance contracts issued before the operative date of the

1 valuation manual, the minimum standard of valuation is the standard  
2 in existence before the operative date of the valuation manual.

3 Sec. 425.073. POLICIES ISSUED ON OR AFTER THE OPERATIVE  
4 DATE OF THE VALUATION MANUAL. (a) Except as otherwise provided by  
5 this section, for policies issued on or after the operative date of  
6 the valuation manual, the standard prescribed by the valuation  
7 manual is the minimum standard of valuation required under Section  
8 425.0535.

9 (b) The commissioner by order shall adopt a valuation manual  
10 and determine the operative date of the valuation manual. A  
11 valuation manual adopted by the commissioner under this section  
12 must be substantially similar to the valuation manual approved by  
13 the National Association of Insurance Commissioners. The operative  
14 date must be January 1 of the first calendar year immediately  
15 following a year in which, on or before July 1, the commissioner  
16 determines that:

17 (1) the valuation manual has been adopted by the  
18 National Association of Insurance Commissioners by an affirmative  
19 vote of at least 42 members, or three-fourths of the members voting,  
20 whichever is greater;

21 (2) the National Association of Insurance  
22 Commissioners Standard Model Valuation Law, as amended by the  
23 National Association of Insurance Commissioners in 2009, or  
24 legislation including substantially similar terms and provisions,  
25 has been enacted by states representing greater than 75 percent of  
26 the direct premiums written as reported in the following annual  
27 statements submitted for 2008:

1                   (A) life insurance and accident and health annual  
2 statements;

3                   (B) health annual statements; or

4                   (C) fraternal annual statements; and

5                   (3) the National Association of Insurance  
6 Commissioners Standard Model Valuation Law, as amended by the  
7 National Association of Insurance Commissioners in 2009, or  
8 legislation including substantially similar terms and provisions,  
9 has been enacted by at least 42 of the following 55 jurisdictions:

10                   (A) the 50 United States;

11                   (B) American Samoa;

12                   (C) the United States Virgin Islands;

13                   (D) the District of Columbia;

14                   (E) Guam; and

15                   (F) Puerto Rico.

16                   (c) After a valuation manual has been adopted by the  
17 commissioner by order, any changes to the valuation manual must be  
18 adopted by order and must be substantially similar to changes  
19 adopted by the National Association of Insurance Commissioners.  
20 Unless a change in the valuation specifies a later effective date,  
21 the effective date for changes to the valuation manual may not be  
22 earlier than January 1 of the year immediately following the date on  
23 which the commissioner determines that the changes to the valuation  
24 manual have been adopted by the National Association of Insurance  
25 Commissioners by an affirmative vote representing:

26                   (1) at least three-fourths of the members of the  
27 National Association of Insurance Commissioners voting, but not

1 less than a majority of the total membership; and

2 (2) members of the National Association of Insurance  
3 Commissioners representing jurisdictions totaling greater than 75  
4 percent of the direct premiums written as reported in the most  
5 recently available annual statements as provided by Subsections  
6 (b)(2)(A)-(C).

7 (d) The valuation manual must specify:

8 (1) the minimum valuation standards for and  
9 definitions of the policies or contracts subject to Section  
10 425.0535, including:

11 (A) the commissioner's reserve valuation method  
12 for life insurance contracts subject to Section 425.0535;

13 (B) the commissioner's annuity reserve  
14 valuation method for annuity contracts subject to Section 425.0535;  
15 and

16 (C) the minimum reserves for all other policies  
17 or contracts subject to Section 425.0535;

18 (2) the policies or contracts that are subject to the  
19 requirements of a principle-based valuation under Section 425.074  
20 and the minimum valuation standards consistent with those  
21 requirements, including:

22 (A) the requirements for the format of reports to  
23 the commissioner under Section 425.074(b)(3), which must include  
24 the information necessary to determine if a valuation is  
25 appropriate and in compliance with this subchapter;

26 (B) the assumptions prescribed for risks over  
27 which the company does not have significant control or influence;

1 and

2 (C) the procedures for corporate governance and  
3 oversight of the actuarial function, and a process for appropriate  
4 waiver or modification of the procedures;

5 (3) the policies that are not subject to a  
6 principle-based valuation under Section 425.074;

7 (4) the data and form of data required under Section  
8 425.074, to whom the data must be submitted, and other desired  
9 requirements, including requirements concerning data analyses and  
10 reporting of analyses; and

11 (5) other requirements, including requirements  
12 relating to reserve methods, models for measuring risk, generation  
13 of economic scenarios, assumptions, margins, use of company  
14 experience, disclosure, certification, reports, actuarial opinions  
15 and memorandums, transition rules, and internal controls.

