

BILL ANALYSIS

C.S.H.B. 1379
By: Sheets
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It is noted that life insurers set aside reserves which are used to pay future expected claims. There are concerns about the current reserve framework for life insurers, which has been in place and fundamentally unchanged for a significant period of time. Interested parties contend that the current system relies on a one-size-fits-all system dependent on a formula which primarily draws information from annual statement data and that, since the differences in company experience, mortality, and expense levels are not reflected, efficiency in underwriting, pricing, and expense control is not rewarded.

Interested parties further contend that principle-based reserves allow reserves to be tailor-made for every company to match its unique risks. To implement principle-based reserves, state legislatures must adopt both the Standard Valuation Model Law that was approved by the National Association of Insurance Commissioners (NAIC) and recent revisions to the NAIC Standard Nonforfeiture Law.

C.S.H.B. 1379 seeks to apply the statutory framework developed by the NAIC to enhance the current system for calculating policy reserves, provide regulators with tools to properly monitor a life insurer's reserve levels through annual reporting and review, and help reserve requirements keep pace with new product designs from life insurers to meet consumer needs.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of insurance in SECTION 15 of this bill.

ANALYSIS

C.S.H.B. 1379 amends the Insurance Code to require the commissioner of insurance to adopt by rule a valuation manual substantially similar to the valuation manual approved by the National Association of Insurance Commissioners (NAIC) for the purpose of setting reserves for life insurance policies, accident and health insurance policies, and certain deposit-type contracts and to determine the operative date of the valuation manual. The bill establishes that the minimum standard of valuation for disability, accident and sickness, and accident and health insurance contracts issued before the valuation manual's operative date is the valuation standard in existence before the valuation manual's operative date in addition to any requirements established by the commissioner and adopted by rule. The bill makes the standard prescribed by the valuation manual the minimum standard of valuation for policies and contracts issued on or after the valuation manual's operative date, including the minimum standard for accident and

health insurance.

Valuation Manual Adoption Procedures and Content

C.S.H.B. 1379 requires the valuation manual's operative date to be January 1 of the first calendar year immediately following a year in which, on or before July 1, the commissioner determines that the valuation manual has been adopted by a specified minimum threshold of members of the NAIC and that the NAIC Standard Model Valuation Law or legislation including substantially similar terms and provisions has been enacted by a specified minimum threshold of states and jurisdictions, as applicable. The bill requires the commissioner to determine whether the NAIC and a sufficient number of states and other jurisdictions have adopted a valuation manual. The bill requires the commissioner, as soon as practicable after making that determination, to adopt rules as required by the bill's provisions.

C.S.H.B. 1379 requires any changes to the valuation manual made after the commissioner's adoption to be adopted by rule and to be substantially similar to changes adopted by the NAIC. The bill prohibits an effective date for changes to the valuation manual from being earlier than January 1 of the year immediately following the date on which the commissioner determines that the changes to the valuation manual have been adopted in the manner specified by the bill by an affirmative vote of a specified minimum threshold of the NAIC, unless a change in the valuation specifies a later effective date.

C.S.H.B. 1379 sets out the required content of the valuation manual, including the specification of certain minimum valuation standards, provisions governing the application of principle-based valuation, and an exemption that allows certain small companies to value reserves based on an exception from certain requirements. The bill prescribes the valuation manual's required minimum valuation standard for policies not subject to a principle-based valuation standard. The bill requires a company to comply with minimum valuation standards prescribed by commissioner rule in the absence of a specific valuation requirement or if such a requirement in the valuation manual does not in the commissioner's opinion comply with state standard valuation law.

