

State of South Dakota

NINETIETH SESSION
LEGISLATIVE ASSEMBLY, 2015

265W0440

HOUSE COMMERCE AND ENERGY ENGROSSED NO. **HB 1235** - 02/11/2015

Introduced by: Representatives Willadsen, Beal, Deutsch, Harrison, Hawley, Kirschman, Novstrup (Al), Rounds, Schoenbeck, Stalzer, Westra, Wiik, Wollmann, and Zikmund and Senators Brown, Bradford, Curd, Greenfield (Brock), Haggar (Jenna), Heineman (Phyllis), Lederman, Novstrup (David), and Sutton

1 FOR AN ACT ENTITLED, An Act to update the valuation manual related to the valuation of
2 assets, liabilities, and reserves.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 58-26 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Terms used in §§ 58-26-45 to 58-26-90, inclusive, and in this Act, apply on or after the
7 operative date of the valuation manual and mean:

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

11 (2) "Appointed actuary," a qualified actuary who is appointed in accordance with the
12 valuation manual to prepare the actuarial opinion required pursuant to section 5 of
13 this Act;



- 1 (3) "Company," an entity, which:
 - 2 (a) Has written, issued, or reinsured life insurance contracts, accident and health
 - 3 insurance contracts, or deposit-type contracts in this state and has at least one
 - 4 policy in force or on claim; or
 - 5 (b) Has written, issued, or reinsured life insurance contracts, accident and health
 - 6 insurance contracts, or deposit-type contracts in any state and is required to
 - 7 hold a certificate of authority to write life insurance, accident and health
 - 8 insurance, or deposit-type contracts in this state;
- 9 (4) "Deposit-type contract," a contract that does not incorporate mortality or morbidity
- 10 risks and as may be specified in the valuation manual;
- 11 (5) "Life insurance," a contract that incorporates mortality risk, including annuity and
- 12 pure endowment contracts, and as may be specified in the valuation manual;
- 13 (6) "NAIC," the National Association of Insurance Commissioners;
- 14 (7) "Policyholder behavior," any action a policyholder, contract holder, or any other
- 15 person with the right to elect options, such as a certificate holder, may take under a
- 16 policy or contract subject to this chapter including, lapse, withdrawal, transfer,
- 17 deposit, premium payment, loan, annuitization, or benefit elections prescribed by the
- 18 policy or contract but excluding events of mortality or morbidity that result in
- 19 benefits prescribed in their essential aspects by the terms of the policy or contract;
- 20 (8) "Principle-based valuation," a reserve valuation that uses one or more methods or one
- 21 or more assumptions determined by the insurer and is required to comply with
- 22 sections 32 to 34, inclusive, of this Act, as specified in the valuation manual;
- 23 (9) "Qualified actuary," an individual who is qualified to sign the applicable statement
- 24 of actuarial opinion in accordance with the American Academy of Actuaries

1 qualification standards for actuaries signing such statements and who meets the
2 requirements specified in the valuation manual;

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

6 (11) "Valuation manual," the manual of valuation instructions adopted by the NAIC as
7 specified in this chapter or as subsequently amended.

8 Section 2. That § 58-26-45 be amended to read as follows:

9 58-26-45. The director shall annually value the reserve liabilities for all outstanding life
10 insurance policies and annuity and pure endowment contracts of every life insurance company
11 doing business in this state, ~~and may certify the amount of any of the reserves, specifying the~~
12 ~~mortality table or tables, rate or rates of interest, and the net level premium, or other methods~~
13 ~~used in the calculation of the reserves~~ issued on or after July 1, 1995, and prior to the operative
14 date of the valuation manual. In calculating the reserves, the director may use group methods
15 and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the
16 reserves required of any foreign or alien company, the director may accept any valuation made
17 by the insurance supervisory official of any state or other jurisdiction if the valuation complies
18 with the minimum standard provided by this chapter ~~and if the official of the state or jurisdiction~~
19 ~~accepts as sufficient and for all valid legal purposes the certificate of valuation of the director~~
20 ~~when the certificate states the valuation to have been made in a specified manner according to~~
21 ~~which the aggregate reserves would be at least as large as if they had been computed in the~~
22 ~~manner prescribed by the law of that state or jurisdiction.~~

23 The provisions in §§ 58-26-56 to 58-26-84, inclusive, apply to all policies and contracts, as
24 appropriate, subject to this chapter issued on or after July 1, 1995, and prior to the operative date

1 of the valuation manual. The provisions set forth in sections 25 to 31, inclusive, of this Act, and
2 sections 32 to 34, inclusive, of this Act, do not apply to any such policies and contracts.

3 The minimum standard for the valuation of policies and contracts issued prior to July 1,
4 1995, is that provided by the laws in effect immediately prior to that date.

5 Section 3. That chapter 58-26 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 The director shall annually value, or cause to be valued, the reserve liabilities, hereinafter
8 called reserves, for all outstanding life insurance contracts, annuity and pure endowment
9 contracts, accident and health contracts, and deposit-type contracts of every company issued on
10 or after the operative date of the valuation manual. In lieu of the valuation of the reserves
11 required of a foreign or alien company, the director may accept a valuation made, or caused to
12 be made, by the insurance supervisory official of any state or other jurisdiction when the
13 valuation complies with the minimum standard provided pursuant to this chapter.

14 The provisions in sections 25 to 31, inclusive, of this Act, and sections 32 to 34, inclusive
15 of this Act, shall apply to all policies and contracts issued on or after the operative date of the
16 valuation manual.

17 Section 4. That § 58-26-52 be amended to read as follows:

18 58-26-52. For the purposes of ~~this chapter~~ the opinion required by §§ 58-26-46 to 58-26-50,
19 inclusive, qualified actuary means a member in good standing of the American Academy of
20 Actuaries who meets the requirements set forth in rules promulgated pursuant to chapter 1-26.