16 (e) With respect to policies that are not subject to a  
17 principle-based valuation under Section 425.074 as described by  
18 Subsection (d)(3), the minimum valuation standard specified in the  
19 valuation manual must:

20 (1) be consistent with the minimum valuation standard  
21 before the operative date of the valuation manual; or

22 (2) develop reserves that quantify the benefits and  
23 guarantees, and the funding, associated with the contracts and  
24 their risks at a level of conservatism that reflects conditions  
25 that include unfavorable events that have a reasonable probability  
26 of occurring.

27 (f) In the absence of a specific valuation requirement or if

1 a specific valuation requirement in the valuation manual does not  
2 in the commissioner's opinion comply with this subchapter, the  
3 company shall, with respect to the requirement, comply with minimum  
4 valuation standards prescribed by the commissioner by rule.

5 (g) The commissioner may employ or contract with a qualified  
6 actuary, at the expense of the company, to perform an actuarial  
7 examination of the company and provide an opinion concerning the  
8 appropriateness of any reserve assumption or method used by the  
9 company, or to review and provide an opinion on a company's  
10 compliance with any requirement of this subchapter. The  
11 commissioner may rely on the opinion, regarding provisions  
12 contained within this subchapter, of a qualified actuary engaged by  
13 the insurance supervisory official of another state.

14 (h) The commissioner may require a company to change an  
15 assumption or method as necessary in the commissioner's opinion to  
16 comply with a requirement of the valuation manual or this  
17 subchapter.

18 (i) The commissioner may take other disciplinary action as  
19 permitted under Chapter 82.

20 Sec. 425.074. REQUIREMENTS OF A PRINCIPLE-BASED VALUATION.

21 (a) A company shall establish reserves using a principle-based  
22 valuation that meets the conditions for policies or contracts  
23 provided by the valuation manual. At a minimum, the valuation  
24 shall:

25 (1) quantify the benefits and guarantees, and the  
26 funding, associated with the contracts and their risks at a level of  
27 conservatism that reflects conditions that include unfavorable



1 events that have a reasonable probability of occurring during the  
2 terms of the contracts;

3 (2) with respect to policies and contracts with  
4 significant tail risk, reflect conditions appropriately adverse to  
5 quantify the tail risk;

6 (3) incorporate assumptions, risk analysis methods,  
7 and financial models and management techniques that are consistent  
8 with those used in the company's overall risk assessment process,  
9 while recognizing potential differences in financial reporting  
10 structures and any prescribed assumptions or methods;

11 (4) incorporate assumptions:

12 (A) prescribed by the valuation manual; or

13 (B) established:

14 (i) using the company's available  
15 experience, to the extent that data is relevant and statistically  
16 credible; or

17 (ii) to the extent that the company data is  
18 not available, relevant, or statistically credible, using other  
19 relevant, statistically credible experience; and

20 (5) provide margins for uncertainty, including  
21 adverse deviation and estimation error, such that the greater the  
22 uncertainty the larger the margin and resulting reserve.

23 (b) A company using a principle-based valuation for one or  
24 more policies or contracts subject to this section and as specified  
25 by the valuation manual shall:

26 (1) establish procedures for corporate governance and  
27 oversight of the actuarial valuation function consistent with

1 procedures specified by the valuation manual;

2 (2) provide to the commissioner and the company's  
3 board of directors an annual certification of the effectiveness of  
4 the internal controls with respect to the principle-based  
5 valuation; and

6 (3) develop, and file with the commissioner on  
7 request, a principle-based valuation report that complies with  
8 standards prescribed in the valuation manual.