C.S.H.B. 1379 authorizes the commissioner to employ or contract with a qualified actuary at the company's expense to perform an actuarial examination of a company and provide an opinion concerning the appropriateness of any reserve assumption or method used by the company or to review and provide an opinion on a company's compliance with any requirement of state standard valuation law. The bill authorizes the commissioner to rely on the opinion in regards to provisions contained within state standard valuation law of a qualified actuary engaged by the insurance supervisory official of another state. The bill authorizes the commissioner to require a company to change an assumption or method as necessary in the commissioner's opinion to comply with a requirement of the valuation manual or state standard valuation law and authorizes the commissioner to take other disciplinary action as permitted under statutory provisions prescribing the imposition of sanctions.

Principle-Based Valuation and Experience Reporting

C.S.H.B. 1379 requires a company to establish reserves using a principle-based valuation that meets the conditions for policies or contracts provided by the valuation manual and sets out the minimum criteria for a principle-based valuation. The bill requires a company using a principle-based valuation for one or more of those policies or contracts to establish procedures for corporate governance and oversight of the actuarial valuation function consistent with procedures specified by the valuation manual; to provide to the commissioner and the company's board of directors an annual certification of the effectiveness of the internal controls with respect to the principle-based valuation; and to develop, and file with the commissioner on request, a principle-based valuation report that complies with standards prescribed in the valuation manual.

C.S.H.B. 1379 requires a company's internal controls with respect to the principle-based valuation to be designed to ensure that all material risks inherent in the liabilities and associated assets subject to the valuation are included in the valuation, and that valuations are made in accordance with the valuation manual. The bill requires the annual certification to be based on the controls in place as of the end of the preceding calendar year and authorizes a principle-based valuation to include a prescribed formulaic reserve component.

C.S.H.B. 1379 requires a company to submit mortality, morbidity, policyholder behavior, or expense experience and other data as prescribed in the valuation manual.

Provisions Relating to Policies and Contracts Issued Before Operative Date of Valuation Manual

C.S.H.B. 1379 limits the applicability of established state standard valuation law provisions requiring the annual valuation of reserves for all outstanding life insurance policies and annuity and pure endowment contracts of each life insurance company engaged in business in Texas to policies and contracts issued before the valuation manual's operative date and removes the authority of the Texas Department of Insurance (TDI) to certify the amount of such reserves. The bill specifies that the minimum standards for the valuation of policies and contracts issued before the valuation manual's operative date are as provided by the law in effect immediately before that date and exempts such policies and contracts from the bill's provisions regarding the minimum standard for valuation, valuation manual, and principle-based valuation requirements for policies or contracts issued on or after the valuation manual's operative date.

C.S.H.B. 1379 provides that any document or other information in the possession or control of TDI that is a memorandum in support of the actuarial opinion or other material provided by the company to the commissioner in connection with a memorandum is confidential and privileged and is not subject to disclosure under state public information law, subpoena, discovery, or admissibility as evidence in a private civil action. The bill prohibits the commissioner or any person who receives such a document or other information while acting under the commissioner's authority from testifying or being compelled to testify in a private civil action concerning the document or other information.

C.S.H.B. 1379 authorizes the commissioner to share information, including such confidential and privileged documents or information, with another state, federal, or international regulatory agency; with the NAIC and its affiliates and subsidiaries; and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality of the information. The bill authorizes the commissioner to receive such information from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, provided that the commissioner shall maintain as confidential or privileged any information received with notice or understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the information.

C.S.H.B. 1379 establishes that disclosing information or providing a document to the commissioner, or sharing information as authorized, does not result in a waiver of any applicable privilege or claim of confidentiality that may apply to the document or information. The bill establishes that a memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection with the memorandum, may be subject to subpoena for the purpose of defending an action seeking damages from the actuary submitting the memorandum by reason of an action required by the bill's provisions regarding actuarial opinions of reserves required before the operative date of the valuation manual or rules adopted under such provisions.