21 Section 5. That chapter 58-26 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 (1) Every company with outstanding life insurance contracts, accident and health
24 insurance contracts, or deposit-type contracts in this state and subject to regulation

1 by the director shall annually submit the opinion of the appointed actuary as to
2 whether the reserves and related actuarial items held in support of the policies and
3 contracts are computed appropriately, are based on assumptions that satisfy
4 contractual provisions, are consistent with prior reported amounts, and comply with
5 applicable laws of this state. The valuation manual will prescribe the specifics of this
6 opinion including any items deemed to be necessary to its scope.

7 (2) Every company with outstanding life insurance contracts, accident and health
8 insurance contracts, or deposit-type contracts in this state and subject to regulation
9 by the director, except as exempted in the valuation manual, shall also annually
10 include in the opinion required pursuant to subdivision (1), an opinion of the same
11 appointed actuary as to whether the reserves and related actuarial items held in
12 support of the policies and contracts specified in the valuation manual, when
13 considered in light of the assets held by the company with respect to the reserves and
14 related actuarial items, including the investment earnings on the assets and the
15 considerations anticipated to be received and retained under the policies and
16 contracts, make adequate provision for the company's obligations under the policies
17 and contracts, including the benefits under and expenses associated with the policies
18 and contracts.

19 (3) Each opinion required by subdivision (2) is governed by the following provisions:
20 (a) A memorandum, in form and substance as specified in the valuation manual,
21 and acceptable to the director, shall be prepared to support each actuarial
22 opinion; and
23 (b) If the insurance company fails to provide a supporting memorandum at the
24 request of the director within a period specified in the valuation manual or the

1 director determines that the supporting memorandum provided by the
2 insurance company fails to meet the standards prescribed by the valuation
3 manual or is otherwise unacceptable to the director, the director may engage
4 a qualified actuary at the expense of the company to review the opinion and
5 the basis for the opinion and prepare the supporting memorandum required by
6 the director.

7 (4) Every opinion is governed by the following provisions:

8 (a) The opinion is in form and substance as specified in the valuation manual and
9 acceptable to the director;

10 (b) The opinion is submitted with the annual statement reflecting the valuation of
11 such reserve liabilities for each year ending on or after the operative date of
12 the valuation manual;

13 (c) The opinion applies to all policies and contracts subject to subdivision (2),
14 plus other actuarial liabilities as may be specified in the valuation manual;

15 (d) The opinion is based on standards adopted from time to time by the Actuarial
16 Standards Board or its successor, and on such additional standards as may be
17 prescribed in the valuation manual;

18 (e) In the case of an opinion required to be submitted by a foreign or alien
19 company, the director may accept the opinion filed by that company with the
20 insurance supervisory official of another state if the director determines that
21 the opinion reasonably meets the requirements applicable to a company
22 domiciled in this state;

23 (f) Except in cases of fraud or willful misconduct, the appointed actuary is not
24 liable for damages to any person, other than the insurance company and the

1 director, for any act, error, omission, decision, or conduct with respect to the
2 appointed actuary's opinion;

3 (g) Disciplinary action by the director against the company or the appointed
4 actuary shall be defined in rules promulgated by the director, pursuant to
5 chapter 1-26.

6 Section 6. That § 58-26-56 be amended to read as follows:

7 58-26-56. Except as ~~otherwise~~ provided in §§ 58-26-64 to 58-26-74, inclusive, and § 58-26-
8 84, the minimum standard for the valuation of ~~all~~ policies and contracts issued prior to July 1,
9 1995, shall be that provided by the laws in effect immediately prior to July 1, 1995. Except as
10 otherwise provided in §§ 58-26-64 to 58-26-74, inclusive, and § 58-26-84, the minimum
11 standard for the valuation of all policies and contracts issued on or after July 1, 1995, shall be
12 the commissioners' reserve valuation methods defined in §§ 58-26-75, 58-26-76, 58-26-81, 58-
13 26-82, and 58-26-84, three and one-half percent interest, or in the case of life insurance policies
14 and contracts, other than annuity and pure endowment contracts, issued on or after July 1, 1973,
15 four percent interest for such policies issued prior to July 1, 1978, five and one-half percent
16 interest for single premium life insurance policies and four and one-half percent interest for all
17 other policies issued on and after July 1, 1978, and the tables provided for in §§ 58-26-57 to 58-
18 26-63, inclusive.

19 Section 7. That § 58-26-57 be amended to read as follows:

20 58-26-57. The tables that shall be used for ~~all~~ ordinary policies of life insurance issued on
21 the standard basis, excluding any disability and accidental death benefits in the policies are: the
22 Commissioners 1941 Standard Ordinary Mortality Table for policies issued prior to the
23 operative date of §§ 58-15-38 and 58-15-42, the Commissioners 1958 Standard Ordinary
24 Mortality Table for policies issued on or after the operative date of §§ 58-15-38 and 58-15-42,

1 and prior to the operative date of §§ 58-15-43.1 to 58-15-43.11, inclusive, provided that for any
2 category of policies issued on female risks, all modified net premiums and present values
3 referred to in this chapter may be calculated according to an age not more than six years younger
4 than the actual age of the insured; and for such policies issued on or after the operative date of
5 §§ 58-15-43.1 to 58-15-43.11, inclusive, (i) the Commissioners 1980 Standard Ordinary
6 Mortality Table, or (ii) at the election of the company for any one or more specified plans of life
7 insurance, the Commissioners 1980 Standard Ordinary Mortality Table with ten-year select
8 mortality factors, or (iii) any ordinary mortality table, adopted after 1980 by the ~~National~~
9 ~~Association of Insurance Commissioners~~, that NAIC, which is approved by rules promulgated
10 pursuant to chapter 1-26 by the director for use in determining the minimum standard of
11 valuation for the policies.

