**By** the Committees on Judiciary; and Banking and Insurance; and Senator Simmons

590-03147-14 20141308c2

A bill to be entitled

An act relating to insurer solvency; amending s. 624.10, F.S.; providing additional definitions applicable to the Florida Insurance Code; amending s. 624.319, F.S.; clarifying that production of documents does not waive the attorney-client or work-product privileges; amending s. 624.402, F.S.; conforming a cross-reference; amending s. 624.4085, F.S.; revising a definition; providing additional calculations for determining whether an insurer has a company action level event; revising provisions relating to mandatory control level events; amending s. 624.424, F.S.; requiring an insurer’s annual statement to include an actuarial opinion summary; providing criteria for such summary; providing an exception for life and health insurers; updating provisions; requiring insurers reinsuring through a captive insurance company to file a report containing certain information; amending s. 625.121, F.S.; revising the Standard Valuation Law; distinguishing the provisions from valuations done pursuant to the National Association of Insurance Commissioner’s (NAIC) valuation manual and incorporating certain provisions included in the manual; exempting certain documents from civil proceedings; revising the methods for evaluating the valuation of industrial life insurance policies; revising provisions relating to calculating additional premium; updating provisions relating to reserve calculations for indeterminate premium plans; creating

s. 625.1212, F.S.; providing for the valuation of policies and contracts after the adoption of the NAIC's valuation manual; providing applicability; defining terms; requiring the office to value insurer reserves; requiring actuarial opinions of the reserves and a supporting memorandum to the opinions; requiring the insurer to apply the standard prescribed in the valuation manual; providing exceptions; providing requirements for a principle-based valuation of reserves; requiring an insurer to submit certain data to the office; directing the Financial Services Commission to adopt rules; creating s. 625.1214, F.S.; providing for the use of confidential information; prohibiting the use of such information in private civil actions; amending s. 627.476, F.S.; revising the Standard Nonforfeiture Law; distinguishing provisions subject to the valuation manual and providing for the application of tables found in the manual; amending s. 628.461, F.S.; revising the amount of outstanding voting securities of a domestic stock insurer or a controlling company which a person is prohibited from acquiring unless certain requirements have been met; deleting a provision authorizing an insurer to file a disclaimer of affiliation and control in lieu of a letter notifying the Office of Insurance Regulation of the Financial Services Commission of the acquisition of the voting securities of a domestic stock company under certain circumstances; requiring the statement notifying the office to include additional

information; conforming a provision to changes made by the act; providing that control is presumed to exist under certain conditions; specifying how control may be rebutted and how a controlling interest may be divested; deleting definitions; amending s. 628.801, F.S.; requiring an insurer to annually file a registration statement by a specified date; revising the requirements and standards for the rules establishing the information and statement form for the registration; requiring an insurer to file an annual enterprise risk report; authorizing the office to conduct examinations to determine the financial condition of registrants; providing that failure to file a registration or report is a violation of the section; providing additional grounds, requirements, and conditions with respect to a waiver from the registration requirements; amending s. 628.803, F.S.; providing sanctions for persons who violate certain provisions relating to the acquisition of controlling stock; creating s. 628.804, F.S.; providing for the groupwide supervision of international insurance groups; defining terms; providing for the selection of a groupwide supervisor; authorizing the commission to adopt rules; creating s. 628.805, F.S.; authorizing the office to participate in supervisory colleges; authorizing the office to assess fees on insurers for participation; amending ss. 636.045 and 641.225, F.S.; applying certain statutes related to solvency to prepaid limited health service organizations and

health maintenance organizations; amending s. 641.255, F.S.; providing for applicability of specified provisions to a health maintenance organization that is a member of a holding company; providing effective dates and a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 624.10, Florida Statutes, is amended to read:

624.10 Other definitions ~~Transacting insurance~~.—As used in the Florida Insurance Code, the term:

(1) "Affiliate" means an entity that exercises control over or is directly or indirectly controlled by the insurer through:

(a) Equity ownership of voting securities;

(b) Common managerial control; or

(c) Collusive participation by the management of the insurer and affiliate in the management of the insurer or the affiliate.

(2) "Affiliated person" of another person means:

(a) The spouse of the other person;

(b) The parents of the other person and their lineal descendants, or the parents of the other person's spouse and their lineal descendants;

(c) A person who directly or indirectly owns or controls, or holds with the power to vote, 10 percent or more of the outstanding voting securities of the other person;

(d) A person, 10 percent or more of whose outstanding voting securities are directly or indirectly owned or

controlled, or held with power to vote, by the other person;

(e) A person or group of persons who directly or indirectly control, are controlled by, or are under common control with the other person;

(f) An officer, director, partner, copartner, or employee of the other person;

(g) If the other person is an investment company, an investment adviser of such company, or a member of an advisory board of such company;

(h) If the other person is an unincorporated investment company not having a board of directors, the depositor of such company; or

(i) A person who has entered into a written or unwritten agreement to act in concert with the other person in acquiring or limiting the disposition of securities of a domestic stock insurer or controlling company.

(3) "Control," including the terms "controlling," "controlled by," and "under common control with," means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise. Control is presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of the voting securities of another person.

(4) "NAIC" means the National Association of Insurance Commissioners.

(5) "Transact" with respect to insurance includes any of

the following, in addition to other applicable provisions of this code:

(a) ~~(1)~~ Solicitation or inducement.

(b) ~~(2)~~ Preliminary negotiations.

(c) ~~(3)~~ Effectuation of a contract of insurance.

(d) ~~(4)~~ Transaction of matters subsequent to effectuation of a contract of insurance and arising out of it.

Section 2. Subsection (2) of section 624.319, Florida Statutes, is amended to read:

624.319 Examination and investigation reports.—

(2) The examination report ~~when~~ so filed is ~~shall be~~ admissible in evidence in any action or proceeding brought by the department or office against the person examined, or against its officers, employees, or agents. In all other proceedings, the admissibility of the examination report is governed by the evidence code. The department or office or its examiners may ~~at any time~~ testify and offer other proper evidence as to information secured or matters discovered during the course of an examination, regardless of whether ~~or not~~ a written report of the examination has been ~~either~~ made, furnished, or filed in the department or office. The production of documents during the course of an examination or investigation does not constitute a waiver of the attorney-client or work-product privileges.

Section 3. Paragraph (c) of subsection (8) of section 624.402, Florida Statutes, is amended to read:

624.402 Exceptions, certificate of authority required.—A certificate of authority shall not be required of an insurer with respect to:

(8)

(c) Subject to the limitations provided in this subsection, services, including those listed in the definition of the term "transact" in s. 624.10, may be provided by the insurer or an affiliated person as defined in s. 624.04 under common ownership or control with the insurer.

Section 4. Paragraph (g) of subsection (1), paragraph (a) of subsection (3), and paragraph (b) of subsection (6) of section 624.4085, Florida Statutes, are amended to read:

624.4085 Risk-based capital requirements for insurers.—

(1) As used in this section, the term:

(g) "Life and health insurer" means an ~~any~~ insurer authorized or eligible under the Florida Insurance Code to underwrite life or health insurance. The term includes a property and casualty insurer that writes accident and health insurance only. Effective January 1, 2015, the term also includes a health maintenance organization that is authorized in this state and one or more other states, jurisdictions, or countries and a prepaid limited health service organization that is authorized in this state and one or more other states, jurisdictions, or countries.

