
OLR Bill Analysis

sHB 6613

AN ACT CONCERNING CHANGES TO THE STANDARD VALUATION LAW AND THE USE OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS' VALUATION MANUAL.

SUMMARY:

This bill requires health, accident, and life insurers to use the National Association of Insurance Commissioners' (NAIC) Valuation Manual for determining the value of their reserves once specified triggering events occur. Among other things, the bill:

1. specifies what must be in the manual;
2. identifies the types of information submitted to comply with the bill that is considered confidential, and the protections for this information, and;
3. specifies the commissioner's powers and duties regarding this information, including circumstances when he can share it.

Once the triggering events occur, each company must establish reserves using a principle-based valuation for policies or contracts as required by the manual. Under the bill, "principle-based valuation" uses one or more assumptions or methods determined by a company to value reserves. The bill specifies how this valuation must be implemented.

The bill requires the commissioner to annually value the reserves for all outstanding life insurance contracts, accident and health contracts, and deposit-type contracts of every company.

Until the manual goes into effect, the bill modifies the existing laws governing reserve requirements for life insurance companies. It

expands the scope of the law that requires (1) the insurance commissioner to value the reserves of these companies and (2) the affected companies to submit the opinion of a qualified actuary on whether the reserves are computed accurately, among other things. It expands the confidentiality protection of information submitted in connection with these requirements but gives the insurance commissioner various powers with regard to this information. These changes apply to policies and contracts issued on or after October 1, 1981.

The bill makes minor, conforming, and technical changes.

EFFECTIVE DATE: October 1, 2013

SCOPE OF THE LAW (§ 1(A))

Under current law, the commissioner must annually value, or cause to be valued, the reserves for all outstanding life insurance policies and annuity and pure endowment contracts of life insurance companies doing business in Connecticut. For alien (out of state) companies, the valuation is limited to the company's United States business. The bill eliminates the commissioner's power to certify the amount of the reserves, specify the mortality table or tables, rate or rates of interest, and methods, including net level premium method or other, used in calculating them.

As described below, once the manual goes into effect, the bill extends this requirement to all outstanding life insurance, accident and health, and deposit-type contracts of every company. For foreign or alien companies, the commissioner may accept a valuation made by or caused to be made by the insurance regulatory official of any other jurisdiction if it complies with the bill's minimum standard.

MODIFICATIONS OF EXISTING REQUIREMENTS FOR LIFE INSURANCE POLICY RESERVES

Actuary's Opinion (§ 1(b)(2)(B))

By law, each life insurance company doing business in Connecticut must annually submit a qualified actuary's opinion as to whether its

reserves and related actuarial items held to support its policies and contracts meet statutory requirements. The actuary also must prepare a supporting memorandum.

By law, the commissioner can engage an actuary if the memorandum is not prepared or is deficient. The bill specifies that the commissioner can do this by employing or contracting with this actuary.

The bill specifically requires the commissioner to adopt regulations to specify:

1. the form and substance of and standards for the supporting memorandum, and
2. the period for a company to provide a memorandum after the commissioner requests one.

Confidentiality (§§ 1(b)(11), 1(c))

Under current law, the commissioner must keep confidential any memorandum in support of the opinion and any other material the company provides him. This material may not be made public and is not subject to subpoena, other than to defend an action seeking damages by reason of any act required by law.

But the commissioner may release the material:

1. with the company's written consent or
2. if the American Academy of Actuaries requests it for disciplinary proceedings and establishes procedures satisfactory to the commissioner to preserve its confidentiality.

In addition, once the company refers to any part of the memorandum in its marketing, or releases this information to the news media, or this information is referred to before a governmental agency other than a state insurance department, the entire confidential memorandum is no longer confidential.

