

1-1 By: Hancock S.B. No. 1379
 1-2 (In the Senate - Filed March 7, 2013; March 18, 2013, read
 1-3 first time and referred to Committee on State Affairs;
 1-4 April 17, 2013, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 9, Nays 0; April 17, 2013,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1379 By: Lucio

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the standard valuation for life insurance, accident and
 1-22 health insurance, and annuities.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 425.052, Insurance Code, is amended by
 1-25 amending Subsection (a) and adding Subsection (c) to read as
 1-26 follows:

1-27 (a) In this subchapter:

1-28 (1) "Accident and health insurance" means contracts
 1-29 that incorporate morbidity risk and provide protection against
 1-30 economic loss resulting from accident, sickness, or medical
 1-31 conditions and as may be specified in the valuation manual.

1-32 (2) "Appointed actuary" means a qualified actuary who
 1-33 is appointed in accordance with the valuation manual to prepare the
 1-34 actuarial opinion required by Section 425.054.

1-35 (3) "Company" means an entity that:

1-36 (A) has written, issued, or reinsured life
 1-37 insurance contracts, accident and health insurance contracts, or
 1-38 deposit-type contracts in this state and has at least one such
 1-39 policy in force or on claim; or

1-40 (B) has written, issued, or reinsured life
 1-41 insurance contracts, accident and health insurance contracts, or
 1-42 deposit-type contracts in any state and is required to hold a
 1-43 certificate of authority to write life insurance, accident and
 1-44 health insurance, or deposit-type contracts in this state.

1-45 (4) "Deposit-type contract" means a contract that does
 1-46 not incorporate mortality or morbidity risk and as may be specified
 1-47 in the valuation manual.

1-48 (5) "Life insurance" means contracts that incorporate
 1-49 mortality risk, including annuity and pure endowment contracts, and
 1-50 as may be specified in the valuation manual.

1-51 (6) "Policyholder behavior" means any action a
 1-52 policyholder, a contract holder, or any other person with the right
 1-53 to elect options, such as a certificate holder, may take under a
 1-54 policy or contract subject to this subchapter, including lapse,
 1-55 withdrawal, transfer, deposit, premium payment, loan,
 1-56 annuitization, or benefit elections prescribed by the policy or
 1-57 contract but excluding events of mortality or morbidity that result
 1-58 in benefits prescribed in their essential aspects by the terms of
 1-59 the policy or contract.

1-60 (7) "Principle-based valuation" means the valuation

2-1 described by Section 425.074.

2-2 (8) "Qualified actuary" means an individual who is
 2-3 qualified to sign the applicable statement of actuarial opinion in
 2-4 accordance with the American Academy of Actuaries' qualification
 2-5 standards for actuaries signing such statements and who meets the
 2-6 requirements specified in the valuation manual.

2-7 (9) "Reserves" [~~,"reserves"~~] means reserve
 2-8 liabilities.

2-9 (10) "Tail risk" means a risk that occurs either where
 2-10 the frequency of low probability events is higher than expected
 2-11 under a normal probability distribution or where there are observed
 2-12 events of very significant size or magnitude.

2-13 (11) "Valuation manual" means the manual of valuation
 2-14 instructions adopted by the commissioner by rule.

2-15 (c) The definitions under Subsection (a) of "accident and
 2-16 health insurance," "appointed actuary," "company," "deposit-type
 2-17 contract," "life insurance," "policyholder behavior,"
 2-18 "principle-based valuation," "qualified actuary," and "tail risk"
 2-19 apply only on and after the operative date of the valuation manual.

2-20 SECTION 2. The heading to Section 425.053, Insurance Code,
 2-21 is amended to read as follows:

2-22 Sec. 425.053. ANNUAL VALUATION OF RESERVES FOR POLICIES AND
 2-23 CONTRACTS ISSUED BEFORE OPERATIVE DATE OF VALUATION MANUAL.

2-24 SECTION 3. Section 425.053, Insurance Code, is amended by
 2-25 amending Subsections (a) and (c) and adding Subsections (d) and (e)
 2-26 to read as follows:

2-27 (a) The department shall annually value or cause to be
 2-28 [have] valued the reserves for all outstanding life insurance
 2-29 policies and annuity and pure endowment contracts of each life
 2-30 insurance company engaged in business in this state issued before
 2-31 the operative date of the valuation manual. [The department may
 2-32 certify the amount of those reserves, specifying the mortality
 2-33 table or tables, rate or rates of interest, and methods, including
 2-34 the net level premium method or another method, used in computing
 2-35 those reserves.]