(3)(a) A company action level event includes:

1. The filing of a risk-based capital report by an insurer which indicates that:

a. The insurer's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital; ~~or~~

b. If a life and health insurer reports using the life and health annual statement instructions, the insurer has total adjusted capital that is greater than or equal to its company

action level risk-based capital, but is less than the product of its authorized control level risk-based capital and 3.0 ~~2.5~~, and has a negative trend;

c. Effective January 1, 2015, if a life and health or property and casualty insurer reports using the health annual statement instructions, the insurer or organization has total adjusted capital that is greater than or equal to its company action level risk-based capital, but is less than the product of its authorized control level risk-based capital and 3.0, and triggers the trend test determined in accordance with the trend test calculation included in the Risk-Based Capital Forecasting and Instructions, Health, updated annually by the NAIC; or

d. If a property and casualty insurer reports using the property and casualty annual statement instructions, the insurer has total adjusted capital that is greater than or equal to its company action level risk-based capital, but less than the product of its authorized control level risk-based capital and 3.0, and triggers the trend test determined in accordance with the trend test calculation included in the Risk-Based Capital Forecasting and Instructions, Property/Casualty, updated annually by the NAIC;

2. The notification by the office to the insurer of an adjusted risk-based capital report that indicates an event in subparagraph 1., unless the insurer challenges the adjusted risk-based capital report under subsection (7); or

3. If, under subsection (7), an insurer challenges an adjusted risk-based capital report that indicates an event in subparagraph 1., the notification by the office to the insurer that the office has, after a hearing, rejected the insurer's

challenge.

(6)

(b) If a mandatory control level event occurs:

1. With respect to a life and health insurer, the office shall, after due consideration of s. 624.408, and effective January 1, 2015, ss. 636.045 and 641.225, take any action necessary to place the insurer under regulatory control, including any remedy available under chapter 631. A mandatory control level event is sufficient ground for the department to be appointed as receiver as provided in chapter 631. The office may forego taking action for up to 90 days after the mandatory control level event if the office finds there is a reasonable expectation that the ~~mandatory control level~~ event may be eliminated within the 90-day period.

2. With respect to a property and casualty insurer, the office shall, after due consideration of s. 624.408, take any action necessary to place the insurer under regulatory control, including any remedy available under chapter 631, or, in the case of an insurer that is not writing new business, may allow the insurer to continue to operate under the supervision of the office. In either case, the mandatory control level event is sufficient ground for the department to be appointed as receiver as provided in chapter 631. The office may forego taking action for up to 90 days after the mandatory control level event if the office finds there is a reasonable expectation that the ~~mandatory control level~~ event may ~~will~~ be eliminated within the 90-day period.

Section 5. Subsection (1) and paragraph (e) of subsection (8) of section 624.424, Florida Statutes, are amended, and

subsection (11) is added to that section, to read:

624.424 Annual statement and other information.—

(1)(a) Each authorized insurer shall file with the office full and true statements of its financial condition, transactions, and affairs. An annual statement covering the preceding calendar year shall be filed on or before March 1, and quarterly statements covering the periods ending on March 31, June 30, and September 30 shall be filed within 45 days after each such date. The office may, for good cause, grant an extension of time for filing ~~of~~ an annual or quarterly statement. The statements must ~~shall~~ contain information generally included in insurers' financial statements prepared in accordance with generally accepted insurance accounting principles and practices and in a form generally used ~~utilized~~ by insurers for financial statements, sworn to by at least two executive officers of the insurer or, if a reciprocal insurer, by ~~the~~ oath of the attorney in fact or its like officer if a corporation. To facilitate uniformity in financial statements and to facilitate office analysis, the commission may by rule adopt the form and instructions for financial statements approved by the NAIC in 2014 ~~National Association of Insurance Commissioners in 2002~~, and ~~may adopt~~ subsequent amendments thereto if the methodology remains substantially consistent, and may by rule require each insurer to submit to the office, or such organization as the office may designate, all or part of the information contained in the financial statement in a computer-readable form compatible with the electronic data processing system specified by the office.

(b) Each insurer's annual statement must contain:

1. A statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or by a qualified loss reserve specialist, pursuant to ~~under~~ criteria established by rule of the commission. In adopting the rule, the commission shall ~~must~~ consider any criteria established by the NAIC ~~National Association of Insurance Commissioners~~. The office may require semiannual updates of the annual statement of opinion for ~~as to~~ a particular insurer if the office has reasonable cause to believe that such reserves are understated to the extent of materially misstating the financial position of the insurer. Workpapers in support of the statement of opinion must be provided to the office upon request. This paragraph does not apply to life insurance, health insurance, or title insurance.

2. An actuarial opinion summary written by the insurer's appointed actuary. The summary must be filed in accordance with the appropriate NAIC property and casualty annual statement instructions. Proprietary business information contained in the summary is confidential and exempt under s. 624.4212, and the summary and related information are not subject to subpoena or discovery directly from the office. Neither the office nor any person who received documents, materials, or other information while acting under the authority of the office, or with whom such information is shared pursuant to s. 624.4212, may testify in a private civil action concerning such confidential information. However, the department or office may use the confidential and exempt information in the furtherance of any regulatory or legal action brought against an insurer as a part of the official duties of the department or office. No waiver of

any other applicable claim of confidentiality or privilege may occur as a result of a disclosure to the office under this section or any other section of the insurance code. This paragraph does not apply to life and health insurers subject to s. 625.121(3) before the operative date of the valuation manual as defined in s. 625.1212(2), and does not apply to life and health insurers subject to s. 625.1212(4) on or after such operative date.

(c) The commission may by rule require reports or filings required under the insurance code to be submitted by electronic means in a computer-readable form compatible with the electronic data processing equipment specified by the commission.

(8)

(e) The commission shall adopt rules to administer ~~implement~~ this subsection~~,~~ which ~~rules~~ must be in substantial conformity with the 2006 Annual Financial Reporting Model Regulation ~~1998 Model Rule requiring annual audited financial reports~~ adopted by the NAIC ~~National Association of Insurance Commissioners~~ or subsequent amendments, except where inconsistent with the requirements of this subsection. Any exception to, waiver of, or interpretation of accounting requirements of the commission must be in writing and signed by an authorized representative of the office. An ~~No~~ insurer may not raise an ~~as a defense in any action, any~~ exception to, waiver of, or interpretation of accounting requirements as a defense in an action, unless previously issued in writing by an authorized representative of the office.

(11) Each insurer doing business in this state which reinsures through a captive insurance company as defined in s.

628.901, but without regard to domiciliary status, shall, in conjunction with the annual financial statement required under paragraph (1)(a), file a report with the office containing financial information specific to reinsurance assumed by each captive.

(a) The report shall be filed as a separate schedule designed to avoid duplication of disclosures required by the NAIC's annual statement and instructions.

(b) Insurers must:

1. Identify the products ceded to the captive and whether the products are subject to rule 69O-164.020, Florida Administrative Code, the NAIC Valuation of Life Insurance Policies Regulation (Model #830), or the NAIC Actuarial Guideline XXXVIII (AG 38).

2. Disclose the assets of the captive in the format prescribed in the NAIC annual statement schedules.

3. Include a stand-alone actuarial opinion or certification identifying the differences between the assets the ceding company would be required to hold and the assets held by the captive.

Section 6. Subsection (2), paragraphs (a) and (b) of subsection (3), subsection (5), paragraph (e) of subsection (6), and subsections (10), (11), and (12) of section 625.121, Florida Statutes, are amended to read:

625.121 Standard Valuation Law; life insurance.—

(2) ANNUAL VALUATION.—The office shall annually value, or cause to be valued, the reserves ~~reserve liabilities, hereinafter called "reserves,"~~ for all outstanding life insurance policies and annuity and pure endowment contracts of

each ~~every~~ life insurer doing business in this state~~, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest, and methods, net-level premium method or others, used in the calculation of such reserves~~. In the case of an alien insurer, such valuation is ~~shall be~~ limited to its insurance transactions in the United States. In calculating ~~such~~ reserves, the office may use group methods and approximate averages for fractions of a year or otherwise, and~~. It~~ may accept ~~in its discretion~~ the insurer's calculation of such reserves. In lieu of the valuation of the reserves ~~herein~~ required of a ~~any~~ foreign or alien insurer, the office ~~it~~ may accept any valuation made or caused to be made by the insurance supervisory official of any state or other jurisdiction if the ~~when such~~ valuation complies with the minimum standard ~~herein~~ provided under this section ~~and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the office when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction~~. If a ~~When any such~~ valuation is made by the office, the office ~~it~~ may use its ~~the~~ actuary ~~of the office~~ or employ an actuary for that ~~the~~ purpose; and the reasonable compensation of the actuary, at a rate approved by the office, plus ~~and~~ reimbursement of travel expenses pursuant to s. 624.320 ~~upon demand by the office~~, supported by an itemized statement of such compensation and expenses, shall be paid by the insurer upon demand of the office. If ~~When~~ a domestic insurer furnishes

the office with a valuation of its outstanding policies as computed by its own actuary or by an actuary deemed satisfactory for that ~~the~~ purpose by the office, the valuation shall be verified by the actuary of the office without cost to the insurer. This section applies to the calculation of reserves for policies and contracts not subject to s. 625.1212.

