Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015

HOUSE BILL NO. 1142
(Representative Keiser)
(Senator Klein)

AN ACT to create and enact sections 26.1-35-00.1, 26.1-35-00.2, 26.1-35-11, 26.1-35-12, 26.1-35-13, and 26.1-35-14 of the North Dakota Century Code, relating to the standard valuation law for life insurance policies and annuities; to amend and reenact sections 26.1-35-01, 26.1-35-01.1, 26.1-35-02, 26.1-35-03, 26.1-35-04, 26.1-35-05, 26.1-35-06, 26.1-35-07, 26.1-35-08, 26.1-35-09, and 26.1-35-10 of the North Dakota Century Code, relating to the standard valuation law for life insurance; and to provide a contingent effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 26.1-35-00.1 of the North Dakota Century Code is created and enacted as follows:

26.1-35-00.1. Definitions.

In this chapter, the following definitions apply on or after the operative date of the valuation manual:

1. "Accident and health insurance" means a contract that incorporates morbidity risk and provides protection against economic loss resulting from accident, sickness, or medical conditions and as may be specified in the valuation manual.

2. "Appointed actuary" means a qualified actuary who is appointed in accordance with the valuation manual to prepare the actuarial opinion required in subsection 2 of section 26.1-35-01.1.

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

4. "Insurer" means an entity that has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state:

   a. And has at least one such policy in force or on claim; or

   b. Is required to hold a certificate of authority to write life insurance, accident and health insurance, or deposit-type contracts in this state.

5. "Life insurance" means a contract that incorporates mortality risk, including annuity and pure endowment contracts, and as may be specified in the valuation manual.

6. "Policyholder behavior" means any action a policyholder, contract holder, or any other person with the right to elect options, such as a certificate holder, may take under a policy or contract subject to this chapter, including lapse, withdrawal, transfer, deposit, premium payment, loan, annuitization, or benefit elections prescribed by the policy or contract. The term does not include events of mortality or morbidity that result in benefits prescribed in their essential aspects by the terms of the policy or contract.

7. "Principle-based valuation" means a reserve valuation that uses one or more methods or one or more assumptions determined by the insurer and is required to comply with section 26.1-35-12 as specified in the valuation manual.

8. "Qualified actuary" means an individual who is qualified to sign the applicable statement of actuarial opinion in accordance with the American academy of actuaries qualification standards for actuaries signing such statements and who meets the requirements specified in the valuation manual.

9. "Tail risk" means a risk that occurs either when the frequency of low probability events is higher than expected under a normal probability distribution or when there are observed events of very significant size or magnitude.

10. "Valuation manual" means the manual of valuation instructions adopted by the national association of insurance commissioners and approved by the commissioner as specified in this chapter.

SECTION 2. Section 26.1-35-00.2 of the North Dakota Century Code is created and enacted as follows:

26.1-35-00.2. Application of valuation manual - Changes to valuation manual - Requirements of valuation manual.

1. Except as provided under subsections 4 or 6 of section 26.1-35-00.2, for policies issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under subsection 2 of section 26.1-35-01.

2. Unless the commissioner or a change in the valuation manual specifies a later effective date, changes to the valuation manual become effective on January first following the date the commissioner adopts the changes. The commissioner may adopt changes to the valuation manual if the valuation manual has been adopted by the national association of insurance commissioners by an affirmative vote representing:

   a. 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

   b. Members of the national association of insurance commissioners representing jurisdictions totaling greater than seventy-five percent of the direct premiums written as reported in the following annual statements most recently available before the vote in paragraph a: life, accident and health annual statements; health annual statements; or fraternal annual statements.

3. The valuation manual must specify all of the following:

   a. Minimum valuation standards for and definitions of the policies or contracts subject to subsection 2 of section 26.1-35-01. The minimum valuation standards must be:

      (1) The commissioners reserve valuation method for life insurance contracts, other than annuity contracts, subject to subsection 2 of section 26.1-35-01;

      (2) The commissioners annuity reserve valuation method for annuity contracts subject to subsection 2 of section 26.1-35-01; and

      (3) Minimum reserves for all other policies or contracts subject to subsection 2 of section 25.1-35-01.

   b. Which policies or contracts or types of policies or contracts that are subject to the requirements of a principle-based valuation in subsection 1 of section 26.1-35-12 and the minimum valuation standards consistent with those requirements.

   c. For policies and contracts subject to a principle-based valuation under section 26.1-35-12.

(1) Requirements for the format of reports to the commissioner under subdivision c of subsection 2 of section 26.1-35-12 and which must include information necessary to determine if the valuation is appropriate and in compliance with this chapter;

(2) Assumptions must be prescribed for risks over which the insurer does not have significant control or influence; and

(3) Procedures for corporate governance and oversight of the actuarial function, and a process for appropriate waiver or modification of such procedures.

d. For policies not subject to a principle-based valuation under section 26.1-35-12, the minimum valuation standard must:

(1) Be consistent with the minimum standard of valuation 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.

e. Other requirements, including those relating to reserve methods, models for measuring risk, generation of economic scenarios, assumptions, margins, use of insurer experience, risk measurement, disclosure, certifications, reports, actuarial opinions and memorandums, transition rules, and internal controls.

f. The data and form of the data required under section 26.1-35-13, with whom the data must be submitted, and may specify other requirements including data analyses and reporting of analyses.