12 Section 8. That § 58-26-58 be amended to read as follows:

13 58-26-58. The tables that shall be used for all industrial life insurance policies issued on the
14 standard basis, excluding any disability and accidental death benefits in the policies are: the
15 1941 Standard Industrial Mortality Table for policies issued prior to the operative date of § 58-
16 15-38, and for policies issued on or after the operative date, the Commissioners 1961 Standard
17 Industrial Mortality Table or any industrial mortality table, adopted after 1980 by the ~~National~~
18 ~~Association of Insurance Commissioners~~ NAIC, that is approved by rules promulgated pursuant
19 to chapter 1-26 by the director for use in determining the minimum standard of valuation for the
20 policies.

21 Section 9. That § 58-26-61 be amended to read as follows:

22 58-26-61. The tables that shall be used for total and permanent disability benefits in or
23 supplementary to ordinary policies or contracts are: for policies or contracts issued on or after
24 January 1, 1966, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates

1 of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit
2 or any tables of disablement rates and termination rates adopted after 1980 by the ~~National~~
3 ~~Association of Insurance Commissioners~~ NAIC, that are approved by rules promulgated
4 pursuant to chapter 1-26 by the director for use in determining the minimum standard of
5 valuation for the policies; for policies or contracts issued on or after January 1, 1961, and prior
6 to January 1, 1966, either of the tables or, at the option of the company, the Class (3) Disability
7 Table (1926) and for policies issued prior to January 1, 1961, the Class (3) Disability Table
8 (1926). Any table shall, for active lives, be combined with a mortality table permitted for
9 calculating the reserves for life insurance policies.

10 Section 10. That § 58-26-62 be amended to read as follows:

11 58-26-62. The tables that shall be used for accidental death benefits in or supplementary to
12 policies issued on or after January 1, 1966, are: the 1959 Accidental Death Benefits Table or any
13 accidental death benefits table adopted after 1980 by the ~~National Association of Insurance~~
14 ~~Commissioners~~ NAIC, that is approved by rules promulgated pursuant to chapter 1-26 by the
15 director for use in determining the minimum standard of valuation for the policies; for policies
16 issued on or after January 1, 1961, and prior to January 1, 1966, either table or, at the option of
17 the company, the Inter-Company Double Indemnity Mortality Table; and for policies issued
18 prior to January 1, 1961, the Inter-Company Double Indemnity Mortality Table. Either table
19 shall be combined with a mortality table for calculating the reserves for life insurance policies.

20 Section 11. That § 58-26-64 be amended to read as follows:

21 58-26-64. Except as provided in §§ 58-26-71 to 58-26-74, inclusive, the minimum standard
22 ~~for the~~ of valuation of ~~all~~ for individual annuity and pure endowment contracts issued on or after
23 July 1, 1995, and for ~~all~~ annuities and pure endowments purchased on or after July 1, 1995,
24 under group annuity and pure endowment contracts, are the commissioners' reserve valuation

1 methods defined in §§ 58-26-75 and 58-26-76 and the tables and interest rates set forth in §§ 58-
2 26-65 to 58-26-69, inclusive.

3 Section 12. That § 58-26-66 be amended to read as follows:

4 58-26-66. The tables that shall be used for individual single premium immediate annuity
5 contracts issued on or after July 1, 1978, excluding any disability and accidental death benefits
6 in the contracts are: the 1971 Individual Annuity Mortality Table or any individual annuity
7 mortality table, adopted after 1980 by the ~~National Association of Insurance Commissioners~~
8 NAIC that is approved by rules promulgated pursuant to chapter 1-26 by the director for use in
9 determining the minimum standard of valuation for the contracts, or any modification of these
10 tables approved by the director, and seven and one-half percent interest.

11 Section 13. That § 58-26-67 be amended to read as follows:

12 58-26-67. The tables that shall be used for individual annuity and pure endowment contracts
13 issued on or after July 1, 1978, other than single premium immediate annuity contracts,
14 excluding any disability and accidental death benefits in the contracts are: the 1971 Individual
15 Annuity Mortality Table or any individual annuity mortality table adopted after 1980 by the
16 ~~National Association of Insurance Commissioners~~ NAIC, that is approved by rules promulgated
17 pursuant to chapter 1-26 by the director for use in determining the minimum standard of
18 valuation for the contracts, or any modification of these tables approved by the director, and five
19 and one-half percent interest for single premium deferred annuity and pure endowment contracts
20 and four and one-half percent interest for all other individual annuity and pure endowment
21 contracts.

22 Section 14. That § 58-26-69 be amended to read as follows:

23 58-26-69. The tables that shall be used for all annuities and pure endowments purchased on
24 or after July 1, 1978, under group annuity and pure endowment contracts, excluding any

1 disability and accidental death benefits purchased under the contracts are: the 1971 Group
 2 Annuity Mortality Table, or any group annuity mortality table adopted after 1980 by the
 3 ~~National Association of Insurance Commissioners~~ NAIC, that is approved by rules promulgated
 4 pursuant to chapter 1-26 by the director for use in determining the minimum standard of
 5 valuation for annuities and pure endowments, or any modification of these tables approved by
 6 the director, and seven and one-half percent interest.

7 Section 15. That § 58-26-71 be amended to read as follows:

8 58-26-71. The interest rates used in determining the minimum standard for the valuation of
 9 ~~all~~ life insurance policies issued in a particular calendar year, on or after the operative date of
 10 §§ 58-15-43.1 to 58-15-43.11, inclusive; ~~all~~ individual annuity and pure endowment contracts
 11 issued in a particular calendar year on or after January 1, 1983; ~~all~~ annuities and pure
 12 endowments purchased in a particular calendar year on or after January 1, 1983, under group
 13 annuity and pure endowment contracts; and the net increase, if any, in a particular calendar year
 14 after January 1, 1983, in amounts held under guaranteed interest contracts; shall be the calendar
 15 year statutory valuation interest rates as defined in this section.