(3) ACTUARIAL OPINION OF RESERVES.—

(a)~~1.~~ Each life insurer ~~insurance company~~ doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commission by rule are computed appropriately, are based on assumptions that ~~which~~ satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The commission by rule shall define the specifics of this opinion and add any other items determined ~~to be~~ necessary to its scope.

1.~~2.~~ The opinion shall be submitted with the annual statement and must reflect ~~reflecting~~ the valuation of such reserve liabilities for each year ending on or before ~~after~~ December 31 of the year before the operative date of the valuation manual as defined in s. 625.1212(2), and in accordance with s. 625.1212(4) for each year thereafter~~, 1992~~.

2.~~3.~~ The opinion applies ~~shall apply~~ to all business in force, including individual and group health insurance plans, in the form and substance acceptable to the office as specified by rule of the commission.

3.~~4.~~ The commission may adopt rules providing the standards of the actuarial opinion consistent with standards adopted by

the Actuarial Standards Board on December 31, 2013 ~~2002~~, and subsequent revisions thereto if~~, provided that~~ the standards remain substantially consistent.

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

5.~~6.~~ As used in ~~For the purposes of~~ this subsection, the term "qualified actuary" means a member in good standing of the American Academy of Actuaries who also meets the requirements specified by rule of the commission.

6.~~7.~~ Disciplinary action by the office against the insurer ~~company~~ or the qualified actuary shall be in accordance with the insurance code and related rules adopted by the commission.

7.~~8.~~ A memorandum in the form and substance specified by rule shall be prepared to support each actuarial opinion.

8.~~9.~~ If the insurer ~~insurance company~~ fails to provide a supporting memorandum at the request of the office within a period specified by rule of the commission, or if the office determines that the supporting memorandum provided by the insurer ~~insurance company~~ fails to meet the standards prescribed by rule of the commission, the office may engage a qualified actuary at the expense of the insurer ~~company~~ to review the opinion and the basis for the opinion and prepare such supporting memorandum as ~~is~~ required by the office.

9.~~10.~~ Except as otherwise provided in this subparagraph ~~paragraph~~, any memorandum or other material in support of the

opinion is confidential and exempt from ~~the provisions of~~ s. 119.07(1) and is not subject to subpoena or discovery directly from the office; however, the memorandum or other material may be released by the office with the written consent of the insurer ~~company~~, or to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the office for preserving the confidentiality of the memorandum or other material. If any portion of the confidential memorandum is cited by the insurer ~~company~~ in its marketing, ~~or~~ is cited before any governmental agency other than a state insurance department, or is released by the insurer ~~company~~ to the news media, no portion of the memorandum is confidential. Neither the office nor any person who receives documents, materials, or other information while acting under the authority of the office or with whom such information is shared pursuant to this paragraph may testify in a private civil action concerning the confidential documents, materials, or information. However, the department or office may use the confidential and exempt information in the furtherance of any regulatory or legal action brought against an insurer as a part of the official duties of the department or office. A waiver of an applicable privilege or claim of confidentiality in the documents, materials, or information may not occur as a result of disclosure to the office under this section or any other section of the insurance code, or as a result of sharing as authorized under s. 624.4212.

(b) In addition to the opinion required by paragraph (a) ~~subparagraph (a)1.~~, the office may, pursuant to commission rule,

require an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commission by rule, when considered in light of the assets held by the insurer ~~company~~ with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the insurer's ~~company's~~ obligations under the policies and contracts, including, but not limited to, the benefits under, and expenses associated with, the policies and contracts.

(5) MINIMUM STANDARD FOR VALUATION OF POLICIES AND CONTRACTS ISSUED ON OR AFTER OPERATIVE DATE OF THE STANDARD NONFORFEITURE LAW.—Except as otherwise provided in paragraph (h) and subsections (6), (13) ~~(11)~~, and (14), the minimum standard for the valuation of all such policies and contracts issued on or after the operative date of s. 627.476 ~~(Standard Nonforfeiture Law for Life Insurance)~~ shall be the commissioners' reserve valuation method defined in subsections (7), (11), and (14); 5 percent interest for group annuity and pure endowment contracts and 3.5 percent interest for all other such policies and contracts, or in the case of life insurance policies and contracts, other than annuity and pure endowment contracts, issued on or after July 1, 1973, 4 percent interest for such policies issued prior to October 1, 1979, and 4.5 percent interest for such policies issued on or after October 1, 1979; and the following tables:

(a) For all ordinary policies of life insurance issued on

the standard basis, excluding any disability and accidental death benefits in such policies:

1. For policies issued before ~~prior to~~ the operative date of s. 627.476(9), the ~~commissioners'~~ 1958 Commissioners Standard Ordinary (CSO) Mortality Table; except that, for any category of such policies issued on female risks, modified net premiums and present values, referred to in subsection (7), may be calculated according to an age up to ~~not more than~~ 6 years younger than the actual age of the insured.

2. For policies issued on or after the operative date of s. 627.476(9), the ~~commissioners'~~ 1980 Commissioners Standard Ordinary Mortality Table or, at the election of the insurer for any one or more specified plans of life insurance, the ~~commissioners'~~ 1980 Commissioners Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors.

3. For policies issued on or after July 1, 2004, ordinary mortality tables, adopted after 1980 by the NAIC ~~National Association of Insurance Commissioners~~, adopted by rule by the commission for use in determining the minimum standard of valuation for such policies.

(b) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies:

1. For policies issued before ~~prior to~~ the first date ~~to which~~ the ~~commissioners'~~ 1961 Commissioners Standard Industrial Mortality Table is applicable according to s. 627.476, the 1941 Standard Industrial Mortality Table; ~~and~~

2. For ~~such~~ policies issued on or after that date, the ~~commissioners'~~ 1961 Commissioners Standard Industrial Mortality

Table; and

3. For policies issued on or after October 1, 2014, a Commissioners Standard Industrial Mortality Table adopted by the NAIC after 1980 which is adopted by rule of the commission for use in determining the minimum standard of valuation for such policies.

(c) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the 1937 Standard Annuity Mortality Table or, at the option of the insurer, the Annuity Mortality Table for 1949, Ultimate, or any modification of ~~either of~~ these tables approved by the office.

(d) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the Group Annuity Mortality Table for 1951; any modification of such table approved by the office; or, at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(e) For total and permanent disability benefits in or supplementary to ordinary policies or contracts:

1. 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;

2. For policies or contracts issued on or after January 1, 1961, and before ~~prior to~~ January 1, 1966, either of the tables specified in subparagraph 1. ~~those tables~~ or, at the option of the insurer, the class three disability table (1926);

3. For policies issued before ~~prior to~~ January 1, 1961, the class three disability table (1926); and

4. For policies or contracts issued on or after July 1, 2004, tables of disablement rates and termination rates adopted after 1980 by the NAIC ~~National Association of Insurance Commissioners~~, adopted by rule by the commission for use in determining the minimum standard of valuation for those policies or contracts.