2-36 (c) Instead of valuing the reserves as required by
 2-37 Subsection (a) for a foreign or alien company, the department may
 2-38 accept any valuation made by or for the insurance supervisory
 2-39 official of another state or jurisdiction if[+]

2-40 [~~(1)~~] the valuation complies with the minimum standard
 2-41 provided by this subchapter[~~, and~~

2-42 [~~(2)~~ the official accepts as sufficient and valid for
 2-43 all legal purposes a certificate of valuation made by the
 2-44 department that states the valuation was made in a specified manner
 2-45 according to which the aggregate reserves would be at least as large
 2-46 as they would be if computed in the manner prescribed by the law of
 2-47 that state or jurisdiction].

2-48 (d) Except as otherwise provided by this subchapter,
 2-49 policies and contracts issued on or after the operative date of the
 2-50 valuation manual are governed by Section 425.0535.

2-51 (e) The minimum standards for the valuation of policies and
 2-52 contracts issued before the operative date of the valuation manual
 2-53 are as provided by Sections 425.058 through 425.071 and Section
 2-54 425.072(b), as applicable. Sections 425.072(a), 425.073, and
 2-55 425.074 do not apply to a policy or contract described by this
 2-56 subsection.

2-57 SECTION 4. Subchapter B, Chapter 425, Insurance Code, is
 2-58 amended by adding Section 425.0535 to read as follows:

2-59 Sec. 425.0535. ANNUAL VALUATION OF RESERVES FOR POLICIES
 2-60 AND CONTRACTS ISSUED ON OR AFTER OPERATIVE DATE OF VALUATION

2-61 MANUAL. (a) The commissioner shall annually value, or cause to be
 2-62 valued, the reserves for all outstanding life insurance contracts,
 2-63 annuity and pure endowment contracts, accident and health
 2-64 contracts, and deposit-type contracts of each company issued on or
 2-65 after the operative date of the valuation manual as provided by this
 2-66 section.

2-67 (b) In lieu of the valuation of the reserves required of a
 2-68 foreign or alien company, the commissioner may accept a valuation
 2-69 made, or caused to be made, by the insurance supervisory official of

3-1 another state if the valuation complies with the minimum standard
3-2 provided by this subchapter.

3-3 (c) Sections 425.072(a), 425.073, and 425.074 apply to all
3-4 policies and contracts issued on or after the operative date of the
3-5 valuation manual.

3-6 SECTION 5. The heading to Section 425.054, Insurance Code,
3-7 is amended to read as follows:

3-8 Sec. 425.054. ACTUARIAL OPINION OF RESERVES BEFORE
3-9 OPERATIVE DATE OF VALUATION MANUAL [~~REQUIRED~~].

3-10 SECTION 6. Section 425.054, Insurance Code, is amended by
3-11 amending Subsection (a) and adding Subsections (a-1), (j), (k),
3-12 (l), (m), (n), (o), (p), and (q) to read as follows:

3-13 (a) This section applies only to an actuarial opinion of
3-14 reserves before the operative date of the valuation manual.
3-15 Actuarial opinions of reserves on or after the operative date of the
3-16 valuation manual are governed by Section 425.0545.

3-17 (a-1) For purposes of this section, "qualified actuary"
3-18 means:

3-19 (1) a qualified actuary, as that term is defined by
3-20 Section 802.002; or

3-21 (2) a person who, before September 1, 1993, satisfied
3-22 the requirements of the former State Board of Insurance to submit an
3-23 opinion under former Section 2A(a)(1), Article 3.28.

3-24 (j) Except as provided by Subsections (l), (n), (o), and
3-25 (p), any document or other information in the possession or control
3-26 of the department that is a memorandum in support of the opinion or
3-27 other material provided by the company to the commissioner in
3-28 connection with a memorandum is confidential and not subject to:

3-29 (1) disclosure under Chapter 552, Government Code;

3-30 (2) subpoena;

3-31 (3) discovery; or

3-32 (4) admissibility as evidence in a private civil
3-33 action.

