AN ACT

ENTITLED, An Act to update the valuation manual related to the valuation of assets, liabilities, and reserves.

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

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

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

(1) "Accident and health insurance," 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," a qualified actuary who is appointed in accordance with the valuation manual to prepare the actuarial opinion required pursuant to section 5 of this Act;

(3) "Company," an entity, which:

(a) Has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and has at least one policy in force or on claim; or

(b) Has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in any state and is required to hold a certificate of authority to write life insurance, accident and health insurance, or deposit-type contracts in this state;

(4) "Deposit-type contract," a contract that does not incorporate mortality or morbidity risks and as may be specified in the valuation manual;

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

(6) "NAIC," the National Association of Insurance Commissioners;

(7) "Policyholder behavior," 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 but excluding events of mortality or morbidity that result in benefits prescribed in their essential aspects by the terms of the policy or contract;

(8) "Principle-based valuation," a reserve valuation that uses one or more methods or one or more assumptions determined by the insurer and is required to comply with sections 32 to 34, inclusive, of this Act, as specified in the valuation manual;

(9) "Qualified actuary," 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;

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

(11) "Valuation manual," the manual of valuation instructions adopted by the NAIC as specified in this chapter and as approved by the director pursuant to rules promulgated pursuant to chapter 1-26.

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

58-26-45. The director shall annually value the reserve liabilities for all outstanding life

insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state issued on or after July 1, 1995, and prior to the operative date of the valuation manual. In calculating the reserves, the director 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 foreign or alien company, the director may accept any valuation made by the insurance supervisory official of any state or other jurisdiction if the valuation complies with the minimum standard provided by this chapter.

The provisions in §§ 58-26-56 to 58-26-84, inclusive, apply to all policies and contracts, as appropriate, subject to this chapter issued on or after July 1, 1995, and prior to the operative date of the valuation manual. The provisions set forth in sections 25 to 31, inclusive, of this Act, and sections 32 to 34, inclusive, of this Act, do not apply to any such policies and contracts.

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

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

The director may, by rules promulgated pursuant to chapter 1-26, adopt the manual of valuation instruction adopted by the NAIC after the NAIC notifies the director that the valuation manual is operative. After the director adopts the NAIC valuation manual of instruction, the director shall annually value, or cause to be valued, the reserve liabilities, hereinafter called reserves, for all outstanding life insurance contracts, annuity and pure endowment contracts, accident and health contracts, and deposit-type contracts of every company 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 company, the director 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

pursuant to this chapter.

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

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

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

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

(1) Every company with outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and subject to regulation by the director shall annually 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 will prescribe the specifics of this opinion including any items deemed to be necessary to its scope.

(2) Every company with outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and subject to regulation by the director, except as exempted in the valuation manual, shall also annually include in the opinion required pursuant to subdivision (1), 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 company 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 obligations under the policies and contracts, including the benefits under and expenses associated with the policies and contracts.

(3) Each opinion required by subdivision (2) is governed by the following provisions:

(a) A memorandum, in form and substance as specified in the valuation manual, and acceptable to the director, shall be prepared to support each actuarial opinion; and

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

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

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

(b) The opinion is 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;

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

(d) The opinion is based on standards adopted from time to time by the Actuarial

Standards Board or its successor, and on such additional standards as may be prescribed in the valuation manual;

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

(f) Except in cases of fraud or willful misconduct, the appointed actuary is not liable for damages to any person, other than the insurance company and the director, for any act, error, omission, decision, or conduct with respect to the appointed actuary's opinion;

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

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

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

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

58-26-57. The tables that shall be used for ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in the policies are: the Commissioners 1941 Standard Ordinary Mortality Table for policies issued prior to the operative date of §§ 58-15-38 and 58-15-42, the Commissioners 1958 Standard Ordinary Mortality Table for policies issued on or after the operative date of §§ 58-15-38 and 58-15-42, and prior to the operative date of §§ 58-15-43.1 to 58-15-43.11, inclusive, 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 such policies issued on or after the operative date of §§ 58-15-43.1 to 58-15-43.11, inclusive, (i) the Commissioners 1980 Standard Ordinary Mortality Table, or (ii) at the election of the company for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with ten-year select mortality factors, or (iii) any ordinary mortality table, adopted after 1980 by the NAIC, which is approved by rules promulgated pursuant to chapter 1-26 by the director for use in determining the minimum standard of valuation for the policies.

