

By: Sheets

H.B. No. 1379

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

By: Muñoz, Jr.

C.S.H.B. No. 1379

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the standard valuation for life insurance, accident and
3 health insurance, and annuities and the nonforfeiture requirements
4 of certain life insurance policies; amending provisions that may be
5 subject to a criminal penalty.

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

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

10 (a) In this subchapter:

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

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

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

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

23 (B) has written, issued, or reinsured life
24 insurance contracts, accident and health insurance contracts, or

1 deposit-type contracts in any state and is required to hold a
2 certificate of authority to write life insurance, accident and
3 health insurance, or deposit-type contracts in this state.

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

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

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

19 (7) "Principle-based valuation" means the valuation
20 described by Section 425.074.

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

26 (9) "Reserves" [~~7~~—"reserves"] means reserve
27 liabilities.

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

5 (11) "Valuation manual" means the manual of valuation
6 instructions adopted by the commissioner by rule.

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

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

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

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

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

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

5 [~~(1)~~] the valuation complies with the minimum standard
6 provided by this subchapter[~~, and~~

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

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

16 (e) The minimum standards for the valuation of policies and
17 contracts issued before the operative date of the valuation manual
18 are as provided by Sections 425.058 through 425.071 and Section
19 425.072(b), as applicable. Sections 425.072(a), 425.073, and
20 425.074 do not apply to a policy or contract described by this
21 subsection.

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

24 Sec. 425.0535. ANNUAL VALUATION OF RESERVES FOR POLICIES
25 AND CONTRACTS ISSUED ON OR AFTER OPERATIVE DATE OF VALUATION
26 MANUAL. (a) The commissioner shall annually value, or cause to be
27 valued, the reserves for all outstanding life insurance contracts,

1 annuity and pure endowment contracts, accident and health
2 contracts, and deposit-type contracts of each company issued on or
3 after the operative date of the valuation manual.

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

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

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

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

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

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

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

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

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

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

- 7 (1) disclosure under Chapter 552, Government Code;
8 (2) subpoena;
9 (3) discovery; or
10 (4) admissibility as evidence in a private civil
11 action.

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

17 (1) The commissioner may:

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

26 (2) receive documents or other information, including
27 confidential and privileged documents or information, from the

1 National Association of Insurance Commissioners and its affiliates
2 and subsidiaries, and from regulatory and law enforcement officials
3 of other foreign or domestic jurisdictions, provided that the
4 commissioner shall maintain as confidential or privileged any
5 document or information received with notice or understanding that
6 it is confidential or privileged under the laws of the jurisdiction
7 that is the source of the document or information.

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 and
27 privileged status of the memorandum or other material.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 filed by the company with the insurance supervisory official of
2 another state if the commissioner determines that the opinion
3 reasonably meets the requirements applicable to a company domiciled
4 in this state.

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

7 (a) A memorandum [~~that, in form and substance, complies with~~
8 ~~the commissioner's rules~~] shall be prepared to support each
9 actuarial opinion required by Section 425.054 or 425.0545. The
10 form and substance of each supporting memorandum must comply with
11 the commissioner's rules for memorandums subject to Section
12 425.054, or the valuation manual for memorandums subject to Section
13 425.0545.

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

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

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

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

1 is subject to disciplinary action under 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 in
3 addition to any requirements established by the commissioner and
4 adopted by rule.

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

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

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

23 (2) the National Association of Insurance
24 Commissioners Standard Model Valuation Law, as amended by the
25 National Association of Insurance Commissioners in 2009, or
26 legislation including substantially similar terms and provisions,
27 has been enacted by states representing greater than 75 percent of

1 the direct premiums written as reported in the following annual
2 statements submitted for 2008:

3 (A) life insurance and accident and health annual
4 statements;

5 (B) health annual statements; or

6 (C) fraternal annual statements; and

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

12 (A) the 50 United States;

13 (B) American Samoa;

14 (C) the United States Virgin Islands;

15 (D) the District of Columbia;

16 (E) Guam; and

17 (F) Puerto Rico.