3-34 (k) The commissioner or any person who receives a document
3-35 or other information described by Subsection (j) while acting under
3-36 the authority of the commissioner may not testify and may not be
3-37 compelled to testify in a private civil action concerning the
3-38 document or other information.

3-39 (l) The commissioner may:

3-40 (1) share documents or other information, including
3-41 the confidential documents or information described by Subsection
3-42 (j), with another state, federal, or international regulatory
3-43 agency, with the National Association of Insurance Commissioners
3-44 and its affiliates and subsidiaries, and with state, federal, and
3-45 international law enforcement authorities, provided that the
3-46 recipient agrees to maintain the confidentiality of the document or
3-47 information;

3-48 (2) receive documents or other information, including
3-49 confidential documents or information, from the National
3-50 Association of Insurance Commissioners and its affiliates and
3-51 subsidiaries, and from regulatory and law enforcement officials of
3-52 other foreign or domestic jurisdictions, provided that the
3-53 commissioner shall maintain as confidential any document or
3-54 information received with notice or understanding that it is
3-55 confidential under the laws of the jurisdiction that is the source
3-56 of the document or information; and

3-57 (3) enter into agreements governing sharing and use of
3-58 documents and other information consistent with this section.

3-59 (m) Disclosing information or providing a document to the
3-60 commissioner under this section, or sharing information as
3-61 authorized under this section, does not result in a waiver of any
3-62 applicable privilege or claim of confidentiality that may apply to
3-63 the document or information.

3-64 (n) A memorandum in support of the opinion, and any other
3-65 material provided by the company to the commissioner in connection
3-66 with the memorandum, may be subject to subpoena for the purpose of
3-67 defending an action seeking damages from the actuary submitting the
3-68 memorandum by reason of an action required by this section or rules
3-69 adopted under this section.

4-1 (o) The memorandum or other material provided by the company
 4-2 to the commissioner in connection with the memorandum may otherwise
 4-3 be released by the commissioner with the written consent of the
 4-4 company, or to the American Academy of Actuaries on receipt of a
 4-5 request stating that the memorandum or other material is required
 4-6 for the purpose of professional disciplinary proceedings and
 4-7 setting forth procedures satisfactory to the commissioner for
 4-8 preserving the confidentiality of the memorandum or other material.

4-9 (p) The memorandum ceases to be confidential if:
 4-10 (1) any portion of the memorandum is cited by the
 4-11 company in its marketing;
 4-12 (2) the memorandum is cited by the company before a
 4-13 government agency other than a state insurance department; or
 4-14 (3) the memorandum is released by the company to the
 4-15 news media.

4-16 (q) This section does not prohibit the commissioner from
 4-17 using information acquired under this section in the furtherance of
 4-18 a legal or regulatory action relating to the administration of this
 4-19 code.

4-20 SECTION 7. Subchapter B, Chapter 425, Insurance Code, is
 4-21 amended by adding Section 425.0545 to read as follows:

4-22 Sec. 425.0545. ACTUARIAL OPINION OF RESERVES AFTER
 4-23 OPERATIVE DATE OF VALUATION MANUAL. (a) A company that has
 4-24 outstanding life insurance contracts, accident and health
 4-25 insurance contracts, or deposit-type contracts in this state and is
 4-26 subject to regulation by the department shall annually submit the
 4-27 opinion of the appointed actuary as to whether the reserves and
 4-28 related actuarial items held in support of the policies and
 4-29 contracts are computed appropriately, are based on assumptions that
 4-30 satisfy contractual provisions, are consistent with prior reported
 4-31 amounts, and are in compliance with applicable laws of this state.
 4-32 An opinion under this section must comply with provisions of the
 4-33 valuation manual, including in regard to any items necessary to its
 4-34 scope.

4-35 (b) Unless exempted by the valuation manual, a company
 4-36 described by Subsection (a) shall include with the opinion required
 4-37 by that subsection an opinion of the same appointed actuary
 4-38 concerning whether the reserves and related actuarial items held in
 4-39 support of the policies and contracts specified in the valuation
 4-40 manual, when considered in light of the assets held by the company
 4-41 with respect to the reserves and related actuarial items, including
 4-42 investment earnings on the assets and considerations anticipated to
 4-43 be received and retained under the policies and contracts, make
 4-44 adequate provision for the company's obligations under the policies
 4-45 and contracts, including benefits under and expenses associated
 4-46 with the policies and contracts.