Any such table for active lives shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(f) For accidental death benefits in or supplementary to policies:

1. For policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table;

2. For policies issued on or after January 1, 1961, and before ~~prior to~~ January 1, 1966, the 1959 Accidental Death Benefits ~~either that~~ Table or, at the option of the insurer, the Intercompany Double Indemnity Mortality Table;

3. For policies issued before ~~prior to~~ January 1, 1961, the Intercompany Double Indemnity Mortality Table; and

4. For policies issued on or after July 1, 2004, tables of accidental death benefits adopted after 1980 by the NAIC ~~National Association of Insurance Commissioners~~, adopted by rule by the commission for use in determining the minimum standard of valuation for those policies.

Either table shall be combined with a mortality table permitted

for calculating the reserves for life insurance policies.

(g) For group life insurance, life insurance issued on the substandard basis, and other special benefits, such tables as may be approved by the office as being sufficient with relation to the benefits provided by such policies.

(h) Except as provided in subsection (6), the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this paragraph and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts shall be the commissioners' reserve valuation method defined in subsection (7) and the following tables and interest rates:

1. For individual annuity and pure endowment contracts issued before ~~prior to~~ October 1, 1979, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the office, and 6 percent interest for single-premium immediate annuity contracts and 4 percent interest for all other individual annuity and pure endowment contracts.

2. For individual single-premium immediate annuity contracts issued on or after October 1, 1979, and before ~~prior to~~ October 1, 1986, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the office, and 7.5 percent interest. For such contracts issued on or after October 1, 1986, the 1983 Individual Annual Mortality Table, or any modification of such table approved by the office, and the applicable calendar year statutory valuation

interest rate as described in subsection (6).

3. For individual annuity and pure endowment contracts issued on or after October 1, 1979, and before ~~prior to~~ October 1, 1986, other than single-premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the office, and 5.5 percent interest for single-premium deferred annuity and pure endowment contracts and 4.5 percent interest for all other such individual annuity and pure endowment contracts. For such contracts issued on or after October 1, 1986, the 1983 Individual Annual Mortality Table, or any modification of such table approved by the office, and the applicable calendar year statutory valuation interest rate as described in subsection (6).

4. For all annuities and pure endowments purchased before ~~prior to~~ October 1, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table, or any modification of this table approved by the office, and 6 percent interest.

5. For all annuities and pure endowments purchased on or after October 1, 1979, and before ~~prior to~~ October 1, 1986, under group annuity and pure endowment contracts, excluding ~~any~~ disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table, or any modification of this table approved by the office, and 7.5 percent interest. For such contracts purchased on or after October 1, 1986, the 1983 Group Annuity Mortality Table, or any

modification of such table approved by the office, and the applicable calendar year statutory valuation interest rate as described in subsection (6).

After July 1, 1973, an ~~any~~ insurer may have filed with the former Department of Insurance a written notice of its election to comply with ~~the provisions of~~ this paragraph after a specified date before January 1, 1979, which shall be the operative date of this paragraph for such insurer. However, an insurer may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If an insurer does not make ~~makes no~~ such election, the operative date of this paragraph for such insurer is ~~shall be~~ January 1, 1979.

(i) In lieu of the mortality tables specified in this subsection, and subject to rules previously adopted by the former Department of Insurance, the insurance company may, at its option:

1. Substitute the applicable 1958 CSO or CET Smoker and Nonsmoker Mortality Tables, in lieu of the 1980 CSO or CET mortality table standard, for policies issued on or after the operative date of s. 627.476(9) and before January 1, 1989.

2. Substitute the applicable 1980 CSO or CET Smoker and Nonsmoker Mortality Tables in lieu of the 1980 CSO or CET mortality table standard.~~;~~

3. Use the Annuity 2000 Mortality Table for determining the minimum standard of valuation for individual annuity and pure endowment contracts issued on or after January 1, 1998, and before July 1, 1998.

4. Use the 1994 GAR Table for determining the minimum standard of valuation for annuities and pure endowments purchased on or after January 1, 1998, and before July 1, 1998, under group annuity and pure endowment contracts.

(j) The commission may adopt by rule the model regulation for valuation of life insurance policies as approved by the NAIC ~~National Association of Insurance Commissioners~~ in March 1999, including tables of select mortality factors, and may make the regulation effective for policies issued on or after January 1, 2000.

(k) For individual annuity and pure endowment contracts issued on or after July 1, 2004, excluding ~~any~~ disability and accidental death benefits purchased under those contracts, individual annuity mortality tables adopted after 1980 by the NAIC ~~National Association of Insurance Commissioners~~, adopted by rule by the commission for use in determining the minimum standard of valuation for those contracts.

(l) For all annuities and pure endowments purchased on or after July 1, 2004, under group annuity and pure endowment contracts, excluding ~~any~~ disability and accidental death benefits purchased under those contracts, group annuity mortality tables adopted after 1980 by the NAIC ~~National Association of Insurance Commissioners~~, adopted by rule by the commission for use in determining the minimum standard of valuation for those contracts.

(6) MINIMUM STANDARD OF VALUATION.—

(e) The interest rate index shall be the Moody’s Corporate Bond Yield Average-Monthly Average Corporates as published by Moody’s Investors Service, Inc., if the ~~as long as this~~ index is

calculated by using substantially the same methodology ~~as~~ used by Moody's ~~it~~ on January 1, 1981. If Moody's corporate bond yield average ceases to be calculated in substantially the same ~~this~~ manner, the interest rate index shall be the index specified in the valuation manual, as applicable, as provided under s. 625.1212, or an index adopted by the NAIC and approved by rule adopted ~~promulgated~~ by the commission. The methodology used in determining the index approved by rule must ~~shall~~ be substantially the same as the methodology employed on January 1, 1981, for determining Moody's Corporate Bond Yield Average-Monthly Average Corporates as published by Moody's Investors Service, Inc.

(10) LOWER VALUATIONS.—An insurer that ~~which at any time had~~ adopted a ~~any~~ standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard ~~herein~~ provided under this section shall ~~may~~, with the approval of the office, adopt a ~~any~~ lower standard of valuation, but not lower than the minimum herein provided; however, for the purposes of this subsection, the holding of additional reserves previously determined by an appointed ~~a qualified~~ actuary, as defined in s. 625.1212(2), to be necessary to render the opinion required by subsection (3) may ~~shall~~ not be deemed to be the adoption of a higher standard of valuation.

(11) ADDITIONAL PREMIUM ~~DEFICIENCY RESERVE~~.—If in any contract year the gross premium charged by a ~~any~~ life insurer on a ~~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 premium

reserve required for the policy or contract shall be the greater of the reserve calculated according to the actual mortality table, rate of interest, and method used for the policy or contract, or the actual method 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 are those standards ~~there shall be maintained on such policy or contract a deficiency reserve in addition to the reserve~~ defined by subsections (4), (5), and (6) ~~(7) and (12)~~. ~~For each such policy or contract, the deficiency reserve shall be the present value, according to the minimum valuation standards of mortality and rate of interest, of the differences between all such valuation net premiums and the corresponding premiums charged for such policy or contract during the remainder of the premium-paying period. For any category of policies, contracts, or benefits specified in subsections (5) and (6), issued on or after the operative date of s. 627.476 (the Standard Nonforfeiture Law for Life Insurance), the aggregate deficiency reserves may be reduced by the amount, if any, by which the aggregate reserves actually calculated in accordance with subsection (9) exceed the minimum aggregate reserves prescribed by subsection (8). The minimum valuation standards of mortality and rate of interest referred to in this subsection are those standards stated in subsections (5) and (6). However,~~ For any life insurance policy that ~~which~~ is issued on or after January 1, 1985, for which the gross premium in the first policy year

exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess, and which provides an endowment benefit, a cash surrender value, or a combination thereof in an amount greater than such excess premium, the foregoing provisions of this subsection shall be applied as if the method actually used in calculating the reserve for such policy were the method described in subsection (7), the provisions of subparagraph (7)(a)2. being ignored. The minimum premium reserve amount ~~of the deficiency reserve~~, if any, at each policy anniversary of such a policy is ~~shall be~~ the excess, if any, of the amount determined by the foregoing provisions of this subsection plus the reserve calculated by the method described in subsection (7), the provisions of subparagraph (7)(a)2. being ignored, over the reserve actually calculated by the method described in subsection (7), the provisions of subparagraph (7)(a)2. being taken into account.