4. In the absence of a specific valuation requirement or if a specific valuation requirement in the valuation manual is not, in the opinion of the commissioner, in compliance with this chapter, with respect to such requirements, the insurer shall comply with minimum valuation standards prescribed by the commissioner by rule.

5. The commissioner may employ or contract with a qualified actuary, at the expense of the insurer, to perform an actuarial examination of the insurer and opine on the appropriateness of any reserve assumption or method used by the insurer, or to review and opine on an insurer's compliance with any requirement set forth in this chapter. The commissioner may rely upon the opinion regarding provisions contained within this chapter, of a qualified actuary engaged by the commissioner of another state, district, or territory of the United States.

6. The commissioner may require an insurer to change any assumption or method that, in the opinion of the commissioner, is necessary in order to comply with the requirements of the valuation manual or this chapter; and the insurer shall adjust the reserves as required by the commissioner. The commissioner may take other disciplinary action as permitted under this title.

SECTION 3. AMENDMENT. Section 26.1-35-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-35-01. ~~Commissioner to annually value liabilities for life policies and annuities~~Reserve valuation.

1. The following apply to policies and contracts issued before the operative date of the valuation manual:

a. The commissioner shall annually value, or cause to be valued, the reserve liabilities, in this chapter referred to as reserves, for all outstanding life insurance policies and annuity

and pure endowment contracts of every ~~life insurance company~~life insurer doing business in this state~~, and may certify the amount of the reserves, specifying the mortality table or tables, rate or rates of interest, and methods, net level premium method or other, used in the calculation of the reserves~~ issued after June 30, 1977, and before the operative date of the valuation manual. In calculating the reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves required of ~~any~~a foreign or alien ~~company~~insurer, the commissioner may accept ~~any~~a valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction ~~where~~when the valuation complies with the minimum standards provided in this chapter~~, if the official of that state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when the certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction~~.

b. Except sections 26.1-35-00.2 and 26.1-35-12, this chapter applies to all policies and contracts, as appropriate, subject to this chapter issued after June 30, 1977, and before the operative date of the valuation manual; however, sections 26.1-35-00.2 and 26.1-35-12 do not apply to such policies and contracts.

c. The minimum standard for the valuation of policies and contracts issued before July 1, 1977, are the standards provided by the laws in effect immediately before that date.

2. The following apply to policies and contracts issued on or after the operative date of the valuation manual:

a. Annually, the commissioner shall value, or cause to be valued, the reserve liabilities, in this chapter referred to as reserves, for all outstanding life insurance contracts, annuity and pure endowment contracts, accident and health contracts, and deposit-type contracts of every insurer issued on or after the operative date of the valuation manual. In lieu of the valuation of the reserves required of a foreign or alien insurer, the commissioner may accept a valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when the valuation complies with the minimum standard provided in this chapter.

b. The provisions set forth in sections 26.1-35-00.2 and 26.1-35-12 apply to all policies and contracts issued on or after the operative date of the valuation manual.

SECTION 4. AMENDMENT. Section 26.1-35-01.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-35-01.1. Actuarial opinion of reserves.

~~This section becomes operative at the end of the first full calendar year following the year of enactment.~~

1. The following apply to the actuarial opinions issued before the operative date of the valuation manual:

a. Every life ~~insurance company~~insurer doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The commissioner by rule shall define the specifics of this opinion and add any other items deemed to be necessary to its scope.

~~2.~~b. Actuarial analysis of reserves and assets supporting such reserves.

~~a.~~(1) Every life ~~insurance company~~insurer, except as exempted by or pursuant to rule, shall also annually include in the opinion required by subsection 1, an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by ~~regulation~~rule, when considered in light of the assets held by the ~~company~~insurer with respect to the reserves and related actuarial items, including the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the ~~company's~~insurer's obligations under the policies and contracts, including the benefits under and expenses associated with the policies and contracts.

~~b.~~(2) The commissioner may provide by rule for a transition period for establishing any higher reserves which the qualified actuary may deem necessary in order to render the opinion required by this section.

~~3.~~c. Requirement for opinion under ~~subsection 2~~subdivision b. Each opinion required by ~~subsection 2~~subdivision b must be governed by the following provisions:

~~a.~~(1) A memorandum, in form and substance acceptable to the commissioner as specified by rule, must be prepared to support each actuarial opinion.

~~b.~~(2) If the ~~insurance company~~insurer fails to provide a supporting memorandum at the request of the commissioner within a period specified by rule or the commissioner determines that the supporting memorandum provided by the ~~insurance company~~insurer fails to meet the standards prescribed by rule or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the ~~company~~insurer to review the opinion and the basis for the opinion and prepare ~~such~~the supporting memorandum ~~as is~~ required by the commissioner.

~~4.~~d. Requirement for all opinions subject to subsection 1. Every opinion subject to subsection 1 must be governed by the following provisions:

~~a.~~(1) The opinion must be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after December 31, 1994.