4-47 (c) Each opinion required by this section must:
 4-48 (1) be in the form and contain the substance that is
 4-49 specified by the valuation manual and is acceptable to the
 4-50 commissioner;

4-51 (2) be submitted with the annual statement reflecting
 4-52 the valuation of reserves for each year ending on or after the
 4-53 operative date of the valuation manual;

4-54 (3) apply to all policies and contracts subject to
 4-55 this section, plus other actuarial liabilities specified by the
 4-56 valuation manual; and

4-57 (4) be based on standards adopted from time to time by
 4-58 the Actuarial Standards Board or its successor, and on any
 4-59 additional standards prescribed by the valuation manual.

4-60 (d) In the case of an opinion required to be submitted by a
 4-61 foreign or alien company, the commissioner may accept the opinion
 4-62 filed by the company with the insurance supervisory official of
 4-63 another state if the commissioner determines that the opinion
 4-64 reasonably meets the requirements applicable to a company domiciled
 4-65 in this state.

4-66 SECTION 8. Subsection (a), Section 425.055, Insurance Code,
 4-67 is amended to read as follows:

4-68 (a) A memorandum [~~that, in form and substance, complies with~~
 4-69 ~~the commissioner's rules~~] shall be prepared to support each

5-1 actuarial opinion required by Section 425.054 or 425.0545. The
5-2 form and substance of each supporting memorandum must comply with
5-3 the commissioner's rules and, for actuarial opinions subject to
5-4 Section 425.0545, the valuation manual.

5-5 SECTION 9. Subsection (a), Section 425.056, Insurance Code,
5-6 is amended to read as follows:

5-7 (a) Except in cases of fraud or wilful misconduct or as
5-8 provided by Subsection (b), a person who certifies an opinion under
5-9 Section 425.054 or 425.0545 is not liable for damages to a person,
5-10 other than the life insurance company covered by the opinion, for an
5-11 act, error, omission, decision, or other conduct with respect to
5-12 the person's opinion.

5-13 SECTION 10. Section 425.057, Insurance Code, is amended to
5-14 read as follows:

5-15 Sec. 425.057. DISCIPLINARY ACTION: COMPANY OR PERSON
5-16 CERTIFYING OPINION. A company or person that certifies an opinion
5-17 under Section 425.054 or 425.0545 and that violates Section
5-18 425.054, 425.0545, or 425.055 or rules adopted under those sections
5-19 is subject to disciplinary action under Chapter 82.

5-20 SECTION 11. The heading to Section 425.058, Insurance Code,
5-21 is amended to read as follows:

5-22 Sec. 425.058. COMPUTATION [VALUATION] OF MINIMUM STANDARD
5-23 [POLICY OR CONTRACT]: GENERAL RULE.

5-24 SECTION 12. The heading to Section 425.059, Insurance Code,
5-25 is amended to read as follows:

5-26 Sec. 425.059. COMPUTATION [VALUATION] OF MINIMUM STANDARD
5-27 FOR CERTAIN ANNUITIES AND PURE ENDOWMENT CONTRACTS.

5-28 SECTION 13. The heading to Section 425.064, Insurance Code,
5-29 is amended to read as follows:

5-30 Sec. 425.064. COMMISSIONERS RESERVE VALUATION METHOD FOR
5-31 LIFE INSURANCE AND ENDOWMENT BENEFITS.

5-32 SECTION 14. The heading to Section 425.065, Insurance Code,
5-33 is amended to read as follows:

5-34 Sec. 425.065. COMMISSIONERS ANNUITY RESERVE VALUATION
5-35 METHOD FOR ANNUITY AND PURE ENDOWMENT BENEFITS.

5-36 SECTION 15. Subchapter B, Chapter 425, Insurance Code, is
5-37 amended by adding Sections 425.072, 425.073, 425.074, 425.075,
5-38 425.076, and 425.077 to read as follows:

5-39 Sec. 425.072. MINIMUM STANDARD FOR ACCIDENT AND HEALTH
5-40 INSURANCE CONTRACTS. (a) The standard prescribed by the valuation
5-41 manual for accident and health insurance contracts issued on or
5-42 after the operative date of the valuation manual is the minimum
5-43 standard of valuation required under Section 425.0535.