C.S.H.B. 1379 establishes that the supporting memorandum or other material provided by the company to the commissioner may otherwise be released by the commissioner with the written

consent of the company, or to the Actuarial Board for Counseling and Discipline or its successor, on receipt of a request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality and privileged status of the memorandum or other material. The bill sets out the circumstances under which the memorandum ceases to be confidential and privileged. The bill establishes that its provisions regarding actuarial opinions of reserves required before the operative date of the valuation manual do not prohibit the commissioner from using the acquired information in the furtherance of a legal or regulatory action relating to the administration of the Insurance Code.

Provisions Relating to Policies and Contracts Issued on or After Operative Date of Valuation Manual

C.S.H.B. 1379 defines "company," for the purposes of state standard valuation law on and after the valuation manual's operative date, as an entity that has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in Texas and has at least one such policy in force or on claim or an entity that has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in any state and is required to hold a certificate of authority to write life insurance, accident and health insurance, or deposit-type contracts in Texas.

C.S.H.B. 1379 requires the commissioner to annually value or cause to be valued the reserves for all outstanding life insurance contracts, annuity and pure endowment contracts, accident and health contracts, and deposit-type contracts of each company issued on or after the valuation manual's operative date. The bill authorizes the commissioner, in lieu of the valuation of the reserves required of a foreign or alien company, to accept a valuation made or caused to be made by the insurance supervisory official of another state if the valuation complies with the provided minimum standards prescribed by state standard valuation law. The bill applies its provisions regarding the minimum standard of valuation for accident and health insurance contracts and other policies issued on or after the valuation manual's operative date and principle-based valuation requirements to all policies and contracts issued on or after the operative date of the valuation manual.

C.S.H.B. 1379 requires a company that has outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in Texas that is subject to TDI regulation to annually submit the appointed actuary's opinion as to whether the reserves and related actuarial items held in support of the policies and contracts are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts, and are in compliance with applicable state laws. The bill requires an actuarial opinion of reserves made after the valuation manual's operative date to comply with provisions of the valuation manual, including in regard to any items necessary to its scope. The bill requires such a company, unless exempted by the valuation manual, to include with the required actuarial opinion an opinion of the same appointed actuary concerning whether the reserves and related actuarial items held in support of the policies and contracts specified in the valuation manual make adequate provision for the company's obligations under the policies and contracts when considered in light of the assets held by the company with respect to the reserves and related actuarial items.

C.S.H.B. 1379 sets out the requirements for an actuarial opinion of reserves required after the valuation manual's operative date. The bill authorizes the commissioner, in the case of an actuarial opinion required to be submitted by a foreign or alien company, to accept the opinion filed by the company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in Texas.

C.S.H.B. 1379 requires a supporting memorandum to be prepared for each actuarial opinion of

reserves made after the valuation manual's operative date and requires the form and substance of a supporting memorandum to comply with the valuation manual. The bill limits the liability of a person who certifies an actuarial opinion made after the valuation manual's operative date and subjects a company or person who makes such a certification to disciplinary action for violating state standard valuation law provisions governing actuarial opinions of reserves and supporting memorandum for those opinions.

C.S.H.B. 1379 designates as "confidential information" a memorandum in support of an actuarial opinion of reserves made after the valuation manual's operative date; information provided in the course of an actuarial examination, subject to certain conditions; information developed by a company for an annual certification evaluating the effectiveness of the company's internal controls; any principle-based valuation report; and experience materials and other information, as applicable, that are created, produced, obtained by, or disclosed to the commissioner or other person in connection with such experience materials.

C.S.H.B. 1379 establishes that a company's confidential information is confidential by law, privileged, and not subject to state public information law, subpoena, or discovery, or admissibility in evidence in a private civil action provided that the commissioner is authorized to use such confidential information in the furtherance of any legal or regulatory action brought against the company as a part of the commissioner's official duties. The bill prohibits the commissioner or any person who received confidential information while acting under the commissioner's authority from testifying and from being required to testify in any private civil action concerning any confidential information.