~~b.~~(2) The opinion must apply to all business in force, including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by rule.

~~c.~~(3) The opinion must be based on standards adopted from time to time by the actuarial standards board and on such additional standards as the commissioner may by rule prescribe.

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

~~e.~~(5) For the purposes of this section, "qualified actuary" means a member in good standing of the American academy of actuaries who meets the requirements set forth in ~~such regulations~~the rule.

~~f.~~(6) Except in cases of fraud or willful misconduct, the qualified actuary is not liable for damages to any person, other than the ~~insurance company~~insurer and the

commissioner, for any act, error, omission, decision, or conduct with respect to the actuary's opinion.

~~g.~~(7) Disciplinary action by the commissioner against the ~~company~~insurer or the qualified actuary must be defined in rules by the commissioner.

~~h.~~(8) ~~Any~~Except as provided in paragraphs 12, 13, and 14, documents, materials, or other information in the possession or control of the insurance department that are a memorandum in support of the opinion, and any other material provided by the ~~company~~insurer to the commissioner in connection ~~therewith~~with the memorandum, ~~must be kept~~are confidential ~~by the commissioner and may not be made public and is not subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by rules adopted hereunder; provided, however, that the~~records not subject to section 44-04-18 and are privileged, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action. However, the commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.

(9) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner is permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to paragraph 8.

(10) In order to assist in the performance of the commissioner's duties, the commissioner:

(a) May share documents, materials, or other information including the confidential and privileged documents, materials, or information subject to paragraph 8 with other state, federal, and international regulatory agencies; with the national association of insurance commissioners and its affiliates and subsidiaries; and with state, federal, and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;

(b) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, 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, and shall maintain as confidential or privileged any document, material, or 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, or information; and

(c) May enter agreements governing sharing and use of information consistent with paragraphs 8, 9, and 10.

(11) A waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information may not occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in paragraph 10.

(12) A memorandum in support of the opinion, and any other material provided by the insurer 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 by rules adopted under this section.

(13) The memorandum or other material may otherwise be released by the commissioner with the written consent of the ~~company~~insurer or to the American academy of actuaries upon 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.

(14) Once any portion of the confidential memorandum is cited by the ~~company~~insurer in its marketing or is cited before any governmental agency other than a state insurance department or is released by the ~~company~~insurer to the news media, all portions of the confidential memorandum are no longer confidential.

2. The following apply to actuarial opinions of reserves issued after the operative date of the valuation manual:

a. Every insurer with outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and subject to regulation by the commissioner annually shall submit the opinion of the appointed actuary 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 comply with applicable laws of this state. The valuation manual prescribes the specifics of this opinion, including any items deemed to be necessary to its scope.

b. Every insurer with outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and subject to regulation by the commissioner, except as exempted in the valuation manual, also annually shall include in the opinion required by subdivision a an opinion of the same appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified in the valuation manual, when considered in light of the assets held by the insurer with respect to the reserves and related actuarial items, including the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the insurer's obligations under the policies and contracts, including the benefits under and expenses associated with the policies and contracts.

c. Each opinion required by this subsection is governed by the following provisions:

(1) A memorandum, in form and substance as specified in the valuation manual, and acceptable to the commissioner, must be prepared to support each actuarial opinion.

(2) If the insurer fails to provide a supporting memorandum at the request of the commissioner within a period specified in the valuation manual or the commissioner determines that the supporting memorandum provided by the insurer fails to meet the standards prescribed by the valuation manual or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the insurer to review the opinion and the basis for the opinion and prepare the supporting memorandum required by the commissioner.

d. Under this subsection, every opinion is governed by the following provisions:

(1) The opinion must be in a form and substance as specified in the valuation manual and acceptable to the commissioner.

(2) The opinion must be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after the operative date of the valuation manual.

(3) The opinion must apply to all policies and contracts subject to subdivision b, plus other actuarial liabilities as may be specified in the valuation manual.

(4) The opinion must be based on standards adopted by the actuarial standards board or its successor and approved by the commissioner and on such additional standards as may be prescribed in the valuation manual.

(5) In the case of an opinion required to be submitted by a foreign or alien insurer, the commissioner may accept the opinion filed by that insurer with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to an insurer domiciled in this state.

(6) Except in cases of fraud or willful misconduct, the appointed actuary is not liable for damages to any person, other than the insurer and the commissioner, for any act, error, omission, decision, or conduct with respect to the appointed actuary's opinion.

(7) Disciplinary action by the commissioner against the insurer or the appointed actuary must be defined in rules adopted by the commissioner.

SECTION 5. AMENDMENT. Section 26.1-35-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-35-02. ~~Minimum standards of valuation for life or accident insurance~~Computation of minimum standard.