9 (c) A company's internal controls with respect to the  
10 principle-based valuation must be designed to ensure that all  
11 material risks inherent in the liabilities and associated assets  
12 subject to the valuation are included in the valuation, and that  
13 valuations are made in accordance with the valuation manual. The  
14 certification described by Subsection (b)(2) must be based on the  
15 controls in place as of the end of the preceding calendar year.

16 (d) A principle-based valuation may include a prescribed  
17 formulaic reserve component.

18 Sec. 425.075. EXPERIENCE REPORTING FOR POLICIES IN FORCE ON  
19 OR AFTER OPERATIVE DATE OF VALUATION MANUAL. A company shall submit  
20 mortality, morbidity, policyholder behavior, or expense experience  
21 and other data as prescribed in the valuation manual.

22 Sec. 425.076. CONFIDENTIALITY. (a) In this section,  
23 "confidential information" means:

24 (1) a memorandum in support of an opinion submitted  
25 under Section 425.0545 and any other documents, materials, and  
26 other information, including, but not limited to, all working  
27 papers, and copies thereof, created, produced, or obtained by or

1 disclosed to the commissioner or any other person in connection  
2 with such memorandum;

3 (2) all documents, materials, and other information,  
4 including, but not limited to, all working papers, and copies  
5 thereof, created, produced, or obtained by or disclosed to the  
6 commissioner or any other person in the course of an examination  
7 made under Section 425.073(g); provided, however, that if an  
8 examination report or other material prepared in connection with an  
9 examination made under Subchapter B, Chapter 401, is not held as  
10 private and confidential information under Subchapter B, Chapter  
11 401, an examination report or other material prepared in connection  
12 with an examination made under Section 425.073(g) shall not be  
13 "confidential information" to the same extent as if such  
14 examination report or other material had been prepared under  
15 Subchapter B, Chapter 401;

16 (3) any reports, documents, materials, and other  
17 information developed by a company in support of, or in connection  
18 with, an annual certification by the company under Section  
19 425.074(b)(2) evaluating the effectiveness of the company's  
20 internal controls with respect to a principle-based valuation and  
21 any other documents, materials, and other information, including,  
22 but not limited to, all working papers, and copies thereof,  
23 created, produced, or obtained by or disclosed to the commissioner  
24 or any other person in connection with such reports, documents,  
25 materials, and other information;

26 (4) any principle-based valuation report developed  
27 under Section 425.074(b)(3) and any other documents, materials, and

1 other information, including, but not limited to, all working  
2 papers, and copies thereof, created, produced, or obtained by or  
3 disclosed to the commissioner or any other person in connection  
4 with such report; and

5           (5) any documents, materials, data, and other  
6 information submitted by a company under Section 425.075  
7 (collectively, "experience data") and any other documents,  
8 materials, data, and other information, including, but not limited  
9 to, all working papers, and copies thereof, created or produced in  
10 connection with such experience data, in each case that include any  
11 potentially company-identifying or personally identifiable  
12 information, that is provided to or obtained by the commissioner  
13 (together with any "experience data," the "experience materials")  
14 and any other documents, materials, data, and other information,  
15 including, but not limited to, all working papers, and copies  
16 thereof, created, produced, or obtained by or disclosed to the  
17 commissioner or any other person in connection with such experience  
18 materials.

19           (b) Except as provided in this section, a company's  
20 confidential information is confidential by law and privileged, and  
21 shall not be subject to Chapter 552, Government Code, shall not be  
22 subject to subpoena, and shall not be subject to discovery or  
23 admissible in evidence in any private civil action; provided,  
24 however, that the commissioner is authorized to use the  
25 confidential information in the furtherance of any regulatory or  
26 legal action brought against the company as a part of the  
27 commissioner's official duties.

1       (c) Neither the commissioner nor any person who received  
2 confidential information while acting under the authority of the  
3 commissioner shall be permitted or required to testify in any  
4 private civil action concerning any confidential information.