C.S.H.B. 1379 authorizes the commissioner, in order to assist in the performance of the commissioner's duties, to share the specified confidential information with other state, federal, and international regulatory agencies; the NAIC and its affiliates and subsidiaries; in certain cases, the Actuarial Board for Counseling and Discipline or its successor upon a request stating that the confidential information is required for the purpose of professional disciplinary proceedings; and with state, federal, and international law enforcement officials, provided that the recipient agrees and has the legal authority to agree to maintain the confidentiality and privileged status of such information in the same manner and to the same extent as required for the commissioner.

C.S.H.B. 1379 authorizes the commissioner to receive documents, materials, data, and other information, including otherwise confidential or privileged documents, material, data, and information, from the NAIC and its affiliates and subsidiaries, from regulatory or law enforcement officials of other foreign or domestic jurisdictions, and from the Actuarial Board for Counseling and Discipline or its successor. The bill requires the commissioner to maintain as confidential or privileged any document, material, data, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document or other information.

C.S.H.B. 1379 authorizes the commissioner to enter into agreements governing the sharing and use of information consistent with certain bill provisions relating to confidentiality and establishes that disclosing documents, material, data, or other confidential information to the commissioner, or sharing such confidential information as authorized, does not result in a waiver of any applicable privilege or claim of confidentiality. The bill makes a privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under the bill's provisions regarding confidentiality available and enforceable in any proceeding in, and in any court of, the state. The bill specifies that a reference to a regulatory agency, law enforcement agency, or the NAIC includes an entity's employee, agent, consultant, or contractor, as applicable, with regard to the bill's provisions governing the sharing and use of certain confidential information.

C.S.H.B. 1379 establishes that any of the confidential information specified in relation to a

supporting memorandum or principle-based valuation report may be subject to subpoena for the purpose of defending an action seeking damages from an appointed actuary submitting the related memorandum in support of an actuarial opinion of reserves after the valuation manual's operative date or a principle-based valuation report by reason of an action required by state standard valuation law or rules adopted under state standard valuation law and may be released by the commissioner with the written consent of the company. The bill sets out the circumstances under which any portion of a memorandum in support of an actuarial opinion or a principle-based valuation report ceases to be confidential and privileged.

C.S.H.B. 1379 authorizes the commissioner to exempt specific product forms or product lines of a domestic company licensed and doing business only in Texas from the bill's requirements regarding policies issued on or after the valuation manual's operative date if the commissioner has issued an exemption in writing to the company and has not subsequently revoked the exemption in writing and if the company computes reserves using assumptions and methods used before the valuation manual's operative date in addition to any requirements established by the commissioner and adopted by rule.

Standard Nonforfeiture Law For Life Insurance

C.S.H.B. 1379 requires the valuation manual, with regard to a life insurance policy in which any ordinary mortality table adopted by the NAIC after 1980 that is approved by rules adopted by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or the Commissioners 1980 Extended Term Insurance Table issued on or after the valuation manual's operative date, to provide the commissioners standard ordinary mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the aforementioned 1980 tables. The bill establishes that, if the commissioner by rule adopts a commissioners standard ordinary mortality table adopted by the NAIC for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual, the minimum nonforfeiture standard determined in accordance with that table supersedes the standard provided by the valuation manual.

C.S.H.B. 1379 requires the valuation manual, with regard to a life insurance policy in which any industrial mortality table adopted by the NAIC after 1980 that is approved by rules adopted by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1961 Standard Industrial Mortality Table or the Commissioners 1961 Industrial Extended Term Insurance Table issued on or after the valuation manual's operative date, to include the commissioners standard industrial mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the aforementioned 1961 tables. The bill establishes that, if the commissioner by rule adopts a commissioners standard industrial mortality table adopted by the NAIC for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual, the minimum nonforfeiture standard determined in accordance with that table supersedes the standard provided by the valuation manual.