~~The~~Except as provided in sections 26.1-35-03, 26.1-35-04, and 26.1-35-11, the minimum ~~standards~~standard for the valuation of all life or accident insurance policies and contracts issued prior to July 1, 1977, are those provided by sections 26-03-33, 26-03-34, and 26-10-01 as they existed on June 30, 1977. Except as otherwise provided in sections 26.1-35-03~~ and~~, 26.1-35-04, and 26.1-35-11, the minimum standard for the valuation of all life or accident insurance policies and contracts issued after June 30, 1977, is the ~~commissioners'~~commissioners reserve valuation methods defined in sections 26.1-35-05, 26.1-35-06, ~~and~~ 26.1-35-09~~;~~, and 26.1-35-11, five and one-half percent interest for single premium life insurance policies and four and one-half percent interest for all other such policies and contracts issued after June 30, 1977, other than annuity and pure endowment contracts, and the following tables:

1. For ~~all~~ordinary policies of ~~ordinary~~ life insurance issued on the standard basis, excluding any disability and accidental death benefits in the policies, the commissioners 1941 standard ordinary mortality table for policies issued before the operative date of section 26.1-33-22, the ~~commissioners'~~commissioners 1958 standard ordinary mortality table for policies issued on or after the operative date of section 26.1-33-22 and prior to the earlier of a specified date filed by ~~a company~~an insurer with the commissioner in a written notice of the ~~company's~~insurer's election to comply with this chapter or January 1, 1989, provided that for any category of policies issued on female risks, all modified net premiums and present values referred to in this chapter may be calculated according to an age not more than six years younger than the actual age of the insured; and for policies issued on or after the earlier of a specified date filed by ~~a company~~an insurer with the commissioner in a written notice of the ~~company's~~insurer's election to comply with this chapter or January 1, 1989:

   a. The ~~commissioners'~~commissioners 1980 standard ordinary mortality table;

   b. At the election of the ~~company~~insurer for any one or more specified plans of life insurance, the ~~commissioners'~~commissioners 1980 standard ordinary mortality table with ten-year select mortality factors; or

   c. Any ordinary mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for the policies.

2. For ~~all policies of~~ industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in the policies, the 1941 standard industrial mortality table for policies issued before the operative date of section 26.1-33-23, and for policies issued on or after the operative date of section 26.1-33-23, the ~~commissioners'~~commissioners 1961 standard industrial mortality table or any industrial mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for the policies.

3. For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in the policies, the 1937 standard annuity mortality table, or at the option of the insurer, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner.

4. For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in the policies, the group annuity mortality table for 1951, a modification of the table approved by the commissioner, or at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

5. For total and permanent disability benefits in or supplementary to policies or contracts, for policies or contracts issued after December 31, 1965, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates, adopted after 1980 by the national association of insurance commissioners, that are approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for ~~the~~those policies; for policies or contracts issued after December 31, 1960, and before January 1, 1966, either those tables or, at the option of the insurer, the class (3) disability table (1926); and for policies issued before January 1, 1961, the class (3) disability table (1926). The table must, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

~~4.~~6. For accidental death benefits in or supplementary to policies ~~or contracts~~issued after December 31, 1965, the 1959 accidental death benefits table or any accidental death benefits table, adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for the policies~~. The~~; for policies issued after December 31, 1960, and before January 1, 1966, either that table or, at the option of the insurer, the intercompany double indemnity mortality table; and for policies issued before January 1, 1961, the intercompany double indemnity mortality table. Either table must be combined with a mortality table ~~permitted~~ for calculating the reserves for life insurance policies.

~~5.~~7. For group life insurance, life insurance issued on the substandard basis and other special benefits, any tables ~~that may be~~ approved by the commissioner.

SECTION 6. AMENDMENT. Section 26.1-35-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-35-03. ~~Minimum standards of valuation~~Computation of minimum standard for annuities.

1. Except as provided in section 26.1-35-04, the minimum ~~standards for the~~standard of valuation ~~of all~~for individual annuity and pure endowment contracts issued on or after the operative date of this section, and for ~~all~~ annuities and pure endowments purchased on or after the operative date under group annuity and pure endowment contracts, must be the ~~commissioners'~~commissioners reserve valuation methods defined in sections 26.1-35-05 and 26.1-35-06 and the following tables and interest rates:

   ~~1.~~a. For individual annuity and pure endowment contracts issued before July 1, 1977, excluding any disability and accidental death benefits in those contracts, the 1971 individual annuity mortality table, or any modification of this table approved by the

commissioner, and six percent interest for single premium immediate annuity contracts and four percent interest for all other individual annuity and pure endowment contracts.

b. For individual single premium immediate annuity contracts~~, excluding any disability and accidental death benefits in the contracts~~ issued after June 30, 1977, excluding any disability and accidental death benefits in those contracts, the 1971 individual annuity mortality table or any individual annuity mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for the contracts, or any modification of these tables approved by the commissioner, and seven and one-half percent interest.

~~2.~~c. For individual annuity and pure endowment contracts issued after June 30, 1977, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in the contracts, the 1971 individual annuity mortality table or any individual annuity mortality table~~,~~ adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for the contracts, or any modification of these tables approved by the commissioner, and five and one-half percent interest for single premium deferred annuity and pure endowment contracts and four and one-half percent interest for all other individual annuity and pure endowment contracts.

d. For annuities and pure endowments purchased prior to July 1, 1977, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under those contracts, the 1971 group annuity mortality table or any modification of this table approved by the commissioner, and six percent interest.