16 (1) The calendar year statutory valuation interest rates, "I", shall be determined as
 17 follows and the results rounded to the nearer one-quarter of one percent:

18 (a) For life insurance,

$$I = .03 + W(R1 - .03) + \frac{W}{2} (R2 - .09);$$

21 2

22 (b) For single premiums immediate annuities and for annuity benefits involving
 23 life contingencies arising from other annuities with cash settlement options
 24 and from guaranteed interest contracts with cash settlement options,

19

1
2
$$I = .03 + W(R - .03)$$

3 where R1 is the lesser of R and .09, R2 is the greater of R and .09, R is the
4 reference interest rate defined in §§ 58-26-71 to 58-26-74, inclusive, and W
5 is the weighting factor defined in §§ 58-26-71 to 58-26-74, inclusive;

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

13 (d) For other annuities with no cash settlement options and for guaranteed interest
14 contracts with no cash settlement options, the formula for single premium
15 immediate annuities stated in subdivision (b) applies;

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

20 (2) However, if the calendar year statutory valuation interest rate for any life insurance
21 policies issued in any calendar year determined without reference to this sentence
22 differs from the corresponding actual rate for similar policies issued in the
23 immediately preceding calendar year by less than one-half of one percent, the
24 calendar year statutory valuation interest rate for life insurance policies is equal to the
25 corresponding actual rate for the immediately preceding calendar year. For purposes

1 of applying the immediately preceding sentence, the calendar year statutory valuation
2 interest rate for life insurance policies issued in a calendar year shall be determined
3 for 1980, using the reference interest rate defined in 1979, and shall be determined
4 for each subsequent calendar year regardless of when §§ 58-15-43.1 to 58-15-43.11,
5 inclusive, became operative.

6 Section 16. That § 58-26-74 be amended to read as follows:

7 58-26-74. If the Monthly Average of the Composite Yield on Seasoned Corporate Bonds
8 is no longer published by Moody's Investors Service, Inc., or if the ~~National Association of~~
9 ~~Insurance Commissioners~~ NAIC determines that the Monthly Average of the Composite Yield
10 on Seasoned Corporate Bonds as published by Moody's Investors Service, Inc., is no longer
11 appropriate for the determination of the reference interest rate, then an alternative method for
12 determination of the reference interest rate, which is adopted by the ~~National Association of~~
13 ~~Insurance Commissioners~~ NAIC and approved by rules promulgated pursuant to chapter 1-26
14 by the director, may be substituted.

15 Section 17. That § 58-26-75 be amended to read as follows:

16 58-26-75. Except as otherwise provided in §§ 58-26-76, 58-26-81, 58-26-82, and 58-26-84,
17 reserves according to the commissioners' reserve valuation method, for the life insurance and
18 endowment benefits of policies providing for a uniform amount of insurance and requiring the
19 payment of uniform premiums shall be the excess, if any, of the present value, at the date of
20 valuation, of future guaranteed benefits provided for by the policies, over the then present value
21 of any future modified net premiums of the policies. The modified net premiums for any policy
22 shall be the uniform percentage of the respective contract premiums for the benefits such that
23 the present value, at the date of issue of the policy, of all the modified net premiums shall be
24 equal to the sum of the then present value of the benefits provided for by the policy and the

1 excess of subdivision (1) over subdivision (2) as follows:

2 (1) A net level annual premium equal to the present value, at the date of issue, of the
3 benefits provided for after the first policy year, divided by the present value, at the
4 date of issue, of an annuity of one per annum payable on the first and each
5 subsequent anniversary of a policy on which a premium falls due. However, the net
6 level annual premium may not exceed the net level annual premium on the nineteen
7 year premium whole life plan for insurance of the same amount at an age one year
8 higher than the age at issue of the policy;

9 (2) A net one year term premium for the benefits provided for in the first policy year.

10 Any life insurance policy issued on or after January 1, 1986, for which the contract premium
11 in the first policy year exceeds that of the second year and for which no comparable additional
12 benefit is provided in the first year for the excess and which provides an endowment benefit or
13 a cash surrender value or a combination thereof in an amount greater than the excess premium,
14 the reserve according to the commissioners' reserve valuation method as of any policy
15 anniversary occurring on or before the assumed ending date defined in this chapter as the first
16 policy anniversary on which the sum of any endowment benefit and any cash surrender value
17 then available is greater than the excess premium shall, except as otherwise provided in §§ 58-
18 26-81 and 58-26-82, be the greater of the reserve as of the policy anniversary calculated as
19 described in the preceding paragraph and the reserve as of the policy anniversary calculated as
20 described in that paragraph, but with (i) the value defined in subdivision (1) of that paragraph
21 being reduced by fifteen percent of the amount of excess first year premium, (ii) all present
22 values of benefits and premiums being determined without reference to premiums or benefits
23 provided for by the policy after the assumed ending date, (iii) the policy being assumed to
24 mature on the date as an endowment, and (iv) the cash surrender value provided on the date

1 being considered as an endowment benefit. In making the above comparison, the mortality and
2 interest bases stated in §§ 58-26-56 to 58-26-63, inclusive, and §§ 58-26-71 to 58-26-74,
3 inclusive, shall be used.

4 Reserves according to the commissioners' reserve valuation method for: (i) life insurance
5 policies providing for varying amount of insurance or requiring the payment of varying
6 premiums; (ii) group annuity and pure endowment contracts purchased under a retirement plan
7 or plan of deferred compensation, established or maintained by an employer, including a
8 partnership or sole proprietorship, or by an employee organization, or by both, other than a plan
9 providing individual retirement accounts or individual retirement annuities under section 408
10 of the Internal Revenue Code, as of January 1, 1995; (iii) disability and accidental death benefits
11 in all policies and contracts; and (iv) all other benefits, except life insurance and endowment
12 benefits in life insurance policies and benefits provided by all other annuity and pure
13 endowment contracts, shall be calculated by a method consistent with the principles of the
14 preceding paragraphs of this section.