C.S.H.B. 1379 prohibits the annual nonforfeiture interest rate for a life insurance policy issued in a particular calendar year before the valuation manual's operative date from being less than four percent. The bill specifies that the annual nonforfeiture interest rate for any life insurance policy issued in a particular calendar year on or after the valuation manual's operative date is provided by the valuation manual.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1379 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 425.052, Insurance Code, is amended.

SECTION 2. The heading to Section 425.053, Insurance Code, is amended.

SECTION 3. Section 425.053, Insurance Code, is amended.

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

Sec. 425.0535. ANNUAL VALUATION OF RESERVES FOR POLICIES AND CONTRACTS ISSUED ON OR AFTER OPERATIVE DATE OF VALUATION MANUAL. (a) The commissioner shall annually value, or cause to be valued, the reserves for all outstanding life insurance contracts, annuity and pure endowment contracts, accident and health contracts, and deposit-type contracts of each company issued on or after the operative date of the valuation manual as provided by this section.

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

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

SECTION 5. The heading to Section 425.054, Insurance Code, is amended.

SECTION 6. Section 425.054, Insurance

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.

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

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

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

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

SECTION 5. Same as introduced version.

SECTION 6. Section 425.054, Insurance

Code, is amended by amending Subsection (a) and adding Subsections (a-1), (j), (k), (l), (m), (n), (o), (p), and (q) to read as follows:

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

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

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

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

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

(1) disclosure under Chapter 552, Government Code;

(2) subpoena;

(3) discovery; or

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

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

(l) The commissioner may:

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

(2) receive documents or other information, including confidential and privileged documents or information, from the National Association of Insurance Commissioners and its affiliates and

Code, is amended by amending Subsection (a) and adding Subsections (a-1), (j), (k), (l), (m), (n), (o), (p), and (q) to read as follows:

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

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

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

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

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

(1) disclosure under Chapter 552, Government Code;

(2) subpoena;

(3) discovery; or

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

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

(l) The commissioner may:

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

(2) receive documents or other information, including confidential and privileged documents or information, from the National Association of Insurance Commissioners and its affiliates and

subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, provided that the commissioner shall maintain as confidential any document or information received with notice or understanding that it is confidential and privileged under the laws of the jurisdiction that is the source of the document or information; and

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

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

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

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

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

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

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

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

(q) This section does not prohibit the commissioner from using information acquired under this section in the

subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, provided that the commissioner shall maintain as confidential or privileged any document or information received with notice or understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document or information.

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

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

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

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

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

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

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

(q) This section does not prohibit the commissioner from using information acquired under this section in the

furtherance of a legal or regulatory action relating to the administration of this code.

SECTION 7. Subchapter B, Chapter 425, Insurance Code, is amended.

SECTION 8. Section 425.055(a), Insurance Code, is amended.

SECTION 9. Section 425.056(a), Insurance Code, is amended.

SECTION 10. Section 425.057, Insurance Code, is amended.

SECTION 11. The heading to Section 425.058, Insurance Code, is amended.

SECTION 12. The heading to Section 425.059, Insurance Code, is amended.

SECTION 13. The heading to Section 425.064, Insurance Code, is amended.

SECTION 14. The heading to Section 425.065, Insurance Code, is amended.

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

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

(b) For disability, accident and sickness, and accident and health insurance contracts issued before the operative date of the valuation manual, the minimum standard of valuation is the standard in existence before

furtherance of a legal or regulatory action relating to the administration of this code.

SECTION 7. Same as introduced version.

SECTION 8. Same as introduced version.

SECTION 9. Same as introduced version.

SECTION 10. Same as introduced version.

SECTION 11. Same as introduced version.

SECTION 12. Same as introduced version.

SECTION 13. Same as introduced version.

SECTION 14. Same as introduced version.

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

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

(b) For disability, accident and sickness, and accident and health insurance contracts issued before the operative date of the valuation manual, the minimum standard of valuation is the standard in existence before

the operative date of the valuation manual.