~~3.~~e. For ~~all~~ annuities and pure endowments purchased after June 30, 1977, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under ~~the~~these contracts, the 1971 group annuity mortality table or any group annuity mortality table~~,~~ adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for ~~the~~ annuities and pure endowments, or any modification of these tables approved by the commissioner, and seven and one-half percent interest.

2. After June 30, 1977, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1979, which must be the operative date of this section for that insurer. If an insurer makes no election, the operative date of this section for that insurer must be January 1, 1979.

SECTION 7. AMENDMENT. Section 26.1-35-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-35-04. ~~Determination~~Computation of minimum standard ~~for valuation - Interest rates~~by calendar year of issue.

~~The calendar year statutory valuation interest rates as defined in this section are:~~

1. The interest rates used in determining the minimum standard for the valuation of the following are the calendar year statutory valuation interest rates as defined in this section:

   a. ~~All life~~Life insurance policies issued in a particular calendar year, on or after the earlier of a specified date filed by ~~a company~~an insurer with the commissioner in a written notice of the ~~company's~~insurer's election to comply with this chapter or January 1, 1989.

   b. ~~All individual~~Individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1984.

c. ~~All annuities~~Annuities and pure endowments purchased in a particular calendar year on or after January 1, 1984, under group annuity and pure endowment contracts.

d. The net increase, if any, in a particular calendar year after January 1, 1984, in amounts held under guaranteed interest contracts.

2. The calendar year statutory valuation interest rates, I, must be determined as follows and the results rounded to the nearer one-quarter of one percent:

a. For life insurance:

$$I = .03 + W(R_1 - .03) + \frac{W}{2}(R_2 - .09)$$

b. For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options:

$$I = .03 + W(R - .03)$$

where R_1 is the lesser of R and .09, R_2 is the greater of R and .09, R is the reference interest rate defined in this section, and W is the weighting factor defined in this section.

c. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in subdivision b, the formula for life insurance stated in subdivision a applies to annuities and guaranteed interest contracts with guarantee durations in excess of ten years and the formula for single premium immediate annuities stated in subdivision b applies to annuities and guaranteed interest contracts with guarantee duration of ten years or less.

d. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in subdivision b applies.

e. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in subdivision b applies.

However, if the calendar year statutory valuation interest rate for ~~any~~a life insurance ~~policies~~policy issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one percent, the calendar year statutory valuation interest rate for the life insurance policies must equal the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year must be determined for 1980 by using the reference interest rate defined for 1979, and must be determined for each subsequent calendar year regardless of when section ~~26.1-33-26~~26.1-33-24 becomes operative.

3. The weighting factors referred to in the formulas in subsection 2 are given in the following tables:

a. The weighting factors for life insurance are:

Guarantee Duration	Weighting Factors
10 years or less	.50

More than 10 years, but not more than 20 years	.45
More than 20 years	.35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy.

b. The weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options is eighty hundredths.

c. The weighting factors for other annuities and for guaranteed interest contracts, except as stated in subdivision b, are as specified in paragraphs 1, 2, and 3, according to the requirements and definitions in paragraphs 4, 5, and 6:

(1) For annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration	Weighting Factor for Plan Type A	B	C
5 years or less	.80	.60	.50
More than 5 years, but not more than 10 years	.75	.60	.50
More than 10 years, but not more than 20 years	.65	.50	.45
More than 20 years	.45	.35	.35

(2) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in paragraph 1 increased by .15 .25 .05

(3) For annuities and guaranteed interest contracts valued on an issue year basis,

other than those with no cash settlement options, which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than twelve months beyond the valuation date, the factors shown in paragraph 1 or derived in paragraph 2 increased by	.05	.05	.05

(4) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the ~~guarantee~~guaranteed duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(5) The plan type as used in the tables in this subsection is defined as follows:

(a) Plan type A: At any time the policyholder may withdraw funds only with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the ~~insurance company~~insurer, without such adjustment but in installments over five years or more, as an immediate life annuity, or no withdrawal permitted.

(b) Plan type B: Before expiration of the interest rate guarantee, the policyholder may withdraw funds only with an adjustment to reflect changes in interest

rates or asset values since receipt of the funds by the ~~insurance company~~insurer, without ~~such~~an adjustment but in installments over five years or more, or no withdrawal permitted. At the end of the interest rate guarantee, funds may be withdrawn without ~~such~~an adjustment in a single sum or installments over less than five years.

(c) Plan type C: The policyholder may withdraw funds before expiration of the interest rate guarantee in a single sum or installments over less than five years either without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the ~~insurance company~~insurer, or subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(6) ~~A company~~An insurer may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. ~~An~~As used in this section, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract. A change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

4. The reference interest rate referred to in subsection 2 is defined as follows:

a. For ~~all~~ life insurance, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June thirtieth of the calendar year next preceding the year of issue, ~~of Moody's corporate bond yield average~~ the monthly average ~~corporates~~of the composite yield on seasoned corporate bonds, as published by Moody's investors service, incorporated.

b. For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve months, ending on June thirtieth of the calendar year of issue or year of purchase, ~~of Moody's corporate bond yield average~~ the monthly average ~~corporates~~of the composite yield on seasoned corporate bonds, as published by Moody's investors service, incorporated.

c. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subdivision b with guarantee duration in excess of ten years, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June thirtieth of the calendar year of issue or purchase, of ~~Moody's corporate bond yield average~~ the monthly average ~~corporates~~of the composite yield on seasoned corporate bonds, as published by Moody's investors service, incorporated.

d. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subdivision b with guaranteed duration of ten years or less, the average over a period of twelve months, ending on June thirtieth of the calendar year of issue or purchase, of ~~Moody's corporate bond yield average~~ the monthly average ~~corporates~~of the composite

yield on seasoned corporate bonds, as published by Moody's investors service, incorporated.

e. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve months, ending on June thirtieth of the calendar year of issue or purchase, of ~~Moody's corporate bond yield average~~ the monthly average ~~corporates~~of the composite yield on seasoned corporate bonds, as published by Moody's investors service, incorporated.

f. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in subdivision b the average over a period of twelve months, ending on June thirtieth of the calendar year of the change in the fund, of ~~Moody's corporate bond yield average~~ the monthly average ~~corporates~~of the composite yield on seasoned corporate bonds, as published by Moody's investors service, incorporated.

5. If ~~Moody's corporate bond yield average~~ the monthly average ~~corporates~~of the composite yield on seasoned corporate bonds is no longer published by Moody's investors service, incorporated, or if the national association of insurance commissioners determines that ~~Moody's corporate bond yield average~~ the monthly average ~~corporates~~of the composite yield on seasoned corporate bonds as published by Moody's investors service, incorporated, is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate~~, which is~~ adopted by the national association of insurance commissioners and approved by rule adopted by the commissioner, may be substituted.

SECTION 8. AMENDMENT. Section 26.1-35-05 of the North Dakota Century Code is amended and reenacted as follows:

26.1-35-05. ~~Reserves by commissioners' reserve~~Reserve valuation method - Life insurance and endowment benefits.

1. Except as otherwise provided in sections 26.1-35-06 ~~and~~, 26.1-35-09, and 26.1-35-11, reserves according to the ~~commissioners'~~commissioners reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, must be the excess, if any, of the present value, at the date of valuation, of the future guaranteed benefits provided for by ~~the~~those policies, over the then present value of any future modified net premiums for the policies. The modified net premiums for a policy must be the uniform percentage of the respective contract premiums for the benefits that the present value, at the date of issue of the policy, of all the modified net premiums equals the sum of the present value of the benefits provided by the policy and the excess of subdivision a over subdivision b as follows:

   a. A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary of the policy on which a premium falls due~~; provided, however, that~~. However, the net level annual premium may not exceed the net level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of the policy.

   b. A net one-year term premium for the benefits provided in the first policy year.

2. For ~~any~~a life insurance policy issued after December 31, 1986, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for the excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than the excess premium, the reserve according to the ~~commissioners'~~commissioners reserve valuation

method as of any policy anniversary occurring on or before the assumed ending date, which is defined as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than the excess premium, except as otherwise provided in section 26.1-35-09, must be the greater of the reserve as of ~~such~~the policy anniversary calculated as described in this section and the reserve as of ~~such~~the policy anniversary calculated as described in this section, but with the value defined in ~~subdivision a of~~ subsection 1 being reduced by fifteen percent of the amount of such excess first year premium; all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date; the policy being assumed to mature on such date as an endowment; and the cash surrender value provided on ~~such~~that date being considered as an endowment benefit. In making the above comparison, the mortality and interest bases stated in sections 26.1-35-02 and 26.1-35-04 must be used.

3. Reserves according to the ~~commissioners'~~commissioners reserve valuation method must be calculated by a method consistent with the principles as described in this section for ~~life~~:

   a. Life insurance policies providing a varying amount of insurance or requiring the payment of varying premiums; ~~group~~

   b. Group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership, limited liability company, or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the federal Internal Revenue Code, as amended; ~~disability~~

   c. Disability and accidental death benefits in all policies and contracts; and ~~all~~

   d. All other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts~~, must be calculated by a method consistent with the principles of this section~~.

SECTION 9. AMENDMENT. Section 26.1-35-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-35-06. ~~Reserves by commissioners' annuity reserve~~Reserve valuation - Annuity and pure endowment benefits method.

1. This section applies to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the federal Internal Revenue Code of 1954, as amended.

2. Reserves according to the ~~commissioners'~~commissioner annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in the contracts, must be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by the contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of the contracts, that become payable prior to the end of ~~such~~the respective contract year. The future guaranteed benefits must be determined by using the mortality tables, if any, and the interest rate, or rates, specified in the contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of the contracts to determine nonforfeiture values.

SECTION 10. AMENDMENT. Section 26.1-35-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-35-07. Minimum ~~aggregate~~ reserves ~~for life policies issued after June 30, 1977~~.

1. ~~A company's~~An insurer's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued after June 30, 1977, may not be less than the aggregate reserves calculated in accordance with the methods set forth in sections 26.1-35-05, 26.1-35-06, ~~and~~ 26.1-35-09, and 26.1-35-10 and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for the policies.