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

1 (1) at least three-fourths of the members of the
2 National Association of Insurance Commissioners voting, but not
3 less than a majority of the total membership; and

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

9 (d) The valuation manual must specify:

10 (1) the minimum valuation standards for and
11 definitions of the policies or contracts subject to Section
12 425.0535, including:

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

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

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

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

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

27 (B) the assumptions prescribed for risks over

1 which the company does not have significant control or influence;
2 and

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

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

8 (4) the data and form of data required under Section
9 425.075, to whom the data must be submitted, and other desired
10 requirements, including requirements concerning data analyses and
11 reporting of analyses;

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

17 (6) an exemption that allows certain small companies
18 to value reserves based on an exception from certain requirements
19 of this section and Section 425.074; however, the premium
20 thresholds for determining whether the exemption applies shall be
21 as follows:

22 (A) less than \$300 million of ordinary life
23 premium; and

24 (B) less than \$600 million of combined ordinary
25 life premiums for a group of life insurers if the company is a
26 member of that group.

27 (e) For purposes of Subsections (d)(6)(A) and (B), an

1 ordinary life premium is measured as a direct premium plus
2 reinsurance assumed from an unaffiliated company, as reported in
3 the prior calendar year statement.

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

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

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

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

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

1 the insurance supervisory official of another state.

2 (i) The commissioner may require a company to change an
3 assumption or method as necessary in the commissioner's opinion to
4 comply with a requirement of the valuation manual or this
5 subchapter.

6 (j) The commissioner may take other disciplinary action as
7 permitted under Chapter 82.

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

9 (a) A company shall establish reserves using a principle-based
10 valuation that meets the conditions for policies or contracts
11 provided by the valuation manual. At a minimum, the valuation
12 shall:

13 (1) quantify the benefits and guarantees, and the
14 funding, associated with the contracts and their risks at a level of
15 conservatism that reflects conditions that include unfavorable
16 events that have a reasonable probability of occurring during the
17 terms of the contracts;

18 (2) with respect to policies and contracts with
19 significant tail risk, reflect conditions appropriately adverse to
20 quantify the tail risk;

21 (3) incorporate assumptions, risk analysis methods,
22 and financial models and management techniques that are consistent
23 with those used in the company's overall risk assessment process,
24 while recognizing potential differences in financial reporting
25 structures and any prescribed assumptions or methods;

26 (4) incorporate assumptions:

27 (A) prescribed by the valuation manual; or

1 (B) established:

2 (i) using the company's available
3 experience, to the extent that data is relevant and statistically
4 credible; or

5 (ii) to the extent that the company data is
6 not available, relevant, or statistically credible, using other
7 relevant, statistically credible experience; and

8 (5) provide margins for uncertainty, including
9 adverse deviation and estimation error, such that the greater the
10 uncertainty the larger the margin and resulting reserve.

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

14 (1) establish procedures for corporate governance and
15 oversight of the actuarial valuation function consistent with
16 procedures specified by the valuation manual;

17 (2) provide to the commissioner and the company's
18 board of directors an annual certification of the effectiveness of
19 the internal controls with respect to the principle-based
20 valuation; and

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

24 (c) A company's internal controls with respect to the
25 principle-based valuation must be designed to ensure that all
26 material risks inherent in the liabilities and associated assets
27 subject to the valuation are included in the valuation, and that

1 valuations are made in accordance with the valuation manual. The
2 certification described by Subsection (b)(2) must be based on the
3 controls in place as of the end of the preceding calendar year.

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

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

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

12 (1) a memorandum in support of an opinion submitted
13 under Section 425.0545 and any other documents, materials, and
14 other information, including, but not limited to, all working
15 papers, and copies thereof, created, produced, or obtained by or
16 disclosed to the commissioner or any other person in connection
17 with such memorandum;

18 (2) all documents, materials, and other information,
19 including, but not limited to, all working papers, and copies
20 thereof, created, produced, or obtained by or disclosed to the
21 commissioner or any other person in the course of an examination
22 made under Section 425.073(h); provided, however, that if an
23 examination report or other material prepared in connection with an
24 examination made under Subchapter B, Chapter 401, is not held as
25 private and confidential information under Subchapter B, Chapter
26 401, an examination report or other material prepared in connection
27 with an examination made under Section 425.073(h) shall not be

1 "confidential information" to the same extent as if such
2 examination report or other material had been prepared under
3 Subchapter B, Chapter 401;

4 (3) any reports, documents, materials, and other
5 information developed by a company in support of, or in connection
6 with, an annual certification by the company under Section
7 425.074(b)(2) evaluating the effectiveness of the company's
8 internal controls with respect to a principle-based valuation and
9 any other documents, materials, and other information, including,
10 but not limited to, all working papers, and copies thereof,
11 created, produced, or obtained by or disclosed to the commissioner
12 or any other person in connection with such reports, documents,
13 materials, and other information;