5       (d) In order to assist in the performance of the  
6 commissioner's duties, the commissioner may share confidential  
7 information (1) with other state, federal, and international  
8 regulatory agencies and with the National Association of Insurance  
9 Commissioners and its affiliates and subsidiaries and (2) in the  
10 case of confidential information specified in Subsections (a)(1)  
11 and (a)(4) only, with the Actuarial Board for Counseling and  
12 Discipline or its successor upon request stating that the  
13 confidential information is required for the purpose of  
14 professional disciplinary proceedings and with state, federal, and  
15 international law enforcement officials; in the case of (1) and  
16 (2), provided that such recipient agrees, and has the legal  
17 authority to agree, to maintain the confidentiality and privileged  
18 status of such documents, materials, data, and other information in  
19 the same manner and to the same extent as required for the  
20 commissioner.

21       (e) The commissioner may receive documents, materials,  
22 data, and other information, including otherwise confidential and  
23 privileged documents, materials, data, or information, from the  
24 National Association of Insurance Commissioners and its affiliates  
25 and subsidiaries, from regulatory or law enforcement officials of  
26 other foreign or domestic jurisdictions and from the Actuarial  
27 Board for Counseling and Discipline or its successor and shall

1 maintain as confidential or privileged any document, material,  
2 data, or other information received with notice or the  
3 understanding that it is confidential or privileged under the laws  
4 of the jurisdiction that is the source of the document, material, or  
5 other information.

6 (f) The commissioner may enter into agreements governing  
7 sharing and use of information consistent with Subsections (b)  
8 through (k).

9 (g) No waiver of any applicable privilege or claim of  
10 confidentiality in the confidential information shall occur as a  
11 result of disclosure to the commissioner under this section or as a  
12 result of sharing as authorized in Subsection (d).

13 (h) A privilege established under the law of any state or  
14 jurisdiction that is substantially similar to the privilege  
15 established under Subsections (b) through (k) shall be available  
16 and enforced in any proceeding in, and in any court of, this state.

17 (i) In this section, a reference to a regulatory agency, law  
18 enforcement agency, or the National Association of Insurance  
19 Commissioners includes an employee, agent, consultant, or  
20 contractor of the agency or association, as applicable.

21 (j) Notwithstanding this section, any confidential  
22 information specified in Subsections (a)(1) and (a)(4) may be:

23 (1) subject to subpoena for the purpose of defending  
24 an action seeking damages from the appointed actuary submitting the  
25 related memorandum in support of an opinion submitted under Section  
26 425.054 or 425.0545 or a principle-based valuation report developed  
27 under Section 425.074(b)(3) by reason of an action required by this

1 subchapter or by rules adopted or orders issued under this  
2 subchapter; and

3 (2) released by the commissioner with the written  
4 consent of the company.

5 (k) Once any portion of a memorandum in support of an  
6 opinion submitted under Section 425.0545 or a principle-based  
7 valuation report developed under Section 425.074(b)(3) is cited by  
8 the company in its marketing or is publicly volunteered to or before  
9 a governmental agency other than a state insurance department or is  
10 released by the company to the news media, all portions of such  
11 memorandum or report shall no longer be confidential.

12 Sec. 425.077. SINGLE STATE EXEMPTION. The commissioner may  
13 exempt specific product forms or product lines of a domestic  
14 company that is licensed and doing business only in this state from  
15 the requirements of Section 425.073 if:

16 (1) the commissioner has issued an exemption in  
17 writing to the company and has not subsequently revoked the  
18 exemption in writing; and

19 (2) the company computes reserves using assumptions  
20 and methods used before the operative date of the valuation manual  
21 in addition to any requirements established by the commissioner and  
22 adopted by rule.

23 SECTION 16. The commissioner of insurance shall determine  
24 whether the National Association of Insurance Commissioners and a  
25 sufficient number of states and other jurisdictions have adopted a  
26 valuation manual as required by Section 425.073(b), Insurance Code,  
27 as added by this Act. As soon as practicable after the commissioner

1 of insurance determines that the National Association of Insurance  
2 Commissioners and a sufficient number of states and other  
3 jurisdictions have adopted the valuation manual as required by that  
4 section, the commissioner of insurance shall adopt rules or issue  
5 orders necessary to implement this Act.

6 SECTION 17. This Act takes effect January 1, 2014.