(12) RESERVE CALCULATION FOR INDETERMINATE PREMIUM PLANS ~~ALTERNATE METHOD FOR DETERMINING RESERVES IN CERTAIN CASES~~.—In the case of a ~~any~~ plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurer based on then estimates of future experience, or in the case of a ~~any~~ plan of life insurance or annuity for which ~~is of such a nature that~~ the minimum reserves cannot be determined by the methods described in subsections (7) and (11) ~~subsection (7)~~, the reserves that ~~which~~ are held under ~~any~~ such plan must ~~shall~~:

(a) Be appropriate in relation to the benefits and the pattern of premiums for that plan; and

(b) Be computed by a method that ~~which~~ is consistent with the principles of this section, as determined by rules adopted ~~promulgated~~ by the commission.

Section 7. Section 625.1212, Florida Statutes, is created to read:

625.1212 Valuation of policies and contracts issued on or after the operative date of the valuation manual.—

(1) APPLICABILITY.—This section applies to life insurance contracts, accident and health insurance contracts, and deposit-type contracts issued on or after the operative date of the valuation manual unless the manual requires or permits an insurer to determine reserves according to the standards in effect before the operative date of the manual and rules adopted by the commission as provided under s. 625.121. Subsections (5) and (6) do not apply to policies and contracts subject to s. 625.121.

(2) DEFINITIONS.—As used in this section, the term:

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

(b) "Appointed actuary" means a qualified actuary who is appointed in accordance with the valuation manual to prepare the actuarial opinion required in subsection (4).

(c) "Deposit-type contract" means contracts that do not incorporate mortality or morbidity risks and as may be specified in the valuation manual.

(d) "Insurer" means a person engaged as an indemnitor, surety, or contractor in the business of entering into contracts

of insurance or reinsurance.

(e) "Life insurance" means policies or contracts that incorporate mortality risk, including annuity and pure endowment contracts, and as may be specified in the valuation manual.

(f) "Operative date of the valuation manual" means the later of January 1, 2017, or the January 1 immediately following the July 1 that the Commissioner of the Office of Insurance Regulation certifies to the Financial Services Commission in writing that the following conditions occurred on or before July 1:

1. The valuation manual is adopted by the NAIC by an affirmative vote of at least 42 members of the NAIC or 75 percent of members voting, whichever is greater;

2. The Standard Valuation Law, as amended by the NAIC in 2009, or substantially similar legislation, is enacted in states representing more than 75 percent of the direct premiums written as reported in the 2008 annual statements for life, accident and health, health, or fraternal society insurance; and

3. The Standard Valuation Law as amended by the NAIC in 2009, or substantially similar legislation, is enacted in at least 42 of the following 55 jurisdictions: the 50 states of the United States, the District of Columbia, American Samoa, the American Virgin Islands, Guam, and Puerto Rico.

(g) "Policyholder behavior" means an action a policyholder, contract holder, or other person who has the right to elect options, such as a certificateholder, may take under a policy or contract subject to this section including, but not limited to, 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.

(h) "Principle-based valuation" means a reserve valuation that uses one or more methods or assumptions determined by the insurer and must comply with subsection (6) as specified in the valuation manual.

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

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

(k) "Valuation manual" means the manual of valuation instructions adopted by the NAIC, or as subsequently amended.

(3) RESERVE VALUATION.—The office shall annually value, or cause to be valued, insurer reserves for all outstanding life insurance contracts, accident and health contracts, and deposit-type contracts in this state. Insurers are subject to subsections (5) and (6) when calculating the reserves. In lieu of the reserve valuation for a foreign or alien insurer, the office may accept a valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction if the valuation complies with the minimum standard required in this section.

(4) ACTUARIAL OPINION OF RESERVES.—

(a) Each insurer that has outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state which are subject to regulation by the office must annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable state law. The specifics of the opinion, including any items deemed necessary to its scope, must be as prescribed by the valuation manual.

(b) Except as exempted in the valuation manual, each insurer that has outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state shall also annually include an opinion by the same appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified in the valuation manual, when considered in light of the assets held by the insurer with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the insurer's obligations under the policies and contracts, including, but not limited to, the benefits under and expenses associated with the policies and contracts.

(c) The insurer shall prepare a memorandum to support each actuarial opinion in such form and substance as specified in the

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

(d) Each opinion subject to this subsection must be submitted with the annual statement in such form and substance as specified in the valuation manual and acceptable to the office, must reflect the valuation of the reserve liabilities for each year ending on or after the operative date of the valuation manual, and must apply to all policies and contracts subject to paragraph (b), plus other actuarial liabilities as may be specified in the valuation manual. The opinion must be based on standards adopted by the Actuarial Standards Board or its successor, and on such additional standards as may be prescribed in the valuation manual. For a foreign or alien insurer, the office may accept an opinion filed by the insurer with the insurance supervisory official of another state if the office determines that the opinion reasonably meets the requirements applicable to an insurer domiciled in this state.

(e) Disciplinary action by the office against the insurer or the appointed actuary shall be in accordance with the laws of this state and related rules adopted by the commission.

(5) MINIMUM STANDARD OF VALUATION.—

(a) In accordance with this subsection and subsection (6), an insurer must apply the standard prescribed in the valuation

manual as the minimum standard of valuation for contracts issued on or after the operative date of the valuation manual, except:

1. For specific product forms or product lines exempted pursuant to paragraph (f); or

2. That an insurer domiciled in a state that does not require the insurer to apply the standards prescribed in the valuation manual as the minimum standard of valuation, including the principle-based valuation of reserves, may not apply such standards in this state.

(b) If, in the opinion of the office, there is no specific valuation requirement or a specific valuation requirement in the valuation manual is not in compliance with this section, the insurer shall comply with the minimum valuation standards prescribed by the commission by rule.

(c) The office may engage a qualified actuary, at the insurer's expense, to perform an actuarial examination of the insurer and to render an opinion as to the appropriateness of any reserve assumption or method, or computer model or modeling software used by the insurer, or to review and provide an opinion on the insurer's compliance with the requirements of this section. In calculating and establishing reserves under this section, the insurer may rely on the modeling software and tools of a third-party vendor only if the vendor contractually agrees to allow the insurer to provide the office with access to the software or tools as necessary to replicate the results of the software or tools for the purpose of evaluating and validating reserve valuations. The office may rely upon the opinion of a qualified actuary employed by or under contract with the commissioner of another state, district, or territory

of the United States with respect to this section.

(d) The office may require an insurer to change any assumption or method that, in the opinion of the office, is necessary to comply with the valuation manual or this section. The insurer shall adjust the reserves as required by the office. The office may take other disciplinary action pursuant to applicable state law and rules.

(e) The commission may adopt subsequent amendments to the valuation manual by rule if the methodology and standards remain substantially consistent with the valuation manual then in effect.

(f) A domestic insurer licensed and doing business only in this state may exempt specific product forms or product lines from the requirements of this subsection and subsection (6) if the insurer computes reserves for the specific product forms or product lines using assumptions and methods used before the operative date of the valuation manual, and the amount of insurance subject to the stochastic or deterministic reserve requirement is immaterial. The requirements of s. 625.121 apply to specific product forms and product lines exempted under this paragraph.