The bill additionally makes all information in the department's possession or control relating to the memorandum (1) confidential and privileged, (2) exempt from disclosure under the Freedom of Information Act, (3) not subject to subpoena, except to defend an action for damages by the actuary, and (4) not subject to discovery or admissible in evidence in any civil action in this state. It bars the commissioner or anyone who receives the information relating to the memorandum while acting under his authority from being permitted or required to testify in any civil action concerning it.

Commissioner's Powers (§ 1(c)(1))

On the other hand, the bill allows the commissioner to use this information to further any regulatory or legal action brought as part of his official duties. It allows the commissioner to:

1. share information, including information deemed confidential and privileged, with (a) other state, federal and international regulatory officials; (b) the National Association of Insurance Commissioners (NAIC), its affiliates, and subsidiaries; and (c) state, federal and international law enforcement officials, provided the recipient agrees in writing to maintain its confidentiality and privileged status;
2. receive information, including confidential and privileged information, from (a) NAIC, its affiliates, or subsidiaries and (b) regulatory and law enforcement officials of other jurisdictions; and
3. enter into written agreements governing the sharing and use of the information that are consistent with these provisions.

The commissioner must maintain the confidentiality and privileged status of any information he receives when notified, or with the understanding, that it is confidential and privileged under the laws of the source jurisdiction. No waiver of any applicable privilege or claims occurs as a result of disclosure to the commissioner or sharing authorized under the bill.

VALUATION MANUAL (§ 2)

The bill requires health, accident, and life insurers to use the NAIC Valuation Manual for determining the value of their reserves once specified triggering events occur.

Issues Addressed in the Manual (§ 2(b)(3))

The bill requires the manual to specify:

1. the specific policies or contracts it covers and the minimum valuation standards for them. For annuity contracts, the commissioners' annuity reserve valuation method is the standard. For other life insurance contracts, the commissioner's reserve valuation method is the standard. The manual must specify minimum reserves for all other affected policies or contracts;
2. the specific policies or contracts or types of policies or contracts that must establish reserves using a principle-based valuation and the minimum valuation standards consistent with these requirements;
3. for policies or contracts subject to a principle-based valuation, (a) the requirements for formatting reports submitted to the commissioner, including the information required to determine if the valuation is appropriate and complies with the bill, (b) the assumptions prescribed for risks beyond the company's significant control or influence, and (c) the procedures for the corporate governance and oversight of the actuarial function and a process for appropriate waiver or modification of these procedures;
4. for other policies or contracts, the minimum valuation standard must (a) be consistent with the standard in effect before manual goes into effect, or (b) develop reserves that quantify the benefits, guarantees, and funding associated with the policies or contracts and their risks, at a level of conservatism that reflects conditions that include unfavorable events that have a

reasonable probability of occurring;

5. other requirements, at least including reserve methods, models for measuring risk, generation of economic scenarios, assumptions, margins, use of company experience, risk measurement, disclosures, certifications, reports, actuarial opinions and memoranda, transition rules, and internal controls; and
6. the data companies must submit, its form, who gets the data, and other information that may be required, including data analyses and reporting of them.

If (a) there is no specific valuation requirement or (b) the commissioner believes that a specific requirement in the manual does not comply with the bill, the commissioner must direct a company to comply with the minimum valuation standards prescribed by department regulations.

Under the bill, “principle-based valuation” uses one or more assumptions or methods determined by a company to value reserves. This valuation must, among other things, quantify the benefits, guarantees, and funding associated with the policies and contracts and their risks.

TRIGGERING EVENTS (§ 2 (B)(2))

Initial Adoption of the Manual

Under the bill, the manual goes into effect January 1 of the first calendar year following the first July 1 when all of the following have occurred:

1. NAIC, by an affirmative vote of at least 42 of its members or three-quarters of the members voting, whichever is greater, has adopted the manual;
2. the Standard Valuation Law, as amended by NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by states representing more than 75% of the

direct written premiums as reported in the following annual statements submitted to NAIC for 2008: life insurance, accident and health insurance, health insurance, or fraternal annual statements; and

3. at least 42 of the 50 states, the District of Columbia, the U.S. Virgin Islands, Puerto Rico, American Samoa, and Guam have enacted the law, as amended by NAIC in 2009, or legislation including substantially similar terms and provisions.