5-44 (b) For disability, accident and sickness, and accident and
5-45 health insurance contracts issued before the operative date of the
5-46 valuation manual, the minimum standard of valuation is the standard
5-47 in existence before the operative date of the valuation manual.

5-48 Sec. 425.073. VALUATION MANUAL FOR CERTAIN POLICIES.

5-49 (a) Except as otherwise provided by this section, for policies
5-50 issued on or after the operative date of the valuation manual, the
5-51 standard prescribed by the valuation manual is the minimum standard
5-52 of valuation required under Section 425.0535.

5-53 (b) The commissioner by rule shall adopt a valuation manual
5-54 and determine the operative date of the valuation manual. A
5-55 valuation manual adopted by the commissioner under this section
5-56 must be substantially similar to the valuation manual approved by
5-57 the National Association of Insurance Commissioners. The operative
5-58 date must be January 1 of the first calendar year immediately
5-59 following a year in which, on or before July 1, the commissioner
5-60 determines that:

5-61 (1) the valuation manual has been adopted by the
5-62 National Association of Insurance Commissioners by an affirmative
5-63 vote of at least 42 members, or three-fourths of the members voting,
5-64 whichever is greater;

5-65 (2) the National Association of Insurance
5-66 Commissioners Standard Valuation Model Law, as amended by the
5-67 National Association of Insurance Commissioners in 2009, or
5-68 legislation including substantially similar terms and provisions,
5-69 has been enacted by states representing greater than 75 percent of

6-1 the direct premiums written as reported in the following annual
6-2 statements submitted for 2008:
6-3 (A) life insurance and accident and health annual
6-4 statements;
6-5 (B) health annual statements; or
6-6 (C) fraternal annual statements; and
6-7 (3) the National Association of Insurance
6-8 Commissioners Standard Valuation Model Law, as amended by the
6-9 National Association of Insurance Commissioners in 2009, or
6-10 legislation including substantially similar terms and provisions,
6-11 has been enacted by at least 42 of the following 55 jurisdictions:
6-12 (A) the 50 United States;
6-13 (B) American Samoa;
6-14 (C) the United States Virgin Islands;
6-15 (D) the District of Columbia;
6-16 (E) Guam; and
6-17 (F) Puerto Rico.

6-18 (c) After a valuation manual has been adopted by the
6-19 commissioner by rule, any changes to the valuation manual must be
6-20 adopted by rule and must be consistent with changes adopted by the
6-21 National Association of Insurance Commissioners. Unless a change
6-22 in the valuation specifies a later effective date, the effective
6-23 date for changes to the valuation manual may not be earlier than
6-24 January 1 of the year immediately following the date on which the
6-25 commissioner determines that the changes to the valuation manual
6-26 have been adopted by the National Association of Insurance
6-27 Commissioners by an affirmative vote representing:
6-28 (1) at least three-fourths of the members of the
6-29 National Association of Insurance Commissioners voting, but not
6-30 less than a majority of the total membership; and
6-31 (2) members of the National Association of Insurance
6-32 Commissioners representing jurisdictions totaling greater than 75
6-33 percent of the direct premiums written as reported in the most
6-34 recently available annual statements as provided by Subsection
6-35 (b)(2).

6-36 (d) The valuation manual must specify:
6-37 (1) the minimum valuation standards for and
6-38 definitions of the policies or contracts subject to Section
6-39 425.0535, including:
6-40 (A) the commissioner's reserve valuation method
6-41 for life insurance contracts subject to Section 425.0535;
6-42 (B) the commissioner's annuity reserve
6-43 valuation method for annuity contracts subject to Section 425.0535;
6-44 and
6-45 (C) the minimum reserves for all other policies
6-46 or contracts subject to Section 425.0535;
6-47 (2) the policies or contracts that are subject to the
6-48 requirements of a principle-based valuation under Section 425.074
6-49 and the minimum valuation standards consistent with those
6-50 requirements, including:
6-51 (A) the requirements for the format of reports to
6-52 the commissioner under Section 425.074(b)(3), which must include
6-53 the information necessary to determine if a valuation is
6-54 appropriate and in compliance with this subchapter;
6-55 (B) the assumptions prescribed for risks over
6-56 which the company does not have significant control or influence;
6-57 and
6-58 (C) the procedures for corporate governance and
6-59 oversight of the actuarial function, and a process for appropriate
6-60 waiver or modification of the procedures;
6-61 (3) the policies that are not subject to a
6-62 principle-based valuation under Section 425.074;
6-63 (4) the data and form of data required under Section
6-64 425.074, to whom the data must be submitted, and other desired
6-65 requirements, including requirements concerning data analyses and
6-66 reporting of analyses; and
6-67 (5) other requirements, including requirements
6-68 relating to reserve methods, models for measuring risk, generation
6-69 of economic scenarios, assumptions, margins, use of company