(g) An insurer that adopted a standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided under this section may, with the approval of the office, adopt a lower standard of valuation, but such standard may not be lower than the minimum provided in this subsection. For purposes of this subsection, holding additional reserves previously determined by an appointed actuary to be necessary to render the opinion required

by subsection (3) may not be deemed to be the adoption of a higher standard of valuation.

(6) REQUIREMENTS OF A PRINCIPLE-BASED VALUATION OF RESERVES.—

(a) Insurers required to use a principle-based valuation of reserves for specified product forms and product lines and associated policies and contracts, pursuant to subparagraph (5)(a)2., must:

1. Quantify the benefits and guarantees, and the funding associated with the policies or contracts and their risks at a level of conservatism that reflects conditions that:

a. Include unfavorable events that have a reasonable probability of occurring during the lifetime of the policies or contracts; and

b. Are appropriately adverse to quantifying the tail risk.

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

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

a. The assumption is prescribed in the valuation manual.

b. For assumptions that are not prescribed, the assumptions must:

(I) Be established using the insurer's available experience, to the extent that it is relevant and statistically credible; or

(II) To the extent that insurer data is not available, relevant, or statistically credible, be established using 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.

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

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

2. Submit an annual certification to the office and the insurer's board of directors of the effectiveness of internal controls on the principle-based valuation. The internal controls must be designed to assure that all material risks inherent in the liabilities and associated assets subject to the valuation are included in the valuation, and that valuations are made in accordance with the valuation manual. The certification must be based on controls in place as of the end of the preceding calendar year.

3. Upon request, develop and file with the office a principle-based valuation report that complies with standards prescribed in the valuation manual.

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

(7) EXPERIENCE REPORTING.—An insurer subject to the requirements of paragraph (5)(d) shall submit mortality, morbidity, policyholder behavior, or expense experience and

other data as prescribed in the valuation manual to the office.

(8) RULE ADOPTION.—The commission may adopt rules as necessary to administer this section, including rules requiring the use of the NAIC 2009 Standard Valuation Law and the NAIC 2012 Valuation Manual. The adoption of such rules is not subject to s. 120.541(3), and the rules do not take effect until the operative date of the valuation manual.

Section 8. Section 625.1214, Florida Statutes, is created to read:

625.1214 Use of confidential information.—

(1) Documents, reports, materials, and other information created, produced, or obtained pursuant to ss. 625.121 and 625.1212 are privileged, confidential, and exempt as provided in s. 624.4212, and are not subject to subpoena or discovery directly from the office. However, the department or office may use the confidential and exempt information in the furtherance of any regulatory or legal action brought against an insurer as a part of the official duties of the department or office. A waiver of any other applicable claim of confidentiality or privilege may not occur as a result of a disclosure to the office under this section, any other section of the insurance code, or as a result of sharing under s. 624.4212.

(2) Neither the office nor any person who received confidential and exempt information while acting under the authority of the office or with whom such information is shared pursuant to s. 624.4212 may be permitted or required to testify in a private civil action concerning any confidential and exempt information subject to s. 624.4212. If any portion of the confidential memorandum is cited by the insurer in its

marketing, is cited before a governmental agency other than a state insurance department, or is released by the insurer to the news media, no portion of the memorandum is confidential.

(3) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under subsection (1) shall be available and enforced in any proceeding in and in any court of this state.

Section 9. Paragraphs (h) and (i) of subsection (9) and subsection (14) of section 627.476, Florida Statutes, are amended to read:

627.476 Standard Nonforfeiture Law for Life Insurance.—

(9) CALCULATION OF ADJUSTED PREMIUMS AND PRESENT VALUES FOR POLICIES ISSUED AFTER OPERATIVE DATE OF THIS SUBSECTION.—

(h) All adjusted premiums and present values referred to in this section shall, for all policies of ordinary insurance be calculated on the basis of the ~~Commissioners'~~ 1980 Standard Ordinary Mortality Table adopted by the NAIC or, at the election of the insurer for any one or more specified plans of life insurance, the ~~Commissioners'~~ 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors adopted by the NAIC; ~~shall~~ for all policies of industrial insurance be calculated on the basis of the ~~Commissioners'~~ 1961 Standard Industrial Mortality Table adopted by the NAIC; and ~~shall~~ for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this subsection for policies issued in that calendar year. However:

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 subsection, 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 subsection (2), shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of such 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 ~~Commissioners'~~ 1980 Extended Term Insurance Table adopted by the NAIC for policies of ordinary insurance and not more than the ~~Commissioners'~~ 1961 Industrial Extended Term Insurance Table adopted by the NAIC for policies of industrial insurance.

5. In lieu of the mortality tables specified in this section, at the option of the insurance company and subject to rules adopted by the commission, the insurance company may substitute:

a. The 1958 CSO or CET Smoker and Nonsmoker Mortality Tables, whichever is applicable, for policies issued on or after the operative date of this subsection and before January 1,

1989;

b. The 1980 CSO or CET Smoker and Nonsmoker Mortality Tables, whichever is applicable, for policies issued on or after the operative date of this subsection;

c. A mortality table that is a blend of the sex-distinct 1980 CSO or CET mortality table standard, whichever is applicable, or a mortality table that is a blend of the sex-distinct 1980 CSO or CET smoker and nonsmoker mortality table standards, whichever is applicable, for policies that are subject to the United States Supreme Court decision in *Arizona Governing Committee v. Norris* to prevent unfair discrimination in employment situations.

6. For policies issued:

a. Before the operative date of the valuation manual, ordinary mortality tables, adopted after 1980 by the NAIC ~~National Association of Insurance Commissioners~~, adopted by rule by the commission for use in determining the minimum nonforfeiture standard may be substituted for the ~~Commissioners'~~ 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or ~~for~~ the ~~Commissioners'~~ 1980 Extended Term Insurance Table adopted by the NAIC.

b. On or after the operative date of the valuation manual, the valuation manual shall provide the Standard Mortality Table for use in determining the minimum nonforfeiture standard that may be substituted for:

(I) The 1980 Standard Ordinary Mortality Table with or without 10-Year Select Mortality Factors or the 1980 Extended Term Insurance Table adopted by the NAIC. If the commission approves by rule a Standard Ordinary Mortality Table adopted by

the NAIC for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual, the minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.

(II) The 1961 Standard Industrial Mortality Table or 1961 Industrial Extended Term Insurance Table adopted by the NAIC. If the commission approves by rule any Standard Industrial Mortality Table adopted by the NAIC for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual, the minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.

7. For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the aforementioned tables.

(i) The nonforfeiture interest rate per year for a ~~any~~ policy issued in a particular calendar year for policies issued:

1. Before the operative date of the valuation manual, shall be equal to 125 percent of the calendar year statutory valuation interest rate for such policy as defined in the Standard Valuation Law, rounded to the nearest one-fourth of 1 percent; however, the nonforfeiture interest rate may not be less than 4 percent.

2. On or after the operative date of the valuation manual, shall be as provided by the valuation manual.

(14) OPERATIVE DATE.—

(a) After the effective date of this code, an ~~any~~ insurer

may file with the office a written notice or notices of its election to comply with ~~the provisions of~~ this section on and after a specified date or dates before January 1, 1966, as to either or both of its policies of ordinary and industrial insurance, in which case such specified date or dates shall be the operative date of this section with respect to such policies. The operative date of this section for policies of both ordinary and industrial insurance shall be the earlier of January 1, 1966, and any prior operative date or dates resulting from such previously filed written notices. With respect to policies of industrial insurance issued on and after the operative date of this section for such policies but before January 1, 1968, any insurer may file with the office written notice of its election to have the ~~Commissioners'~~ 1961 Standard Industrial Mortality Table and ~~the Commissioners'~~ 1961 Industrial Extended Term Insurance Table adopted by the NAIC applicable with respect to subsection (8) for policies issued on and after the date specified in such election.