15 Section 18. That § 58-26-77 be amended to read as follows:

16 58-26-77. No company's aggregate reserves for all life insurance policies, excluding
17 disability and accidental death benefits, issued on or after July 1, 1995, may be less than the
18 aggregate reserves calculated in accordance with the methods set forth in §§ 58-26-75, 58-26-
19 76, 58-26-81, 58-26-82, and 58-26-83 and the mortality table or tables and rate or rates of
20 interest used in calculating nonforfeiture benefits for the policies. The aggregate reserves for all
21 policies, contracts, and benefits may not be less than the aggregate reserves determined by the
22 ~~qualified~~ appointed actuary to be necessary to give the opinion required by §§ 58-26-46 to 58-
23 26-55, inclusive.

24 Section 19. That § 58-26-78 be amended to read as follows:

1 58-26-78. Reserves for all policies and contracts issued prior to July 1, 1995, may be
2 calculated, at the option of the company, according to any standards which produce greater
3 aggregate reserves for all the policies and contracts than the minimum reserves required by the
4 laws in effect immediately prior to July 1, 1995.

5 Section 20. That § 58-26-79 be amended to read as follows:

6 58-26-79. Reserves for any category of policies, contracts, or benefits as established by the
7 director, issued on or after July 1, 1995, may be calculated, at the option of the company,
8 according to any standards which produce greater aggregate reserves for any category than those
9 calculated according to the minimum standard provided in this chapter, but the rate or rates of
10 interest used for policies and contracts, other than annuity and pure endowment contracts, may
11 not be ~~higher~~ greater than the corresponding rate or rates of interest used in calculating any
12 nonforfeiture benefits provided ~~therein~~ in the policies or contracts.

13 Section 21. That § 58-26-80 be amended to read as follows:

14 58-26-80. Any company which adopts any standard of valuation producing greater aggregate
15 reserves than those calculated according to the minimum standard provided in this chapter may,
16 with the approval of the director, adopt any lower standard of valuation, but not lower than the
17 minimum provided by this chapter. However, for the purposes of this section and §§ 58-26-78
18 and 58-26-79, the holding of additional reserves previously determined by a ~~qualified~~ the
19 appointed actuary to be necessary to render the opinion required by §§ 58-26-46 to 58-26-55,
20 inclusive, is not considered to be the adoption of a higher standard of valuation.

21 Section 22. That § 58-26-81 be amended to read as follows:

22 58-26-81. If in any contract year the gross premium charged by any ~~life insurance~~
23 on any policy or contract is less than the valuation net premium for the policy or contract
24 calculated by the method used in calculating the reserve thereon but using the minimum

1 valuation standards of mortality and rate of interest, the minimum reserve required for the policy
2 or contract is the greater of either the reserve calculated according to the mortality table, rate of
3 interest, and method actually used for the policy or contract, or the reserve calculated by the
4 method actually used for the policy or contract but using the minimum valuation standards of
5 mortality and rate of interest and replacing the valuation net premium by the actual gross
6 premium in each contract year for which the valuation net premium exceeds the actual gross
7 premium. The minimum valuation standards of mortality and rate of interest referred to in this
8 section and § 58-26-82 are those standards stated in §§ 58-26-56 to 58-26-63, inclusive, and
9 §§ 58-26-71 to 58-26-74, inclusive.

10 Section 23. That § 58-26-84 be amended to read as follows:

11 58-26-84. The director shall promulgate rules pursuant to chapter 1-26 for containing the
12 minimum standards applicable to the valuation of health plans, including disability, sickness,
13 and accident, issued on or after July 1, 1995 and prior to the operative date of the valuation
14 manual. For accident and health insurance contracts issued on or after the operative date of the
15 valuation manual, the standard prescribed in the valuation manual is the minimum standard of
16 valuation required pursuant to section 3 of this Act.

17 Section 24. That § 58-26-85 be repealed.

18 ~~58-26-85. All laws inconsistent with the provisions of §§ 58-26-45 to 58-26-84, inclusive,~~
19 ~~are hereby repealed as of July 1, 1995.~~

20 Section 25. That chapter 58-26 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 For policies issued on or after the operative date of the valuation manual, the standard
23 prescribed in the valuation manual is the minimum standard of valuation required pursuant to
24 section 3 of this Act, except as provided pursuant to sections 29 or 31 of this Act.

1 Section 26. That chapter 58-26 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 The operative date of the valuation manual is January first of the first calendar year
4 following the first July first as of which all of the following have occurred:

5 (1) The valuation manual is adopted by the NAIC by an affirmative vote of at least
6 forty-two members, or three-fourths of the members voting, whichever is greater;

7 (2) The Standard Valuation Law, as amended by the NAIC in 2009, or legislation
8 including substantially similar terms and provisions, is enacted by states representing
9 greater than seventy-five percent of the direct premiums written as reported in the
10 following annual statements submitted for 2008: life, accident, and health annual
11 statements; health annual statements; or fraternal annual statements;

12 (3) The Standard Valuation Law, as amended by the NAIC in 2009, or legislation
13 including substantially similar terms and provisions, is enacted by at least forty-two
14 of the following fifty-five jurisdictions: The fifty states of the United States,
15 American Samoa, the American Virgin Islands, the District of Columbia, Guam, and
16 Puerto Rico.

17 Section 27. That chapter 58-26 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 Unless a change in the valuation manual specifies a later effective date, changes to the
20 valuation manual are effective on January first following the date when the change to the
21 valuation manual is adopted by the NAIC by an affirmative vote representing:

22 (1) At least three-fourths of the members of the NAIC voting, but not less than a
23 majority of the total membership; and

24 (2) Members of the NAIC representing jurisdictions totaling greater than seventy-five

1 percent of the direct premiums written as reported in the following annual statements
2 most recently available prior to the vote in subdivision (1) above: life, accident, and
3 health annual statements, health annual statements, or fraternal annual statements.