7-1 experience, disclosure, certification, reports, actuarial opinions
 7-2 and memorandums, transition rules, and internal controls.

7-3 (e) With respect to policies that are not subject to a
 7-4 principle-based valuation under Section 425.074 as described by
 7-5 Subsection (d)(3), the minimum valuation standard specified in the
 7-6 valuation manual must:

7-7 (1) be consistent with the minimum valuation standard
 7-8 before the operative date of the valuation manual; or

7-9 (2) develop reserves that quantify the benefits and
 7-10 guarantees, and the funding, associated with the contracts and
 7-11 their risks at a level of conservatism that reflects conditions
 7-12 that include unfavorable events that have a reasonable probability
 7-13 of occurring.

7-14 (f) In the absence of a specific valuation requirement or if
 7-15 a specific valuation requirement in the valuation manual does not
 7-16 in the commissioner's opinion comply with this subchapter, the
 7-17 company shall, with respect to the requirement, comply with minimum
 7-18 valuation standards prescribed by the commissioner by rule.

7-19 (g) The commissioner may employ or contract with a qualified
 7-20 actuary, at the expense of the company, to perform an actuarial
 7-21 examination of the company and provide an opinion concerning the
 7-22 appropriateness of any reserve assumption or method used by the
 7-23 company, or to review and provide an opinion on a company's
 7-24 compliance with any requirement of this subchapter. The
 7-25 commissioner may rely on the opinion, regarding provisions
 7-26 contained within this subchapter, of a qualified actuary engaged by
 7-27 the insurance supervisory official of another state.

7-28 (h) The commissioner may require a company to change an
 7-29 assumption or method as necessary in the commissioner's opinion to
 7-30 comply with a requirement of the valuation manual or this
 7-31 subchapter.

7-32 (i) The commissioner may take other disciplinary action as
 7-33 permitted under Chapter 82.

7-34 Sec. 425.074. PRINCIPLE-BASED VALUATION REQUIRED. (a) A
 7-35 company shall establish reserves using a principle-based valuation
 7-36 that meets the conditions for policies or contracts provided by the
 7-37 valuation manual. At a minimum, the valuation shall:

7-38 (1) quantify the benefits and guarantees, and the
 7-39 funding, associated with the contracts and their risks at a level of
 7-40 conservatism that reflects conditions that include unfavorable
 7-41 events that have a reasonable probability of occurring during the
 7-42 terms of the contracts;

7-43 (2) with respect to policies and contracts with
 7-44 significant tail risk, reflect conditions appropriately adverse to
 7-45 quantify the tail risk;

7-46 (3) incorporate assumptions, risk analysis methods,
 7-47 and financial models and management techniques that are consistent
 7-48 with those used in the company's overall risk assessment process,
 7-49 while recognizing potential differences in financial reporting
 7-50 structures and any prescribed assumptions or methods;

7-51 (4) incorporate assumptions:

7-52 (A) prescribed by the valuation manual; or

7-53 (B) established:

7-54 (i) using the company's available
 7-55 experience, to the extent that data is relevant and statistically
 7-56 credible; or

7-57 (ii) to the extent that the company data is
 7-58 not available, relevant, or statistically credible, using other
 7-59 relevant, statistically credible experience; and

7-60 (5) provide margins for uncertainty including adverse
 7-61 deviation and estimation error, such that the greater the
 7-62 uncertainty the larger the margin and resulting reserve.