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

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

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

58-26-61. The tables that shall be used for total and permanent disability benefits in or supplementary to ordinary policies or contracts are: for policies or contracts issued on or after January 1, 1966, 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 NAIC, that are approved by rules promulgated pursuant to chapter 1-26 by the director for use in determining the minimum standard of valuation for the policies; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either of the tables or, at the option of the company, the Class (3) Disability Table (1926) and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

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

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

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

58-26-64. Except as provided in §§ 58-26-71 to 58-26-74, inclusive, the minimum standard of valuation for individual annuity and pure endowment contracts issued on or after July 1, 1995, and

for annuities and pure endowments purchased on or after July 1, 1995, under group annuity and pure endowment contracts, are the commissioners' reserve valuation methods defined in §§ 58-26-75 and 58-26-76 and the tables and interest rates set forth in §§ 58-26-65 to 58-26-69, inclusive.

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

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

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

58-26-67. The tables that shall be used for individual annuity and pure endowment contracts issued on or after July 1, 1978, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in the contracts are: the 1971 Individual Annuity Mortality Table or any individual annuity mortality table adopted after 1980 by the NAIC, that is approved by rules promulgated pursuant to chapter 1-26 by the director for use in determining the minimum standard of valuation for the contracts, or any modification of these tables approved by the director, 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.

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

58-26-69. The tables that shall be used for all annuities and pure endowments purchased on or after July 1, 1978, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under the contracts are: the 1971 Group Annuity Mortality Table,

or any group annuity mortality table adopted after 1980 by the NAIC, that is approved by rules promulgated pursuant to chapter 1-26 by the director for use in determining the minimum standard of valuation for annuities and pure endowments, or any modification of these tables approved by the director, and seven and one-half percent interest.

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

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

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

(a) For life insurance,

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

(b) For single premiums 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 R1 is the lesser of R and .09, R2 is the greater of R and .09, R is the reference interest rate defined in §§ 58-26-71 to 58-26-74, inclusive, and W is the

weighting factor defined in §§ 58-26-71 to 58-26-74, inclusive;

(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.

(2) However, if the calendar year statutory valuation interest rate for any life insurance policies 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 life insurance policies is equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980, using the reference interest rate defined in 1979, and shall be determined for each subsequent calendar year regardless of when §§ 58-15-43.1 to 58-15-43.11, inclusive, became operative.

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

58-26-74. If the Monthly Average of the Composite Yield on Seasoned Corporate Bonds is no longer published by Moody's Investors Service, Inc., or if the NAIC determines that the Monthly Average of the Composite Yield on Seasoned Corporate Bonds as published by Moody's Investors Service, Inc., 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 NAIC and approved by rules promulgated pursuant to chapter 1-26 by the director, may be substituted.

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

58-26-75. Except as otherwise provided in §§ 58-26-76, 58-26-81, 58-26-82, and 58-26-84, reserves according to the 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 shall be the excess, if any, of the present value, at the date of valuation, of future guaranteed benefits provided for by the policies, over the then present value of any future modified net premiums of the policies. The modified net premiums for any policy shall be the uniform percentage of the respective contract premiums for the benefits such that the present value, at the date of issue of the policy, of all the modified net premiums shall be equal to the sum of the then present value of the benefits provided for by the policy and the excess of subdivision (1) over subdivision (2) as follows:

(1) 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 annum payable on the first and each subsequent anniversary of a policy on which a premium falls due. 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;

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

Any life insurance policy issued on or after January 1, 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' reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined in this chapter 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 shall, except as otherwise provided in §§ 58-26-81 and 58-26-82, be the greater of the reserve as of the policy anniversary calculated as described in the preceding paragraph and the reserve as of the policy anniversary calculated as described in that paragraph, but with (i) the value defined in subdivision (1) of that paragraph being reduced by fifteen percent of the amount of excess first year premium, (ii) 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, (iii) the policy being assumed to mature on the date as an endowment, and (iv) the cash surrender value provided on the date being considered as an endowment benefit. In making the above comparison, the mortality and interest bases stated in §§ 58-26-56 to 58-26-63, inclusive, and §§ 58-26-71 to 58-26-74, inclusive, shall be used.

Reserves according to the commissioners' reserve valuation method for: (i) life insurance policies providing for varying amount of insurance or requiring the payment of varying premiums; (ii) 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 Internal Revenue

Code, as of January 1, 1995; (iii) disability and accidental death benefits in all policies and contracts; and (iv) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of the preceding paragraphs of this section.