After all of these events occur, the insurance commissioner must certify this fact and notify companies of the certification and the effective date of the operation of the manual.

Changes to the Manual

Under the bill, unless a later effective date is specified, a change to the manual applies on January 1st of the first calendar year after:

1. NAIC adopts the change by an affirmative vote of at least three-quarters of its members voting but not less than a majority of its total membership and
2. the change has been adopted by NAIC members representing jurisdictions totaling more than 75% of the direct written premiums for life insurance, accident and health insurance, health insurance, or fraternal annual statements.

After both have occurred, the commissioner must certify this and notify companies of the certification, the change to the manual, and the change's effective date.

ESTABLISHING RESERVES (§ 2(E))

The bill requires each company to establish reserves using a principle-based valuation for policies or contracts as required by the manual. The valuation must:

1. quantify the benefits, guarantees, and funding associated with the policies or contracts and their risks, at a level of

conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring during the lifetime of the policies or contracts;

2. incorporate assumptions, risk analysis methods, financial models, and management techniques that are generally consistent with those the company uses in its overall risk assessment process;
3. incorporate assumptions prescribed in the manual, or if an assumption is not prescribed in the manual, make the assumption using the company's available experience, to the extent that it is relevant and statistically credible, or to the extent this data is not available, assumptions established using other relevant and statistically credible experience; and
4. provide margins for uncertainty including adverse deviation and estimation error, so that the greater the uncertainty, the larger the margin and resulting reserves.

For policies or contracts with significant tail risk (unlikely, but potentially very expensive risks), the valuation must reflect appropriately adverse conditions to quantify the tail risk.

Governance and Internal Controls (lines 938-958)

A company using this valuation for one or more policies or contracts must:

1. establish a procedure for corporate governance and oversight of the actuarial valuation function consistent with those described in the manual;
2. annually certify to the commissioner and the company's board of directors the effectiveness of the internal controls with respect to the principle-based valuation; and
3. develop and file with the commissioner, upon request, a valuation report that complies with standards prescribed in the

manual.

The controls must be designed to ensure that:

1. all material risks inherent in the liabilities and associated assets subject to the valuation are included in the valuation, and
2. the valuations are made in accordance with the manual.

The certification must be based on the internal controls in place as of the end of the preceding calendar year.

The company must also submit mortality, morbidity, policyholder behavior or expense experience, and other data in accordance with the manual's requirements. Under the bill, "policyholder behavior" is any action a policyholder, contract holder, certificate holder, or other person who may elect options may take under a policy or contract. It includes such things as withdrawals, premium payments, and benefit elections prescribed by the policy or contract. But it does not include deaths or illnesses that result in benefits prescribed in their essential aspects by the terms of the policy or contract (e.g., a life insurance policyholder dying and his beneficiaries being paid).

VALUATION OF RESERVES (§ 2(C))

The bill requires the commissioner to annually value the reserves for all outstanding life insurance contracts, accident and health contracts, and deposit-type contracts of every company. For out-of-state companies, he may accept a valuation made by the insurance regulatory official of another jurisdiction if it complies with the bill's standards.

Actuary's Opinion (§ 2(d))

Every company with outstanding contracts in this state must annually submit the opinion of an actuary as to whether the reserves and related actuarial items held in support of the policies and contracts:

1. are computed appropriately,

2. are based on assumptions that satisfy contractual provisions,
3. are consistent with prior reported amounts, and
4. comply with applicable state laws.

Unless exempted by the manual, the same actuary must give an opinion as to whether the reserves and related actuarial items adequately provide for the company's obligations under the policies and contracts, including the benefits under and expenses associated with them.