Sec. 425.073. POLICIES ISSUED ON OR AFTER THE OPERATIVE DATE OF THE VALUATION MANUAL.

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

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

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

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

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

(B) health annual statements; or

(C) fraternal annual statements; and

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

(A) the 50 United States;

(B) American Samoa;

the operative date of the valuation manual in addition to any requirements established by the commissioner and adopted by rule.

Sec. 425.073. VALUATION MANUAL FOR POLICIES ISSUED ON OR AFTER THE OPERATIVE DATE OF THE VALUATION MANUAL.

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

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

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

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

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

(B) health annual statements; or

(C) fraternal annual statements; and

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

(A) the 50 United States;

(B) American Samoa;

- (C) the United States Virgin Islands;
- (D) the District of Columbia;
- (E) Guam; and
- (F) Puerto Rico.

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

- (1) at least three-fourths of the members of the National Association of Insurance Commissioners voting, but not less than a majority of the total membership; and
- (2) members of the National Association of Insurance Commissioners representing jurisdictions totaling greater than 75 percent of the direct premiums written as reported in the most recently available annual statements as provided by Subsections (b)(2)(A)-(C).

(d) The valuation manual must specify:

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

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

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

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

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

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

- (C) the United States Virgin Islands;
- (D) the District of Columbia;
- (E) Guam; and
- (F) Puerto Rico.

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

- (1) at least three-fourths of the members of the National Association of Insurance Commissioners voting, but not less than a majority of the total membership; and
- (2) members of the National Association of Insurance Commissioners representing jurisdictions totaling greater than 75 percent of the direct premiums written as reported in the most recently available annual statements as provided by Subsections (b)(2)(A)-(C).

(d) The valuation manual must specify:

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

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

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

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

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

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

(B) the assumptions prescribed for risks over which the company does not have significant control or influence; and
(C) the procedures for corporate governance and oversight of the actuarial function, and a process for appropriate waiver or modification of the procedures;
(3) the policies that are not subject to a principle-based valuation under Section 425.074;
(4) the data and form of data required under Section 425.075, to whom the data must be submitted, and other desired requirements, including requirements concerning data analyses and reporting of analyses; and
(5) other requirements, including requirements relating to reserve methods, models for measuring risk, generation of economic scenarios, assumptions, margins, use of company experience, disclosure, certification, reports, actuarial opinions and memorandums, transition rules, and internal controls.

(e) With respect to policies that are not subject to a principle-based valuation under Section 425.074 as described by Subsection (d)(3), the minimum valuation standard specified in the valuation manual must:
(1) be consistent with the minimum valuation standard before the operative date of the valuation manual; or
(2) develop reserves that quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events

(B) the assumptions prescribed for risks over which the company does not have significant control or influence; and
(C) the procedures for corporate governance and oversight of the actuarial function, and a process for appropriate waiver or modification of the procedures;
(3) the policies that are not subject to a principle-based valuation under Section 425.074;
(4) the data and form of data required under Section 425.075, to whom the data must be submitted, and other desired requirements, including requirements concerning data analyses and reporting of analyses;
(5) other requirements, including requirements relating to reserve methods, models for measuring risk, generation of economic scenarios, assumptions, margins, use of company experience, disclosure, certification, reports, actuarial opinions and memorandums, transition rules, and internal controls; and
(6) an exemption that allows certain small companies to value reserves based on an exception from certain requirements of this section and Section 425.074; however, the premium thresholds for determining whether the exemption applies shall be as follows:
(A) less than \$300 million of ordinary life premium; and
(B) less than \$600 million of combined ordinary life premiums for a group of life insurers if the company is a member of that group.
(e) For purposes of Subsections (d)(6)(A) and (B), an ordinary life premium is measured as a direct premium plus reinsurance assumed from an unaffiliated company, as reported in the prior calendar year statement.
(f) With respect to policies that are not subject to a principle-based valuation under Section 425.074 as described by Subsection (d)(3), the minimum valuation standard specified in the valuation manual must:
(1) be consistent with the minimum valuation standard before the operative date of the valuation manual; or
(2) develop reserves that quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events

that have a reasonable probability of occurring.