4 Section 28. That chapter 58-26 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The valuation manual must specify the following:

7 (1) Minimum valuation standards for, and definitions of, the policies or contracts subject
8 to section 3 of this Act. The minimum valuation standards are:

9 (a) The commissioner's reserve valuation method for life insurance contracts,
10 other than annuity contracts, subject to section 3 of this Act;

11 (b) The commissioners annuity reserve valuation method for annuity contracts
12 subject to section 3 of this Act; and

13 (c) Minimum reserves for all other policies or contracts subject to section 3 of this
14 Act;

15 (2) Which policies or contracts or types of policies or contracts that are subject to the
16 requirements of a principle-based valuation in section 32 of this Act and the
17 minimum valuation standards consistent with those requirements;

18 (3) For policies and contracts subject to a principle-based valuation pursuant to sections
19 32 to 34, inclusive, of this Act:

20 (a) Requirements for the format of reports to the director pursuant to subdivision
21 (3) of section 33 of this Act, and which shall include information necessary to
22 determine if the valuation is appropriate and in compliance with this chapter;

23 (b) Assumptions are prescribed for risks over which the company does not have
24 significant control or influence; and

- 1 (c) Procedures for corporate governance and oversight of the actuarial function,
2 and a process for appropriate waiver or modification of such procedures;
- 3 (4) For policies not subject to a principle-based valuation pursuant to sections 32 to 34,
4 inclusive, of this Act, the minimum valuation standard shall:
 - 5 (a) Be consistent with the minimum standard of valuation prior to the operative
6 date of the valuation manual; or
 - 7 (b) Develop reserves that quantify the benefits and guarantees, and the funding,
8 associated with the contracts and their risks at a level of conservatism that
9 reflects conditions that include unfavorable events that have a reasonable
10 probability of occurring;
- 11 (5) Other requirements, including those relating to reserve methods, models for
12 measuring risk, generation of economic scenarios, assumptions, margins, use of
13 company experience, risk measurement, disclosure, certifications, reports, actuarial
14 opinions and memorandums, transition rules, and internal controls; and
- 15 (6) The data and form of the data required pursuant to section 35 of this Act, with whom
16 the data must be submitted, and may specify other requirements including data
17 analyses and reporting of analyses.

18 Section 29. That chapter 58-26 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 In the absence of a specific valuation requirement or if a specific valuation requirement in
21 the valuation manual is not, in the opinion of the director, in compliance with this chapter, then
22 the company shall, with respect to the requirements, comply with minimum valuation standards
23 prescribed by the director by rules promulgated pursuant to chapter 1-26.

24 Section 30. That chapter 58-26 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 The director may engage a qualified actuary, at the expense of the company, to perform an
3 actuarial examination of the company and opine on the appropriateness of any reserve
4 assumption or method used by the company, or to review and opine on a company's compliance
5 with any requirement set forth in this chapter. The director may rely upon the opinion, regarding
6 provisions contained within this chapter, of a qualified actuary engaged by the insurance
7 supervisory official of another state, district or territory of the United States. As used in this
8 section, the term, engage, includes employment and contracting.

9 Section 31. That chapter 58-26 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 The director may require a company to change any assumption or method that in the opinion
12 of the director is necessary in order to comply with the requirements of the valuation manual
13 or this chapter; and the company shall adjust the reserves as required by the director. The
14 director may take other disciplinary action as permitted pursuant to the laws of this state.

15 Section 32. That chapter 58-26 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 A company must establish reserves using a principle-based valuation that meets the
18 following conditions for policies or contracts as specified in the valuation manual:

- 19 (1) Quantify the benefits and guarantees, and the funding, associated with the contracts
20 and their risks at a level of conservatism that reflects conditions that include
21 unfavorable events that have a reasonable probability of occurring during the lifetime
22 of the contracts. For polices or contracts with significant tail risk, reflects conditions
23 appropriately adverse to quantify the tail risk;
- 24 (2) Incorporate assumptions, risk analysis methods, financial models, and management

1 techniques that are consistent with, but not necessarily identical to, those utilized
2 within the company's overall risk assessment process, while recognizing potential
3 differences in financial reporting structures and any prescribed assumption or
4 method;

5 (3) Incorporate assumptions that are derived in one of the following manners:

6 (a) The assumption is prescribed in the valuation manual;

7 (b) For an assumption that is not prescribed, the assumption shall be established
8 utilizing the company's available experience, to the extent it is relevant and
9 statistically credible; or to the extent that company data is not available,
10 relevant, or statistically credible, be established utilizing other relevant,
11 statistically credible experience;

12 (4) Provide margins for uncertainty including adverse deviation and estimation error,
13 such that the greater the uncertainty the larger the margin and resulting reserve.

14 Section 33. That chapter 58-26 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 A company using a principle-based valuation for one or more policies or contracts subject
17 to sections 32 to 34, inclusive, of this Act, as specified in the valuation manual shall:

18 (1) Establish procedures for corporate governance and oversight of the actuarial
19 valuation function consistent with those described in the valuation manual;

20 (2) Provide to the director and the board of directors an annual certification of the
21 effectiveness of the internal controls with respect to the principle-based valuation.

22 The controls shall be designed to assure that all material risks inherent in the
23 liabilities and associated assets subject to such valuation are included in the
24 valuation, and that valuations are made in accordance with the valuation manual. The

1 certification shall be based on the controls in place as of the end of the preceding
2 calendar year;

3 (3) Develop, and file with the director upon request, a principle-based valuation report
4 that complies with standards prescribed in the valuation manual.

5 Section 34. That chapter 58-26 be amended by adding thereto a NEW SECTION to read as
6 follows:

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

8 Section 35. That chapter 58-26 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 A company shall submit mortality, morbidity, policyholder behavior, or expense experience
11 and other data as prescribed in the valuation manual.