2. ~~In no event may the~~The aggregate reserves for all policies, contracts, and benefits may not be less than the aggregate reserves determined by the qualified actuary to be necessary to render the opinion required by section 26.1-35-01.1.

SECTION 11. AMENDMENT. Section 26.1-35-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-35-08. ~~Calculation of minimum aggregate reserves by other standards~~Optional reserve calculation.

1. Reserves for all policies and contracts issued prior to July 1, 1977, may be calculated, at the option of the ~~company~~insurer, according to any standards which produce greater aggregate reserves for the policies and contracts than the minimum reserves required by the laws in effect on June 30, 1977.

2. Reserves for any category of policies, contracts, or benefits, as established by the commissioner, issued on or after July 1, 1977, may be calculated, at the option of the ~~company~~insurer, according to any standards which produce greater aggregate reserves for the category than those calculated according to the minimum standard provided in this chapter, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, may not be ~~higher~~greater than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided in the policies and contracts.

3. ~~Any company~~An insurer that has adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided in this chapter may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum provided in this chapter; provided, however, that for the purposes of this section, the holding of additional reserves previously determined by ~~a qualified~~the appointed actuary to be necessary to render the opinion required by section 26.1-35-01.1 may not be deemed to be the adoption of a higher standard of valuation.

SECTION 12. AMENDMENT. Section 26.1-35-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-35-09. ~~Minimum reserve if~~Reserve calculation - Valuation net premium ~~exceeds~~exceeding the gross premium charged.

1. If in any contract year the gross premium charged by ~~any life insurance company~~an insurer on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve ~~on the policy or contract~~ but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for the policy or contract is the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for the policy or contract, or the reserve calculated by the method actually used for the policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality

and rate of interest referred to in this section are those standards stated in sections 26.1-35-02 and 26.1-35-04.

2. For ~~any~~a life insurance policy issued after December 31, 1986, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for the excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than the excess premium, ~~subsection 1~~the provisions of this section must be applied as if the method actually used in calculating the reserve for the policy was the method described in section 26.1-35-05, ignoring subsection 2 of that section. The minimum reserve at each policy anniversary must be the greater of the minimum reserve calculated in accordance with section 26.1-35-05, including subsection 2 of that section, and the minimum reserve calculated in accordance with this section.

SECTION 13. AMENDMENT. Section 26.1-35-10 of the North Dakota Century Code is amended and reenacted as follows:

26.1-35-10. ~~Future premium determination~~Reserve calculation - Indeterminate premium plans.

In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the ~~insurance company~~insurer based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in sections 26.1-35-05, 26.1-35-06, and 26.1-35-09, the reserves which are held under the plan must be appropriate in relation to the benefits and the pattern of premiums for that plan, and must be computed by a method that is consistent with the principles of this chapter, as determined by rules adopted by the commissioner.

SECTION 14. Section 26.1-35-11 of the North Dakota Century Code is created and enacted as follows:

26.1-35-11. Minimum standard for accident and health insurance contracts.

For an accident and health insurance contract issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under subsection 2 of section 26.1-35-01. For an accident and health insurance contract issued after June 30, 1977, and before the operative date of the valuation manual, the minimum standard of valuation is the standard adopted by the commissioner by rule.

SECTION 15. Section 26.1-35-12 of the North Dakota Century Code is created and enacted as follows:

26.1-35-12. Requirements of a principle-based valuation.

1. An insurer shall establish reserves using a principle-based valuation that meets the following conditions for policies or contracts as specified in the valuation manual:

   a. 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 during the lifetime of the contracts. For polices or contracts with significant tail risk, reflects conditions appropriately adverse to quantify the tail risk.

   b. Incorporate assumptions, risk analysis methods, and financial models and management techniques that are consistent with, but not necessarily identical to, those utilized within the insurer's overall risk assessment process, while recognizing potential differences in financial reporting structures and any prescribed assumptions or methods.

c. Incorporate assumptions that are derived in one of the following manners:

(1) The assumption is prescribed in the valuation manual.

(2) For assumptions that are not prescribed, the assumptions must:

(a) Be established utilizing the insurer's available experience, to the extent the experience is relevant and statistically credible; or

(b) To the extent that insurer data is not available, relevant, or statistically credible, be established utilizing other relevant, statistically credible experience.

d. Provide margins for uncertainty, including adverse deviation and estimation error, such that the greater the uncertainty the larger the margin and resulting reserve.

2. An insurer using a principle-based valuation for one or more policies or contracts subject to this section as specified in the valuation manual shall:

a. Establish procedures for corporate governance and oversight of the actuarial valuation function consistent with those described in the valuation manual.

b. Provide to the commissioner and the board of directors an annual certification of the effectiveness of the internal controls with respect to the principle-based valuation. The controls must be designed to assure 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 certification must be based on the controls in place as of the end of the preceding calendar year.

c. Develop, and file with the commissioner upon request, a principle-based valuation report that complies with standards prescribed in the valuation manual.

3. A principle-based valuation may include a prescribed formulaic reserve component.

SECTION 16. Section 26.1-35-13 of the North Dakota Century Code is created and enacted as follows:

26.1-35-13. Experience reporting for policies in force on or after the operative date of the valuation manual.