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

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

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

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

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

Sec. 425.075. EXPERIENCE REPORTING FOR POLICIES IN FORCE ON OR AFTER OPERATIVE DATE OF VALUATION MANUAL.

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

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

(2) all documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created,

that have a reasonable probability of occurring.

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

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

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

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

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

Sec. 425.075. EXPERIENCE REPORTING FOR POLICIES IN FORCE ON OR AFTER OPERATIVE DATE OF VALUATION MANUAL.

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

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

(2) all documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created,

produced, or obtained by or disclosed to the commissioner or any other person in the course of an examination made under Section 425.073(g); provided, however, that if an examination report or other material prepared in connection with an examination made under Subchapter B, Chapter 401, is not held as private and confidential information under Subchapter B, Chapter 401, an examination report or other material prepared in connection with an examination made under Section 425.073(g) shall not be "confidential information" to the same extent as if such examination report or other material had been prepared under Subchapter B, Chapter 401;

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

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

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

produced, or obtained by or disclosed to the commissioner or any other person in the course of an examination made under Section 425.073(h); provided, however, that if an examination report or other material prepared in connection with an examination made under Subchapter B, Chapter 401, is not held as private and confidential information under Subchapter B, Chapter 401, an examination report or other material prepared in connection with an examination made under Section 425.073(h) shall not be "confidential information" to the same extent as if such examination report or other material had been prepared under Subchapter B, Chapter 401;

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

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

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

including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the commissioner or any other person in connection with such experience materials.

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

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

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

(e) The commissioner may receive documents, materials, data, and other information, including otherwise confidential and privileged documents, materials, data, or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, from regulatory or law

including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the commissioner or any other person in connection with such experience materials.

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

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

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

(e) The commissioner may receive documents, materials, data, and other information, including otherwise confidential or privileged documents, materials, data, or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, from regulatory or law

enforcement officials of other foreign or domestic jurisdictions and from the Actuarial Board for Counseling and Discipline or its successor and shall maintain as confidential any document, material, data, or other information received with notice or the understanding that it is confidential and privileged under the laws of the jurisdiction that is the source of the document, material, data, or other information.

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

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

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

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

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

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

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

(k) Once any portion of a memorandum in support of an opinion submitted under Section 425.0545 or a principle-based valuation report developed under Section 425.074(b)(3) is cited by the company in its marketing or is publicly volunteered to or before a governmental agency other than a state insurance department or is released by

enforcement officials of other foreign or domestic jurisdictions and from the Actuarial Board for Counseling and Discipline or its successor and shall maintain as confidential or privileged any document, material, data, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, data, or other information.

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

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

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

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

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

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

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

(k) Once any portion of a memorandum in support of an opinion submitted under Section 425.0545 or a principle-based valuation report developed under Section 425.074(b)(3) is cited by the company in its marketing or is publicly volunteered to or before a governmental agency other than a state insurance department or is released by

the company to the news media, all portions of such memorandum or report shall no longer be confidential and privileged.

Sec. 425.077. SINGLE STATE EXEMPTION.

SECTION 16. Subchapter A, Chapter 1105, Insurance Code, is amended.

SECTION 17. Section 1105.055, Insurance Code, is amended.

SECTION 18. Section 1105.056, Insurance Code, is amended.

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

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

the company to the news media, all portions of such memorandum or report shall no longer be confidential and privileged.

Sec. 425.077. SINGLE STATE EXEMPTION.

SECTION 16. Same as introduced version.

SECTION 17. Same as introduced version.

SECTION 18. Same as introduced version.

SECTION 19. Same as introduced version.

SECTION 20. Same as introduced version.