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

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

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

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

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

58-26-79. Reserves for any category of policies, contracts, or benefits as established by the director, issued on or after July 1, 1995, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for any 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 greater than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided in the

policies or contracts.

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

58-26-80. Any company which adopts 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 director, adopt any lower standard of valuation, but not lower than the minimum provided by this chapter. However, for the purposes of this section and §§ 58-26-78 and 58-26-79, the holding of additional reserves previously determined by the appointed actuary to be necessary to render the opinion required by §§ 58-26-46 to 58-26-55, inclusive, is not considered to be the adoption of a higher standard of valuation.

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

58-26-81. If in any contract year the gross premium charged by any company 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 thereon 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 and § 58-26-82 are those standards stated in §§ 58-26-56 to 58-26-63, inclusive, and §§ 58-26-71 to 58-26-74, inclusive.

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

58-26-84. The director shall promulgate rules pursuant to chapter 1-26 for containing the minimum standards applicable to the valuation of health plans, including disability, sickness, and

accident, issued on or after July 1, 1995, and prior to the operative date of the valuation manual. For accident and health insurance contracts 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 pursuant to section 3 of this Act.

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

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

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 pursuant to section 3 of this Act, except as provided pursuant to sections 29 or 31 of this Act.

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

The director may not adopt the NAIC valuation manual of instruction until all of the following have occurred:

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

(2) The Standard Valuation Law, as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, is 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 NAIC in 2009, or legislation including substantially similar terms and provisions, is enacted by at least forty-two of the following fifty-five jurisdictions: The fifty states of the United States, American Samoa, the

American Virgin Islands, the District of Columbia, Guam, and Puerto Rico.

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

The director may approve a change to the valuation manual pursuant to rules promulgated pursuant to chapter 1-26 when the change to the valuation manual is adopted by the NAIC by an affirmative vote representing:

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

(2) Members of the NAIC representing jurisdictions totaling greater than seventy-five percent of the direct premiums written as reported in the following annual statements most recently available prior to the vote in subdivision (1) above: life, accident, and health annual statements, health annual statements, or fraternal annual statements.

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

The director may adopt the NAIC valuation manual of instruction if the valuation manual specifies the following:

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

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

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

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

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

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

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

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

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

(4) For policies not subject to a principle-based valuation pursuant to sections 32 to 34, inclusive, of this Act, the minimum valuation standard shall:

(a) Be consistent with the minimum standard of valuation prior to the operative date of the valuation manual; or

(b) 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;

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

(6) The data and form of the data required pursuant to section 35 of this Act, with whom the data must be submitted, and may specify other requirements including data analyses and reporting of analyses.

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

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 director, in compliance with this chapter, then the company shall, with respect to the requirements, comply with minimum valuation standards prescribed by the director by rules promulgated pursuant to chapter 1-26.

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

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

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

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

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

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

(1) 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;

(2) Incorporate assumptions, risk analysis methods, financial models, and management techniques that are consistent with, but not necessarily identical to, those utilized within the company's overall risk assessment process, while recognizing potential differences in financial reporting structures and any prescribed assumption or method;

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

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

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

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

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

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

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

(2) Provide to the director and the board of directors an annual certification of the effectiveness of the internal controls with respect to the principle-based valuation. The controls shall be designed to assure that all material risks inherent in the liabilities and associated assets subject to such valuation are included in the valuation, and that valuations are made in accordance with the valuation manual. The certification shall be based on the controls in place as of the end of the preceding calendar year;

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

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

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

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

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

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

For purposes of this section, confidential information, means:

(1) A memorandum in support of an opinion submitted pursuant to §§ 58-26-46 to 58-26-55 and section 5 of this Act, and any other document, material, and other information,

including all working papers, and copies thereof, created, produced, or obtained by or disclosed to the director or any other person in connection with such memorandum;

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

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

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

(5) Any documents, materials, data, and other information submitted by a company pursuant to section 35 of this Act, collectively, "experience data," and any other documents,

materials, data, and other information, including all working papers, and copies thereof, created or produced in connection with such experience data, in each case that include any potentially company-identifying or personally identifiable information, that is provided to or obtained by the director together with any experience data, the experience materials, and any other documents, materials, data, and other information, including all working papers, and copies thereof, created, produced, or obtained by or disclosed to the director or any other person in connection with such experience materials.