An insurer shall submit mortality, morbidity, policyholder behavior, and expense experience and other data as prescribed in the valuation manual.

SECTION 17. Section 26.1-35-14 of the North Dakota Century Code is created and enacted as follows:

26.1-35-14. Confidentiality.

1. For purposes of this section, "confidential information" means:

a. A memorandum in support of an opinion submitted under section 26.1-35-01.1 and any other documents, materials, and other information, including 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;

b. All documents, materials, and other information, including all working papers and copies of working papers, created, produced, or obtained by or disclosed to the commissioner or any other person in the course of an examination made under subsection 5 of section 26.1-35-00.2. However, if an examination report or other material prepared in connection

with an examination made under chapter 26.1-03 is not held as private and confidential information under chapter 26.1-03, an examination report or other material prepared in connection with an examination made under subsection 5 of section 26.1-35-00.2 may not be confidential information to the same extent as if such examination report or other material had been prepared under chapter 26.1-03;

c. Any reports, documents, materials, and other information developed by an insurer in support of, or in connection with, an annual certification by the insurer under subdivision b of subsection 2 of section 26.1-35-12 evaluating the effectiveness of the insurer's internal controls with respect to a principle-based valuation and any other documents, materials, and other information, including all working papers and copies of working papers created, produced, or obtained by or disclosed to the commissioner or any other person in connection with such reports, documents, materials, and other information;

d. Any principle-based valuation report developed under subdivision c of subsection 2 of section 26.1-35-12 and any other documents, materials, and other information, including all working papers and copies of working papers created, produced, or obtained by or disclosed to the commissioner or any other person in connection with such report; and

e. Any documents, materials, data, and other information submitted by an insurer under section 26.1-35-13, collectively referred to as experience data, and any other documents, materials, data, and other information, including all working papers and copies of working papers created or produced in connection with such experience data, in each case that include any potentially insurer-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 all working papers and copies of working papers created, produced, or obtained by or disclosed to the commissioner or any other person in connection with such experience materials.

2. a. Except as provided in this section, an insurer's confidential information is confidential and privileged, and is not subject to section 44-04-18, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action. However, the commissioner may use the confidential information in the furtherance of any regulatory or legal action brought against the insurer as a part of the commissioner's official duties.

b. Neither the commissioner nor any person that received confidential information while acting under the authority of the commissioner is permitted or required to testify in any private civil action concerning any confidential information.

c. In order to assist in the performance of the commissioner's duties, the commissioner may share confidential information with other state, federal, and international regulatory agencies and with the national association of insurance commissioners and its affiliates and subsidiaries, and in the case of confidential information specified in subdivisions a and d of subsection 1 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, 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.

d. 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 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, or other information.

e. The commissioner may enter agreements governing sharing and use of information consistent with this subsection.

f. A waiver of any applicable privilege or claim of confidentiality in the confidential information may not occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subdivision c.

g. A privilege established under the law of any state or jurisdiction which is substantially similar to the privilege established under this subsection is available and must be enforced in any proceeding in and in any court of this state.

h. In this section, reference to regulatory agency, law enforcement agency, and the national association of insurance commissioners, includes the employees, agents, consultants, and contractors of these entities.

3. Notwithstanding subsection 2, any confidential information specified in subdivisions a and d of subsection 1:

a. May be 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 26.1-35-01.1 or principle-based valuation report developed under subdivision c of subsection 2 of section 26.1-35-12 by reason of an action required by this chapter or by rules adopted under this chapter;

b. May otherwise be released by the commissioner with the written consent of the insurer; and

c. Once any portion of a memorandum in support of an opinion submitted under section 26.1-35-01.1 or a principle-based valuation report developed under subdivision c of subsection 2 of section 26.1-35-12 is cited by the insurer in its marketing or is publicly volunteered to or before a governmental agency other than a state insurance department or is released by the insurer to the news media, all portions of such memorandum or report are no longer confidential.

SECTION 18. CONTINGENT EFFECTIVE DATE. This Act is effective on the January first following the date the insurance commissioner certifies to the secretary of state and the legislative council that all of the following have occurred:

1. The valuation manual has been adopted by the national association of insurance commissioners by an affirmative vote of the greater of at least forty-two members or three-fourths of the members voting.

2. The standard 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 seventy-five percent of the direct premiums written as reported in the following annual statements submitted for 2008: life, accident and health annual statements; health annual statements; or fraternal annual statements.

3. The standard 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 forty-two of the following fifty-five jurisdictions:

a. The fifty states of the United States of America;

b. American Samoa;

c. The United States Virgin Islands;

d. The District of Columbia;

e. Guam; and

f. The Commonwealth of Puerto Rico.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fourth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1142.

House Vote:	Yeas 90	Nays 0	Absent 4
Senate Vote:	Yeas 46	Nays 0	Absent 1

Chief Clerk of the House

Received by the Governor at 12:36 P. M. on March 19, 2015.

Approved at 12:26 P M. on March 20, 2015.

Governor

Filed in this office this 20th day of March, 2015,

at 3:56 o'clock P M.

Secretary of State