14 (4) any principle-based valuation report developed
15 under Section 425.074(b)(3) and any other documents, materials, and
16 other information, including, but not limited to, all working
17 papers, and copies thereof, created, produced, or obtained by or
18 disclosed to the commissioner or any other person in connection
19 with such report; and

20 (5) any documents, materials, data, and other
21 information submitted by a company under Section 425.075
22 (collectively, "experience data") and any other documents,
23 materials, data, and other information, including, but not limited
24 to, all working papers, and copies thereof, created or produced in
25 connection with such experience data, in each case that include any
26 potentially company-identifying or personally identifiable
27 information, that is provided to or obtained by the commissioner

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

7 (b) Except as provided in this section, a company's
8 confidential information is confidential by law and privileged, and
9 shall not be subject to Chapter 552, Government Code, shall not be
10 subject to subpoena, and shall not be subject to discovery or
11 admissible in evidence in any private civil action; provided,
12 however, that the commissioner is authorized to use the
13 confidential information in the furtherance of any regulatory or
14 legal action brought against the company as a part of the
15 commissioner's official duties.

16 (c) Neither the commissioner nor any person who received
17 confidential information while acting under the authority of the
18 commissioner shall be permitted or required to testify in any
19 private civil action concerning any confidential information.

20 (d) In order to assist in the performance of the
21 commissioner's duties, the commissioner may share confidential
22 information (1) with other state, federal, and international
23 regulatory agencies and with the National Association of Insurance
24 Commissioners and its affiliates and subsidiaries and (2) in the
25 case of confidential information specified in Subsections (a)(1)
26 and (a)(4) only, with the Actuarial Board for Counseling and
27 Discipline or its successor upon request stating that the

1 confidential information is required for the purpose of
2 professional disciplinary proceedings and with state, federal, and
3 international law enforcement officials; in the case of (1) and
4 (2), provided that such recipient agrees, and has the legal
5 authority to agree, to maintain the confidentiality and privileged
6 status of such documents, materials, data, and other information in
7 the same manner and to the same extent as required for the
8 commissioner.

9 (e) The commissioner may receive documents, materials,
10 data, and other information, including otherwise confidential or
11 privileged documents, materials, data, or information, from the
12 National Association of Insurance Commissioners and its affiliates
13 and subsidiaries, from regulatory or law enforcement officials of
14 other foreign or domestic jurisdictions and from the Actuarial
15 Board for Counseling and Discipline or its successor and shall
16 maintain as confidential or privileged any document, material,
17 data, or other information received with notice or the
18 understanding that it is confidential or privileged under the laws
19 of the jurisdiction that is the source of the document, material,
20 data, or other information.

21 (f) The commissioner may enter into agreements governing
22 sharing and use of information consistent with Subsections (b)
23 through (k).

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

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

5 (i) In this section, a reference to a regulatory agency, law
6 enforcement agency, or the National Association of Insurance
7 Commissioners includes an employee, agent, consultant, or
8 contractor of the agency or association, as applicable.

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

11 (1) subject to subpoena for the purpose of defending
12 an action seeking damages from the appointed actuary submitting the
13 related memorandum in support of an opinion submitted under Section
14 425.0545 or a principle-based valuation report developed under
15 Section 425.074(b)(3) by reason of an action required by this
16 subchapter or by rules adopted under this subchapter; and

17 (2) released by the commissioner with the written
18 consent of the company.

19 (k) Once any portion of a memorandum in support of an
20 opinion submitted under Section 425.0545 or a principle-based
21 valuation report developed under Section 425.074(b)(3) is cited by
22 the company in its marketing or is publicly volunteered to or before
23 a governmental agency other than a state insurance department or is
24 released by the company to the news media, all portions of such
25 memorandum or report shall no longer be confidential and
26 privileged.

27 Sec. 425.077. SINGLE STATE EXEMPTION. The commissioner may

1 exempt specific product forms or product lines of a domestic
2 company that is licensed and doing business only in this state from
3 the requirements of Section 425.073 if:

4 (1) the commissioner has issued an exemption in
5 writing to the company and has not subsequently revoked the
6 exemption in writing; and

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

11 SECTION 16. Subchapter A, Chapter 1105, Insurance Code, is
12 amended by adding Section 1105.0015 to read as follows:

13 Sec. 1105.0015. DEFINITION. In this chapter, "operative
14 date of the valuation manual" means the date, if any, on which the
15 valuation manual described by Subchapter B, Chapter 425 (Standard
16 Valuation Law), becomes operative as provided by that subchapter.