12 Section 36. That chapter 58-26 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 For purposes of this section, confidential information, means:

15 (1) A memorandum in support of an opinion submitted pursuant to §§ 58-26-46 to 58-
16 26-55 and section 5 of this Act, and any other document, material, and other
17 information, including all working papers, and copies thereof, created, produced, or
18 obtained by or disclosed to the director or any other person in connection with such
19 memorandum;

20 (2) All documents, materials, and other information, including all working papers, and
21 copies thereof, created, produced, or obtained by or disclosed to the director or any
22 other person in the course of an examination made pursuant to section 30 of this Act;
23 provided that if an examination report or other material prepared in connection with
24 an examination made pursuant to chapter 58-3 is not held as private and confidential

1 information pursuant to chapter 58-3, an examination report or other material
2 prepared in connection with an examination made pursuant to chapter 58-3 is not
3 confidential information to the same extent as if such examination report or other
4 material had been prepared pursuant to chapter 58-3;

5 (3) Any reports, documents, materials, and other information developed by a company
6 in support of, or in connection with, an annual certification by the company pursuant
7 to subdivision (2) of section 33 of this Act evaluating the effectiveness of the
8 company's internal controls with respect to a principle-based valuation and any other
9 documents, materials, and other information, including all working papers, and
10 copies thereof, created, produced, or obtained by or disclosed to the director or any
11 other person in connection with such reports, documents, materials, and other
12 information;

13 (4) Any principle-based valuation report developed pursuant to subdivision (3) of section
14 33 of this Act and any other documents, materials, and other information, including
15 all working papers, and copies thereof, created, produced, or obtained by or disclosed
16 to the director or any other person in connection with such report; and

17 (5) Any documents, materials, data, and other information submitted by a company
18 pursuant to section 35 of this Act, collectively, "experience data," and any other
19 documents, materials, data, and other information, including all working papers, and
20 copies thereof, created or produced in connection with such experience data, in each
21 case that include any potentially company-identifying or personally identifiable
22 information, that is provided to or obtained by the director together with any
23 experience data, the experience materials, and any other documents, materials, data,
24 and other information, including all working papers, and copies thereof, created,

1 produced, or obtained by or disclosed to the director or any other person in
2 connection with such experience materials.

3 Section 37. That chapter 58-26 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 (1) Except as provided in sections 36 to 38, inclusive, of this Act, a company's
6 confidential information is confidential by law and privileged, and is not subject to
7 open records, freedom of information, sunshine or other appropriate phrase, is not
8 subject to subpoena and is not subject to discovery or admissible in evidence in any
9 private civil action; provided, however, that the director is authorized to use the
10 confidential information in the furtherance of any regulatory or legal action brought
11 against the company as a part of the director's official duties;

12 (2) Neither the director nor any person who received confidential information while
13 acting under the authority of the director is permitted to testify in any private civil
14 action concerning any confidential information;

15 (3) In order to assist in the performance of the director's duties, the director may share
16 confidential information:

17 (a) With other state, federal, and international regulatory agencies and with the
18 NAIC and its affiliates and subsidiaries; and

19 (b) In the case of confidential information specified in subdivisions (1) and (4) of
20 section 36 of this Act only, with the Actuarial Board for Counseling and
21 Discipline or its successor upon request stating that the confidential
22 information is required for the purpose of professional disciplinary
23 proceedings and with state, federal, and international law enforcement
24 officials;

1 In the case of (a) and (b), provided that such recipient agrees, and has the legal
2 authority to agree, to maintain the confidentiality and privileged status of such
3 documents, materials, data, and other information in the same manner and to the
4 same extent as required for the director;

5 (4) The director may receive documents, materials, data, and other information,
6 including otherwise confidential and privileged documents, materials, data, or
7 information, from the NAIC and its affiliates and subsidiaries, from regulatory or law
8 enforcement officials of other foreign or domestic jurisdictions and from the
9 Actuarial Board for Counseling and Discipline or its successor and shall maintain as
10 confidential or privileged any document, material, data, or other information received
11 with notice or the understanding that it is confidential or privileged under the laws
12 of the jurisdiction that is the source of the document, material, or other information;

13 (5) The director may enter into agreements governing sharing and use of information
14 consistent with this section;

15 (6) No waiver of any applicable privilege or claim of confidentiality in the confidential
16 information occurs as a result of disclosure to the director pursuant to this section or
17 as a result of sharing as authorized in subdivision (3);

18 (7) A privilege established under the law of any state or jurisdiction that is substantially
19 similar to the privilege established pursuant to this section is available and enforced
20 in any proceeding in, and in any court of, this state;

21 (8) For purposes of sections 36 to 38, inclusive, of this Act, regulatory agency, law
22 enforcement agency, and the NAIC include their employees, agents, consultants, and
23 contractors.

24 Section 38. That chapter 58-26 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Notwithstanding section 37 of this Act, any confidential information specified in
3 subdivisions (1) and (4) of section 36 of this Act:

4 (1) May be subject to subpoena for the purpose of defending an action seeking damages
5 from the appointed actuary submitting the related memorandum in support of an
6 opinion submitted pursuant to §§ 58-26-46 to 58-26-55, inclusive, and section 5 of
7 this Act, or principle-based valuation report developed pursuant to subdivision (3)
8 of section 33 of this Act, by reason of an action required by this chapter or by
9 regulations promulgated hereunder;

10 (2) May otherwise be released by the director with the written consent of the company;
11 and

12 (3) Once any portion of a memorandum in support of an opinion submitted pursuant to
13 §§ 58-26-46 to 58-26-55, inclusive, and section 5 of this Act or a principle-based
14 valuation report developed pursuant to subdivision (3) of section 33 of this Act, is
15 cited by the company in its marketing or is publicly volunteered to or before a
16 governmental agency other than a state insurance department or is released by the
17 company to the news media, all portions of such memorandum or report is no longer
18 confidential.