7-63 (b) A company using a principle-based valuation for one or
 7-64 more policies or contracts subject to this section and as specified
 7-65 by the valuation manual shall:

7-66 (1) establish procedures for corporate governance and
 7-67 oversight of the actuarial valuation function consistent with
 7-68 procedures specified by the valuation manual;

7-69 (2) provide to the commissioner and the company's

8-1 board of directors an annual certification of the effectiveness of
 8-2 the internal controls with respect to the principle-based
 8-3 valuation; and

8-4 (3) develop, and file with the commissioner on
 8-5 request, a principle-based valuation report that complies with
 8-6 standards prescribed in the valuation manual.

8-7 (c) A company's internal controls with respect to the
 8-8 principle-based valuation must be designed to ensure that all
 8-9 material risks inherent in the liabilities and associated assets
 8-10 subject to the valuation are included in the valuation, and that
 8-11 valuations are made in accordance with the valuation manual. The
 8-12 certification described by Subsection (b)(2) must be based on the
 8-13 controls in place as of the end of the preceding calendar year.

8-14 (d) A principle-based valuation may include a prescribed
 8-15 formulaic reserve component.

8-16 Sec. 425.075. EXPERIENCE REPORTING FOR POLICIES IN FORCE ON
 8-17 OR AFTER OPERATIVE DATE OF VALUATION MANUAL. A company shall submit
 8-18 mortality, morbidity, policyholder behavior, or expense experience
 8-19 and other data as prescribed in the valuation manual.

8-20 Sec. 425.076. CONFIDENTIALITY. (a) This section applies
 8-21 to:

8-22 (1) a memorandum in support of an opinion submitted
 8-23 under Section 425.0545;

8-24 (2) a principle-based valuation report developed
 8-25 under Section 425.074(b)(3);

8-26 (3) any documents or other information, produced or
 8-27 obtained by or disclosed to the commissioner or any other person:

8-28 (A) in connection with the memorandum or
 8-29 principle-based valuation report;

8-30 (B) in the course of an examination made under
 8-31 Section 425.073(g), except that if an examination report or other
 8-32 material prepared in connection with an examination made under
 8-33 Subchapter B, Chapter 401, is not held as privileged and
 8-34 confidential under Chapter 401, an examination report or other
 8-35 material prepared in connection with an examination made under
 8-36 Section 425.073(g) is not confidential to the same extent as if the
 8-37 examination report or other material had been prepared under
 8-38 Subchapter B, Chapter 401;

8-39 (C) in support of, or in connection with, an
 8-40 annual certification by the company under Section 425.074(b)(2)
 8-41 evaluating the effectiveness of the company's internal controls
 8-42 with respect to a principle-based valuation; or

8-43 (D) in the development of a principle-based
 8-44 valuation report developed under Section 425.074(b)(3); and

8-45 (4) any documents or other information submitted by
 8-46 the company under Section 425.074, or documents or information
 8-47 created, produced, or obtained by the commissioner in connection
 8-48 with the submissions, including experience data to the extent that
 8-49 the data contain information that could potentially identify a
 8-50 company or individual.

8-51 (b) Except as provided by this section, a memorandum and any
 8-52 documents or other information described by Subsection (a) are:

8-53 (1) confidential and not subject to disclosure under
 8-54 Chapter 552, Government Code;

8-55 (2) privileged from subpoena; and

8-56 (3) privileged from discovery and inadmissible as
 8-57 evidence in a private civil action.

8-58 (c) This section does not prohibit the commissioner from
 8-59 using information acquired under this section in the furtherance of
 8-60 a legal or regulatory action relating to the administration of this
 8-61 code.

8-62 (d) The commissioner or any person who receives a document
 8-63 or other information described by Subsection (a) while acting under
 8-64 the authority of the commissioner may not testify and may not be
 8-65 compelled to testify in a private civil action concerning the
 8-66 content of the document or other information.