17 SECTION 17. Section 1105.055, Insurance Code, is amended by
18 amending Subsections (h) and (i) and adding Subsections (j), (k),
19 (l), and (m) to read as follows:

20 (h) For a policy issued before the operative date of the
21 valuation manual, any [~~Any~~] ordinary mortality table adopted after
22 1980 by the National Association of Insurance Commissioners that is
23 approved by rules adopted by the commissioner for use in
24 determining the minimum nonforfeiture standard may be substituted
25 for:

26 (1) the Commissioners 1980 Standard Ordinary
27 Mortality Table with or without Ten-Year Select Mortality Factors;

1 or

2 (2) the Commissioners 1980 Extended Term Insurance
3 Table.

4 (i) For a policy issued before the operative date of the
5 valuation manual, any [Any] industrial mortality table adopted
6 after 1980 by the National Association of Insurance Commissioners
7 that is approved by rules adopted by the commissioner for use in
8 determining the minimum nonforfeiture standard may be substituted
9 for:

10 (1) the Commissioners 1961 Standard Industrial
11 Mortality Table; or

12 (2) the Commissioners 1961 Industrial Extended Term
13 Insurance Table.

14 (j) Except as provided by Subsection (k), for a policy
15 described by Subsection (h) issued on or after the operative date of
16 the valuation manual, the valuation manual must provide the
17 commissioners standard ordinary mortality table for use in
18 determining the minimum nonforfeiture standard that may be
19 substituted for:

20 (1) the Commissioners 1980 Standard Ordinary
21 Mortality Table with or without Ten-Year Select Mortality Factors;

22 or

23 (2) the Commissioners 1980 Extended Term Insurance
24 Table.

25 (k) If the commissioner by rule adopts a commissioners
26 standard ordinary mortality table adopted by the National
27 Association of Insurance Commissioners for use in determining the

1 minimum nonforfeiture standard for policies issued on or after the
2 operative date of the valuation manual, the minimum nonforfeiture
3 standard determined in accordance with that table supersedes the
4 standard provided by the valuation manual.

5 (1) Except as provided by Subsection (m), for a policy
6 described by Subsection (i) issued on or after the operative date of
7 the valuation manual, the valuation manual must include the
8 commissioners standard industrial mortality table for use in
9 determining the minimum nonforfeiture standard that may be
10 substituted for:

11 (1) the 1961 Standard Industrial Mortality Table; or
12 (2) the Commissioners 1961 Industrial Extended Term
13 Insurance Table.

14 (m) If the commissioner by rule adopts a commissioners
15 standard industrial mortality table adopted by the National
16 Association of Insurance Commissioners for use in determining the
17 minimum nonforfeiture standard for policies issued on or after the
18 operative date of the valuation manual, the minimum nonforfeiture
19 standard determined in accordance with that table supersedes the
20 standard provided by the valuation manual.

21 SECTION 18. Section 1105.056, Insurance Code, is amended to
22 read as follows:

23 Sec. 1105.056. NONFORFEITURE INTEREST RATE. (a) For a
24 policy issued before the operative date of the valuation manual,
25 the [The] annual nonforfeiture interest rate for a policy issued in
26 a particular calendar year is equal to 125 percent of the calendar
27 year statutory valuation interest rate for that policy as defined

1 by Subchapter B, Chapter 425, rounded to the nearest one-fourth of
2 one percent, except that the rate may not be less than four percent.

3 (b) For a policy issued on or after the operative date of the
4 valuation manual, the annual nonforfeiture interest rate for any
5 policy issued in a particular calendar year is provided by the
6 valuation manual.

7 SECTION 19. The commissioner of insurance shall determine
8 whether the National Association of Insurance Commissioners and a
9 sufficient number of states and other jurisdictions have adopted a
10 valuation manual as required by Section 425.073(b), Insurance Code,
11 as added by this Act. As soon as practicable after the commissioner
12 of insurance determines that the National Association of Insurance
13 Commissioners and a sufficient number of states and other
14 jurisdictions have adopted the valuation manual as required by that
15 section, the commissioner of insurance shall adopt rules necessary
16 to implement this Act.

17 SECTION 20. This Act takes effect September 1, 2015.