The actuary must prepare a memorandum that supports the opinion and give it to the company. If (1) a company fails to provide a memorandum at the commissioner's request within the time period specified in the manual or (2) the commissioner determines that the memorandum fails to meet the manual's standards or is unacceptable to the commissioner, he may engage another actuary, at the company's expense, to (1) review the opinion and its basis and (2) prepare the memorandum.

Each opinion must:

1. be submitted with the annual statement reflecting the valuation of the reserves for each year ending on or after December 31st of the year the manual goes into effect;
2. apply to all of the affected policies and contracts and any other actuarial liabilities the manual specifies; and
3. be based on standards adopted periodically by the Actuarial Standards Board or its successor and any additional standards prescribed in the manual.

The commissioner can require a company to change any assumption or method that he considers necessary to comply with the bill's requirements regarding the opinion or the manual. In such cases, the company must adjust its reserves as the commissioner requires.

CONFIDENTIALITY (§ 2 (G))

Types of Confidential Information. Under the bill, the following information is considered confidential:

1. a memorandum supporting an actuary's opinion and related documents;
2. all reports, documents, materials and other information a company develops in support of or in connection with the annual certification of the effectiveness of its internal controls;
3. any valuation report developed under the bill; and
4. all submitted information regarding mortality, morbidity, policyholder behavior or expense experience and any related information that includes any potentially company-identifying or personally identifiable information, that is obtained by or provided to the commissioner.

The bill also treats as confidential all documents, materials, and other information and their copies created, produced, or obtained by or disclosed to the commissioner or any other person in the course of an examination conducted under the bill or in connection with the memorandum, certification, report, or information submitted concerning policyholder behavior or expense experience.

Protections for Confidential Information. Under the bill, a company's confidential information is subject to same confidentiality protections that apply to submissions by life insurance companies under current law, as modified by the bill. But if (1) an examination report or other materials prepared in connection with an examination made under current law includes confidential information and (2) the commissioner makes the report public under his existing authority, the report or confidential information connected to it is not confidential, to the same extent as if the report or confidential information connected to it had been prepared under existing law.

The actuary's supporting memorandum and related information in

the department's possession or control may be subpoenaed to defend an action for damages from the actuary who prepared the memorandum or principle-based valuation report as required by the bill or its implementing regulations.

With the company's written consent, the commissioner may release any confidential information the department possesses or controls connected with the supporting memorandum or the principle-based valuation report.

If any part of a supporting memorandum or a valuation report is (1) cited by the company in its marketing or before a governmental agency other than a state insurance department, (2) publicly volunteered by the company, or (3) released by the company to the news media, the entire memorandum or report is no longer confidential.

Commissioner's Powers (§ 2(g)(3))

To help him perform his duties, the commissioner may share confidential information with:

1. other state, federal and international regulatory agencies and NAIC, its affiliates, and its subsidiaries;
2. concerning the supporting memorandum or principle-based valuation report, (a) the Actuarial Board for Counseling and Discipline or its successor upon its request when it needs the information for professional disciplinary proceedings, and (b) state, federal and international law enforcement officials.

The recipient must agree, in writing, and must have the legal authority to agree, to maintain the information's confidentiality and privileged status in the same way and to the same extent as required for the commissioner.

The bill allows the commissioner to receive documents, materials, data and other information, including those that are confidential and privileged, from the same entities with which he can share such

information. He must maintain the confidentiality of any documents, materials, data or other information received with notice or the understanding that they are confidential and privileged under the laws of the jurisdiction that is their source.

The bill allows the commissioner to enter into written agreements governing the sharing and use of documents, materials, data and other information, that are consistent with its provisions.

Privilege (§ 2(g)(3)(C))

No waiver of any applicable privilege or claims of confidentiality in any confidential information occurs as a result of disclosure to the commissioner or sharing authorized by the bill. A privilege established under the law of any state or jurisdiction that is substantially similar to a privilege established by the bill must be available and enforced in any proceeding in, and in any court of, this state.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable

Yea 18 Nay 0 (03/19/2013)