8-67 (e) Subject to Subsection (f), the commissioner may share
 8-68 information described by Subsection (a) with:

8-69 (1) another state, federal, or international

9-1 regulatory agency;
9-2 (2) the National Association of Insurance
9-3 Commissioners and its affiliates and subsidiaries;
9-4 (3) in the case of information described by Subsection
9-5 (a)(1) or (2), the Actuarial Board for Counseling and Discipline or
9-6 its successor on receipt of a request stating that the information
9-7 is required for the purpose of professional disciplinary
9-8 proceedings; and
9-9 (4) state, federal, and international law enforcement
9-10 officials.
9-11 (f) With respect to Subsections (e)(1), (2), and (3), the
9-12 commissioner may not share documents or other information described
9-13 by Subsection (a) unless the recipient agrees and has the legal
9-14 authority to agree to maintain the confidentiality and privileged
9-15 status of the documents or information in the same manner and to the
9-16 same extent as is required for the commissioner.
9-17 (g) The commissioner may receive documents and other
9-18 information, including otherwise confidential and privileged
9-19 documents or information, from the National Association of
9-20 Insurance Commissioners and its affiliates and subsidiaries, from
9-21 regulatory or law enforcement officials of other foreign or
9-22 domestic jurisdictions, and from the Actuarial Board for Counseling
9-23 and Discipline or its successor, and shall maintain as confidential
9-24 or privileged any document or other information received with
9-25 notice or the understanding that it is confidential or privileged
9-26 under the laws of the jurisdiction that is the source of the
9-27 document or other information.
9-28 (h) The commissioner may enter agreements governing sharing
9-29 and use of information consistent with this section.
9-30 (i) Disclosing information or providing a document to the
9-31 commissioner under this section, or sharing information as
9-32 authorized under this section, does not result in a waiver of any
9-33 applicable privilege or claim of confidentiality that may apply to
9-34 the document or information.
9-35 (j) A privilege established under the law of any state or
9-36 jurisdiction that is substantially similar to the privilege
9-37 established under this section is enforceable in any proceeding in,
9-38 and in any court of, this state.
9-39 (k) In this section, a reference to a regulatory agency, law
9-40 enforcement agency, or the National Association of Insurance
9-41 Commissioners includes an employee, agent, consultant, or
9-42 contractor of the agency or association, as applicable.
9-43 (l) Notwithstanding this section, any confidential
9-44 information specified in Subsection (a) may be:
9-45 (1) subject to subpoena for the purpose of defending
9-46 an action seeking damages from the appointed actuary submitting the
9-47 related memorandum in support of an opinion submitted under Section
9-48 425.054 or 425.0545 or a principle-based valuation report developed
9-49 under Section 425.074(b)(3) by reason of an action required by this
9-50 subchapter or by rules adopted under this subchapter; and
9-51 (2) released by the commissioner with the written
9-52 consent of the company.
9-53 (m) A memorandum in support of an opinion submitted under
9-54 Section 425.0545 or a principle-based valuation report developed
9-55 under Section 425.074(b)(3) ceases to be confidential if:
9-56 (1) any portion of the memorandum or report is cited by
9-57 the company in its marketing;
9-58 (2) the company publicly volunteers the memorandum or
9-59 report to a government agency other than a state insurance
9-60 department; or
9-61 (3) the memorandum or report is released by the
9-62 company to the news media.
9-63 Sec. 425.077. SINGLE STATE EXEMPTION. (a) The
9-64 commissioner may exempt specific product forms or product lines of
9-65 a domestic company that is licensed and doing business only in this
9-66 state from the requirements of Section 425.073 if:
9-67 (1) the commissioner has issued an exemption in
9-68 writing to the company and has not subsequently revoked the
9-69 exemption in writing; and

10-1 (2) the company computes reserves using assumptions
10-2 and methods used before the operative date of the valuation manual
10-3 in addition to any requirements established by the commissioner and
10-4 adopted by rule.

10-5 (b) Sections 425.058 through 425.071 and Section 425.072(b)
10-6 apply to a company granted an exemption under this section.

10-7 SECTION 16. The commissioner of insurance shall determine
10-8 whether the National Association of Insurance Commissioners and a
10-9 sufficient number of states and other jurisdictions have adopted a
10-10 valuation manual as required by Subsection (b), Section 425.073,
10-11 Insurance Code, as added by this Act. As soon as practicable after
10-12 the commissioner of insurance determines that the National
10-13 Association of Insurance Commissioners and a sufficient number of
10-14 states and other jurisdictions have adopted the valuation manual as
10-15 required by that section, the commissioner of insurance shall adopt
10-16 rules necessary to implement this Act.

10-17 SECTION 17. This Act takes effect January 1, 2014.

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