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

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

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

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

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

(b) In the case of confidential information specified in subdivisions (1) and (4) of

section 36 of this Act only, with the Actuarial Board for Counseling and Discipline or its successor upon request stating that the confidential information is required for the purpose of professional disciplinary proceedings and with state, federal, and international law enforcement officials;

In the case of (a) and (b), 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 director;

(4) The director may receive documents, materials, data, and other information, including otherwise confidential and privileged documents, materials, data, or information, from the NAIC and its affiliates and subsidiaries, from regulatory or law enforcement officials of other foreign or domestic jurisdictions and from the Actuarial Board for Counseling and Discipline or its successor 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;

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

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

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

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

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

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

(1) 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 pursuant to §§ 58-26-46 to 58-26-55, inclusive, and section 5 of this Act, or principle-based valuation report developed pursuant to subdivision (3) of section 33 of this Act, by reason of an action required by this chapter or by regulations promulgated hereunder;

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

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

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

The director may exempt specific product forms or product lines of a domestic company that is licensed and doing business only in South Dakota from the requirements of sections 25 to 31,

inclusive, of this Act, provided:

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

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

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

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

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

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

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

58-15-43.8. All adjusted premiums and present values referred to in §§ 58-15-31 to 58-15-43, inclusive, are calculated for all policies of ordinary insurance on the basis of the commissioner's 1980 standard ordinary mortality table or, at the election of the insurer, for any one or more specified plans of life insurance, the commissioner's 1980 standard ordinary mortality table with ten-year select mortality factors are calculated for all policies of industrial insurance on the basis of the commissioner's 1961 standard industrial mortality table; and are calculated for all policies issued in a particular calendar year on the basis of a rate of interest not exceeding the nonforfeiture interest

rate as defined in this section for policies issued in that calendar year. However, the following procedures apply:

(1) At the option of the insurer, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this section, for policies issued in the immediately preceding calendar year;

(2) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by § 58-15-31, shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of the paid-up nonforfeiture benefit and paid-up dividend additions, if any;

(3) An insurer may calculate the amount of any guaranteed paid-up nonforfeiture benefit including any paid-up additions under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values;

(4) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioner's 1980 extended term insurance table for policies of ordinary insurance and not more than the commissioner's 1961 industrial extended term insurance table for policies of industrial insurance;

(5) For insurance issued on a substandard basis, the calculation of any adjusted premiums and present values may be based on appropriate modifications of the aforementioned tables;

(6) For policies issued prior to the operative date of the valuation manual, any commissioner's standard ordinary mortality tables, adopted after 1980 by the national association of insurance commissioners, that are approved by rules promulgated by the director for use in determining the minimum nonforfeiture standard may be substituted for the

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

(7) For policies issued prior to the operative date of the valuation manual, any commissioner's standard industrial mortality tables, adopted after 1980 by the national association of insurance commissioners, that are approved by rules promulgated by the director for use in determining the minimum nonforfeiture standard may be substituted for the commissioner's 1961 standard industrial mortality table or the commissioner's 1961 industrial extended term insurance table. For policies issued on or after the operative date of the valuation manual the valuation manual shall provide the commissioner's standard mortality table for use in determining the nonforfeiture standard that may be substituted for the commissioner's 1961 standard industrial mortality table or the commissioner's 1962 industrial extended term insurance table. If the director approves by regulation any commissioner's standard industrial mortality table adopted by the national association of insurance commissioners for use in determining the minimum nonforfeiture standard for

policies issued on or after the operative date of the valuation manual then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.

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

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

(1) For policies issued prior to the operative date of the valuation manual, the nonforfeiture interest rate per annum for any policy issued in a particular calendar year is equal to one hundred twenty-five percent of the calendar year statutory valuation interest rate for the policy as defined in the standard valuation law, rounded to the nearer one quarter of one percent, provided that the nonforfeiture rate may not be less than four percent;

(2) For policies issued on or after the operative date of the valuation manual the forfeiture interest rate per annum for any policy issued in a particular calendar year is provided by the valuation manual.

An Act to update the valuation manual related to the valuation of assets, liabilities, and reserves.

I certify that the attached Act originated in the

HOUSE as Bill No. 1235

_____
Chief Clerk

_____
Speaker of the House

Attest:

_____
Chief Clerk

_____
President of the Senate

Attest:

_____
Secretary of the Senate

House Bill No. 1235
File No. ____
Chapter No. _____

Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

The attached Act is hereby approved this _____ day of _____ , A.D., 20___

_____
Governor

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____ , 20___
at _____ o'clock __ M.

_____
Secretary of State

By _____
Asst. Secretary of State