(b) As used in subsection (9), the term "operative date of the valuation manual" has the same meaning as provided in s. 625.1212(2).

Section 10. Subsections (1), (3), (10), (12), and (13) of section 628.461, Florida Statutes, are amended to read:

628.461 Acquisition of controlling stock.—

(1) A person may not, individually or in conjunction with any affiliated person of such person, acquire directly or indirectly, conclude a tender offer or exchange offer for, enter into any agreement to exchange securities for, or otherwise finally acquire 10 ~~5~~ percent or more of the outstanding voting

securities of a domestic stock insurer or of a controlling company, unless:

(a) The person or affiliated person has filed with the office and sent to the insurer and controlling company a letter of notification regarding the transaction or proposed transaction within ~~no later than~~ 5 days after any form of tender offer or exchange offer is proposed, or within ~~no later than~~ 5 days after the acquisition of the securities if no tender offer or exchange offer is involved. The notification must be provided on forms prescribed by the commission containing information determined necessary to understand the transaction and identify all purchasers and owners involved;

(b) The person or affiliated person has filed with the office the ~~a~~ statement as specified in subsection (3). The statement must be completed and filed within 30 days after:

1. Any definitive acquisition agreement is entered;

2. Any form of tender offer or exchange offer is proposed; or

3. The acquisition of the securities, if no definitive acquisition agreement, tender offer, or exchange offer is involved; and

(c) The office has approved the tender or exchange offer, or acquisition if no tender offer or exchange offer is involved, and approval is in effect.

~~In lieu of a filing as required under this subsection, a party acquiring less than 10 percent of the outstanding voting securities of an insurer may file a disclaimer of affiliation and control. The disclaimer shall fully disclose all material~~

~~relationships and basis for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation and control. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with the person unless and until the office disallows the disclaimer. The office shall disallow a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.~~ A filing ~~as~~ required under this subsection must be made for ~~as to~~ any acquisition that equals or exceeds 10 percent of the outstanding voting securities.

(3) The statement to be filed with the office under subsection (1) and furnished to the insurer and controlling company must ~~shall~~ contain all the following information and any additional information that ~~as~~ the office deems necessary to determine the character, experience, ability, and other qualifications of the person or affiliated person of such person for the protection of the policyholders and shareholders of the insurer and the public:

(a) The identity of, and the background information specified in subsection (4) on, each natural person by whom, or on whose behalf, the acquisition is to be made; and, if the acquisition is to be made by, or on behalf of, a corporation, association, or trust, as to the corporation, association, or trust and as to any person who controls, ~~either~~ directly or indirectly, the corporation, association, or trust, the identity of, and the background information specified in subsection (4) on, each director, officer, trustee, or other natural person

performing duties similar to those of a director, officer, or trustee for the corporation, association, or trust.~~;~~

(b) The source and amount of the funds or other consideration used, or to be used, in making the acquisition.~~;~~

(c) Any plans or proposals that ~~which~~ such persons may have made to liquidate such insurer, to sell any of its assets or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management; and any plans or proposals that ~~which~~ such persons may have made to liquidate any controlling company of such insurer, to sell any of its assets or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management.~~;~~

(d) The number of shares or other securities that ~~which~~ the person or affiliated person of such person proposes to acquire, the terms of the proposed acquisition, and the manner in which the securities are to be acquired.~~; and~~

(e) Information as to any contract, arrangement, or understanding with any party with respect to any of the securities of the insurer or controlling company, including, but not limited to, information relating to the transfer of any of the securities, option arrangements, puts or calls, or the giving or withholding of proxies, which information names the party with whom the contract, arrangement, or understanding has been entered into and gives the details thereof.

(f) Effective January 1, 2015, an agreement by the person required to file the statement that the person will provide the annual report specified in s. 628.801(2) if control exists.

(g) Effective January 1, 2015, an acknowledgement by the

person required to file the statement that the person and all subsidiaries within the person's control in the insurance holding company system will provide, as necessary, information to the office upon request to evaluate enterprise risk to the insurer.

(10) Upon notification to the office by the domestic stock insurer or a controlling company that any person or any affiliated person of such person has acquired 10 ~~5~~ percent or more of the outstanding voting securities of the domestic stock insurer or controlling company without complying with the provisions of this section, the office shall order that the person and any affiliated person of such person cease acquisition of any further securities of the domestic stock insurer or controlling company; however, the person or any affiliated person of such person may request a proceeding, which proceeding shall be convened within 7 days after the rendering of the order for the sole purpose of determining whether the person, individually or in connection with any affiliated person of such person, has acquired 10 ~~5~~ percent or more of the outstanding voting securities of a domestic stock insurer or controlling company. Upon the failure of the person or affiliated person to request a hearing within 7 days, or upon a determination at a hearing convened pursuant to this subsection that the person or affiliated person has acquired voting securities of a domestic stock insurer or controlling company in violation of this section, the office may order the person and affiliated person to divest themselves of any voting securities so acquired.

(12)(a) A person may rebut a presumption of control by

filing a disclaimer of control with the office on a form prescribed by the office. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. In lieu of such form, a person or acquiring party may file with the office a copy of a Schedule 13G filed with the Securities and Exchange Commission pursuant to rules 13d-1(b) or 13d-1(c) under the Securities Exchange Act of 1934, as amended. After a disclaimer has been filed, the insurer is relieved of any duty to register or report under this section which may arise out of the insurer's relationship with the person unless the office disallows the disclaimer.

(b) A controlling person of a domestic insurer who seeks to divest the person's controlling interest in the domestic insurer in any manner shall file with the office, with a copy provided to the insurer, confidential notice, not subject to public inspection as provided under s. 624.4212, of the person's proposed divestiture at least 30 days before the cessation of control. The office shall determine those instances in which the party seeking to divest or to acquire a controlling interest in an insurer must file for and obtain approval of the transaction. The information remains confidential until the conclusion of the transaction unless the office, in its discretion, determines that confidential treatment interferes with enforcement of this section. If the statement referred to in subsection (1) is otherwise filed, this paragraph does not apply ~~For the purpose of this section, the term "affiliated person" of another person means:~~

~~1. The spouse of such other person;~~

~~2. The parents of such other person and their lineal descendants and the parents of such other person's spouse and their lineal descendants;~~

~~3. Any person who directly or indirectly owns or controls, or holds with power to vote, 5 percent or more of the outstanding voting securities of such other person;~~

~~4. Any person 5 percent or more of the outstanding voting securities of which are directly or indirectly owned or controlled, or held with power to vote, by such other person;~~

~~5. Any person or group of persons who directly or indirectly control, are controlled by, or are under common control with such other person;~~

~~6. Any officer, director, partner, copartner, or employee of such other person;~~

~~7. If such other person is an investment company, any investment adviser of such company or any member of an advisory board of such company;~~

~~8. If such other person is an unincorporated investment company not having a board of directors, the depositor of such company; or~~

~~9. Any person who has entered into an agreement, written or unwritten, to act in concert with such other person in acquiring or limiting the disposition of securities of a domestic stock insurer or controlling company~~.

~~(b) For the purposes of this section, the term "controlling company" means any corporation, trust, or association owning, directly or indirectly, 25 percent or more of the voting securities of one or more domestic stock insurance companies.~~

(13) The commission may adopt~~, amend, or repeal~~ rules that

are necessary to administer ~~implement the provisions of~~ this section~~, pursuant to chapter 120~~.