19 Section 39. That chapter 58-26 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 The director may exempt specific product forms or product lines of a domestic company that
22 is licensed and doing business only in South Dakota from the requirements of sections 25 to 31,
23 inclusive, of this Act, provided:

24 (1) The director has issued an exemption in writing to the company and has not

1 subsequently revoked the exemption in writing; and

2 (2) The company computes reserves using assumptions and methods used prior to the
3 operative date of the valuation manual in addition to any requirements established by
4 the director and promulgated by regulation.

5 For any company granted an exemption pursuant to this section, §§ 58-26-46 to 58-26-84,
6 inclusive, and section 5 of this Act are applicable. With respect to any company applying this
7 exemption, any reference to sections 25 to 31, inclusive, of this Act, found in §§ 58-26-46 to
8 58-26-84, inclusive, and section 5 of this Act is not applicable.

9 Section 40. That § 58-15-43 be amended to read as follows:

10 58-15-43. Sections 58-15-31 to 58-15-43, inclusive, shall be known as the standard
11 nonforfeiture law for life insurance.

12 For purposes of §§ 58-15-31 to 58-15-43, the operative date of the valuation manual is
13 January first of the first calendar year that the valuation manual, as defined in section 1 of this
14 Act, is effective.

15 Section 41. That § 58-15-43.8 be amended to read as follows:

16 58-15-43.8. All adjusted premiums and present values referred to in §§ 58-15-31 to 58-15-
17 43, inclusive, are calculated for all policies of ordinary insurance on the basis of the
18 commissioner's 1980 standard ordinary mortality table or, at the election of the insurer, for any
19 one or more specified plans of life insurance, the commissioner's 1980 standard ordinary
20 mortality table with ten-year select mortality factors are calculated for all policies of industrial
21 insurance on the basis of the commissioner's 1961 standard industrial mortality table; and are
22 calculated for all policies issued in a particular calendar year on the basis of a rate of interest not
23 exceeding the nonforfeiture interest rate as defined in this section for policies issued in that
24 calendar year. However, the following procedures apply:

- 1 (1) At the option of the insurer, calculations for all policies issued in a particular
2 calendar year may be made on the basis of a rate of interest not exceeding the
3 nonforfeiture interest rate, as defined in this section, for policies issued in the
4 immediately preceding calendar year;
- 5 (2) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions,
6 any cash surrender value available, whether or not required by § 58-15-31, shall be
7 calculated on the basis of the mortality table and rate of interest used in determining
8 the amount of the paid-up nonforfeiture benefit and paid-up dividend additions, if
9 any;
- 10 (3) An insurer may calculate the amount of any guaranteed paid-up nonforfeiture benefit
11 including any paid-up additions under the policy on the basis of an interest rate no
12 lower than that specified in the policy for calculating cash surrender values;
- 13 (4) In calculating the present value of any paid-up term insurance with accompanying
14 pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality
15 assumed may be not more than those shown in the commissioner's 1980 extended
16 term insurance table for policies of ordinary insurance and not more than the
17 commissioner's 1961 industrial extended term insurance table for policies of
18 industrial insurance;
- 19 (5) For insurance issued on a substandard basis, the calculation of any adjusted
20 premiums and present values may be based on appropriate modifications of the
21 aforementioned tables;
- 22 (6) ~~Any~~ For policies issued prior to the operative date of the valuation manual, any
23 commissioner's standard ordinary mortality tables, adopted after 1980 by the national
24 association of insurance commissioners, that are approved by rules promulgated by

1 the director for use in determining the minimum nonforfeiture standard may be
2 substituted for the commissioner's 1980 standard ordinary mortality table with or
3 without ten-year select mortality factors or for the commissioner's 1980 extended
4 term insurance table. For policies issued on or after the operative date of the
5 valuation manual, the valuation manual shall provide the commissioner's standard
6 mortality table for use in determining the minimum nonforfeiture standard that may
7 be substituted for the commissioner's 1980 standard ordinary mortality table with or
8 without ten-year select mortality factors or for the commissioner's 1980 extended
9 term insurance table. If the director approves by regulation any commissioner's
10 standard ordinary mortality table adopted by the national association of insurance
11 commissioners for use in determining the minimum nonforfeiture standard for
12 policies issued on or after the operative date of the valuation manual that minimum
13 nonforfeiture standard supersedes the minimum nonforfeiture standard provided by
14 the valuation manual; and

15 (7) ~~Any~~ For policies issued prior to the operative date of the valuation manual, any
16 commissioner's standard industrial mortality tables, adopted after 1980 by the
17 national association of insurance commissioners, that are approved by rules
18 promulgated by the director for use in determining the minimum nonforfeiture
19 standard may be substituted for the commissioner's 1961 standard industrial mortality
20 table or the commissioner's 1961 industrial extended term insurance table. For
21 policies issued on or after the operative date of the valuation manual the valuation
22 manual shall provide the commissioner's standard mortality table for use in
23 determining the nonforfeiture standard that may be substituted for the commissioner's
24 1961 standard industrial mortality table or the commissioner's 1962 industrial

1 extended term insurance table. If the director approves by regulation any
2 commissioner's standard industrial mortality table adopted by the national association
3 of insurance commissioners for use in determining the minimum nonforfeiture
4 standard for policies issued on or after the operative date of the valuation manual
5 then that minimum nonforfeiture standard supersedes the minimum nonforfeiture
6 standard provided by the valuation manual.

7 Section 42. That § 58-15-43.9 be amended to read as follows:

8 58-15-43.9. The nonforfeiture interest rate is:

- 9 (1) For policies issued prior to the operative date of the valuation manual, the
10 nonforfeiture interest rate per annum for any policy issued in a particular calendar
11 year is equal to one hundred twenty-five percent of the calendar year statutory
12 valuation interest rate for the policy as defined in the standard valuation law, rounded
13 to the nearer one quarter of one percent, provided that the nonforfeiture rate may not
14 be less than four percent;
- 15 (2) For policies issued on or after the operative date of the valuation manual the
16 forfeiture interest rate per annum for any policy issued in a particular calendar year
17 is provided by the valuation manual.