Section 11. Section 628.801, Florida Statutes, is amended to read:

628.801 Insurance holding companies; registration; regulation.—

(1) An ~~Every~~ insurer that is authorized to do business in this state and that is a member of an insurance holding company shall, on or before April 1 of each year, register with the office and file a registration statement and be subject to regulation with respect to its relationship to the holding company as provided by law or rule ~~or statute~~. The commission shall adopt rules establishing the information and statement form required for registration and the manner in which registered insurers and their affiliates are regulated. The rules apply to domestic insurers, foreign insurers, and commercially domiciled insurers, except for ~~a~~ foreign insurers ~~insurer~~ domiciled in states that are currently accredited by the NAIC ~~National Association of Insurance Commissioners by December 31, 1995~~. Except to the extent of any conflict with this code, the rules must include all requirements and standards of ss. 4 and 5 of the Insurance Holding Company System Regulatory Act and the Insurance Holding Company System Model Regulation of the NAIC ~~National Association of Insurance Commissioners~~, as adopted in December 2010. The commission may adopt subsequent amendments thereto if the methodology remains substantially consistent. The rules ~~Regulatory Act and the Model Regulation existed on November 30, 2001, and~~ may include a prohibition on oral contracts between affiliated entities. Material transactions

between an insurer and its affiliates shall be filed with the office as provided by rule ~~Upon request, the office may waive filing requirements under this section for a domestic insurer that is the subsidiary of an insurer that is in full compliance with the insurance holding company registration laws of its state of domicile, which state is accredited by the National Association of Insurance Commissioners~~.

(2) Effective January 1, 2015, the ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report on or before April 1. As used in this subsection, the term "ultimate controlling person" means a person who is not controlled by any other person. The report, to the best of the ultimate controlling person's knowledge and belief, must identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state office of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the NAIC and is confidential and exempt from public disclosure as provided in s. 624.4212.

(a) An insurer may satisfy this requirement by providing the office with the most recently filed parent corporation reports that have been filed with the Securities and Exchange Commission which provide the appropriate enterprise risk information.

(b) The term "enterprise risk" means an activity, circumstance, event, or series of events involving one or more affiliates of an insurer which, if not remedied promptly, are likely to have a materially adverse effect upon the financial

condition or liquidity of the insurer or its insurance holding company system as a whole, including anything that would cause the insurer's risk-based capital to fall into company action level as set forth in s. 624.4085 or would cause the insurer to be in a hazardous financial condition.

(3) Effective January 1, 2015, pursuant to chapter 624 relating to the examination of insurers, the office may examine any insurer registered under this section and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

(4) The filings and related documents filed pursuant to this section are confidential and exempt as provided in s. 624.4212 and are not subject to subpoena or discovery directly from the office. A waiver of any applicable privilege or claim of confidentiality in the filings and related documents may not occur as a result of any disclosure to the office under this section or any other section of the insurance code as authorized under s. 624.4212. Neither the office nor any person who received the filings and related documents while acting under the authority of the office or with whom such information is shared pursuant to s. 624.4212 is permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to s. 624.4212. However, the department or office may use the confidential and exempt information in the furtherance of any regulatory or legal action brought against an insurer as a part of the official

duties of the department or office.

(5) Effective January 1, 2015, the failure to file a registration statement, or a summary of the registration statement, or the enterprise risk filing report required by this section within the time specified for filing is a violation of this section.

(6) Upon request, the office may waive the filing requirements of this section:

(a) If the insurer is a domestic insurer that is the subsidiary of an insurer that is in full compliance with the insurance holding company registration laws of its state of domicile, which state is accredited by the NAIC; or

(b) If the insurer is a domestic insurer that writes only in this state and has annual direct written and assumed premium of less than $300 million, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, and demonstrates that compliance with this section would not provide substantial regulatory or consumer benefit. In evaluating a waiver request made under this paragraph, the office may consider various factors including, but not limited to, the type of business entity, the volume of business written, the ownership or organizational structure of the entity, or whether the company is in run-off.

A waiver granted pursuant to this subsection is valid for 2 years unless sooner withdrawn due to a change in the circumstances under which the waiver was granted.

Section 12. Effective January 1, 2015, present subsection (4) of section 628.803, Florida Statutes, is renumbered as

subsection (5), and a new subsection (4) is added to that section, to read:

628.803 Sanctions.—

(4) If the office determines that any person violated s. 628.461 or s. 628.801, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with part VI of chapter 624.

Section 13. Effective January 1, 2015, section 628.804, Florida Statutes, is created to read:

628.804 Groupwide supervision for international insurance groups.—

(1) As used in this section:

(a) "Groupwide supervisor" means the chief insurance regulatory official for the jurisdiction who is determined by the office to have significant contacts with the international insurance group sufficient to conduct and coordinate groupwide supervision activities.

(b) "International insurance group" means an insurance group operating internationally which includes an insurer.

(2) The office may act as the groupwide supervisor for an international insurance group in which the ultimate controlling person of the group is domiciled in this state.

(3)(a) If the ultimate controlling person is domiciled outside this state, the office, in cooperation with other groupwide supervisors, may:

1. Determine that the office is the appropriate groupwide supervisor for an international insurance group with substantial operations concentrated in this state or in insurance operations

conducted by subsidiary insurance companies domiciled in this state; or

2. Acknowledge that another chief insurance regulatory official is the appropriate groupwide supervisor for the international insurance group.

(b) Before issuing a determination, the office must notify the insurer and the ultimate controlling person within the international insurance group and provide the international insurance group with at least 30 days to submit information pertinent to the pending determination.

(4) The commission may adopt rules to administer this section, including rules establishing the criteria for making a determination under paragraph (3)(a), such as the extent of insurance operations in this state and nation; the location of the executive offices, assets and liabilities, and business operations of the international insurance group; the domicile of the ultimate controlling person of the international insurance group; and the similarity of the regulatory systems of other jurisdictions acting or seeking to act as lead groupwide supervisor.

Section 14. Effective January 1, 2015, section 628.805, Florida Statutes, is created to read:

628.805 Supervisory colleges.—In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management, and governance processes, and as part of the examination of individual insurers in accordance with ss. 624.316 and 628.801, the office may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates,

including other state, federal, and international regulatory agencies. In accordance with s. 624.4212 regarding confidential information sharing, the office may enter into agreements that provide the basis for cooperation between the office and the other regulatory agencies and the activities of the supervisory college. This section does not delegate to the supervisory college the office's authority to regulate or supervise the insurer or its affiliates under its jurisdiction.

(1) With respect to participation in a supervisory college, the office may:

(a) Initiate the establishment of a supervisory college.

(b) Clarify the membership and participation of other supervisors in the supervisory college.

(c) Clarify the functions of the supervisory college and the role of other regulators, including the establishment of a groupwide supervisor.

(d) Coordinate the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing.

(e) Establish a crisis management plan.

(2) With respect to an insurer registered under s. 628.801, and in accordance with this section, the office may participate in a supervisory college for any domestic insurer that is part of an insurance holding company system that has international operations in order to determine the insurer's compliance with this chapter.

(3) Each registered insurer subject to this section is liable for and shall pay reasonable expenses for the office's participation in a supervisory college, including reasonable

travel expenses. A supervisory college may be convened as a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates, and the office may impose a regular assessment on the insurer for the payment of these expenses.

Section 15. Effective January 1, 2015, subsection (3) is added to section 636.045, Florida Statutes, to read:

636.045 Minimum surplus requirements.—

(3) A prepaid limited health service organization that is authorized in this state and one or more other states, jurisdictions, or countries is subject to ss. 624.4085 and 624.40851.

Section 16. Effective January 1, 2015, subsection (7) is added to section 641.225, Florida Statutes, to read:

641.225 Surplus requirements.—

(7) A health maintenance organization that is authorized in this state and one or more other states, jurisdictions, or countries is subject to ss. 624.4085 and 624.40851.

Section 17. Effective January 1, 2015, subsection (3) is added to section 641.255, Florida Statutes, to read:

641.255 Acquisition, merger, or consolidation.—

(3) A health maintenance organization that is a member of a holding company system is subject to s. 628.461 but not s. 628.4615.

Section 18. Except as otherwise expressly provided in this act, this act shall take effect October 1, 2014, if SB 1300 or similar legislation is adopted in the same legislative session or an extension thereof and becomes a law.