

AN ACT relating to the standard valuation of reserves for life insurance.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔SECTION 1. A NEW SECTION OF KRS 304.6-130 TO 304.6-180 IS CREATED TO READ AS FOLLOWS:

*As used in KRS 304.6-130 to 304.6-180, unless the context requires otherwise, the following definitions shall apply on or after the operative date of the valuation manual, as defined in subsection (11) of this section:*

- (1) "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;*
- (2) "Appointed actuary" means a qualified actuary who is appointed in accordance with the valuation manual to prepare the actuarial opinion required by subsections (6) to (10) of Section 12 of this Act;*
- (3) "Company" means an entity which has written, issued, or reissued life insurance, accident and health insurance, or deposit-type contracts:*
  - (a) In Kentucky and has at least one (1) policy in force or a claim; or*
  - (b) In any state and is required to hold a certificate of authority to write life insurance, accident and health insurance, or deposit-type contracts in this state;*
- (4) "Deposit-type contract" means a contract that does not incorporate mortality or morbidity risks and as may be specified in the valuation manual;*
- (5) "Life insurance" means contracts that incorporate mortality risk, including annuity and pure endowment contracts, and as may be specified in the valuation manual;*
- (6) "NAIC" means the National Association of Insurance Commissioners;*
- (7) "Policyholder behavior" means any action a policyholder, contract holder, or any other person with the right to elect options may take under a policy or*

contract subject to KRS 304.6-130 to 304.6-180, excluding events of mortality that result in benefits prescribed in their essential aspects by the terms of the policy or contract, including but not limited to:

(a) Lapse;

(b) Withdrawal;

(c) Transfer;

(d) Deposit;

(e) Premium payment;

(f) Loan;

(g) Annuitization; or

(h) Benefit elections;

(8) "Principle-based valuation" means a reserve valuation that uses one (1) or more methods or one (1) or more assumptions determined by the company and is required to comply with Section 4 of this Act as specified in the valuation manual;

(9) "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 the statements and who meets the requirements specified in the valuation manual;

(10) "Tail risk" means a risk that occurs either where 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; and

(11) "Valuation manual" means the manual of valuation instructions adopted by the NAIC and any subsequent amendments.

➔SECTION 2. A NEW SECTION OF KRS 304.6-130 TO 304.6-180 IS CREATED TO READ AS FOLLOWS:

(1) For accident and health insurance contracts issued on or after the operative date

of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required by subsection (2) of Section 8 of this Act.

(2) For disability, accident and sickness, and accident and health insurance contracts issued on or after June 18, 1970, but prior to the operative date of the valuation manual, the minimum standard of valuation shall be the standard adopted by the commissioner through administrative regulation.

➔SECTION 3. A NEW SECTION OF KRS 304.6-130 TO 304.6-180 IS CREATED TO READ AS FOLLOWS:

(1) For policies issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual shall be the minimum standard of valuation required under subsection (2) of Section 8 of this Act, except as provided by subsection (5) or (7) of this section.

(2) The operative date of the valuation manual shall be January 1 of the first calendar year following the first July 1, at which time all of the following have occurred:

(a) The valuation manual has been adopted by the NAIC by an affirmative vote of at least forty-two (42) members, or three-fourths (3/4) of the members voting, whichever is greater;

(b) The Standard Valuation Law, as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by states representing greater than seventy-five percent (75%) of the direct premiums written as reported in the following annual statements submitted for 2008:

1. Life, accident and health insurance;

2. Health insurance; or

3. Fraternal benefit societies, as defined in KRS 304.29-011, insurance;

and

(c) The Standard Valuation Law, as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted in by at least forty-two (42) of the fifty-five (55) jurisdictions, including:

1. The fifty (50) states of the United States;
2. American Samoa;
3. The American Virgin Islands;
4. The District of Columbia;
5. Guam; and
6. Puerto Rico.

(3) (a) Unless a change in the valuation manual specifies a later effective date, changes to the valuation manual shall be effective on January 1 following the date when all of the following have occurred:

1. The change to the valuation manual has been adopted by the NAIC by an affirmative vote representing:
  - a. At least three-fourths (3/4) of the members of the NAIC voting, but not less than a majority of the total membership; and
  - b. Members of the NAIC representing jurisdictions totaling greater than seventy-five percent (75%) of the direct premiums written as reported in the following annual statements most recently available prior to the vote required by subparagraph 1. of this paragraph:
    - i. Life, accident and health insurance;
    - ii. Health insurance; or
    - iii. Fraternal benefit societies, as defined in KRS 304.29-011, insurance; or

(b) The valuation manual becomes effective pursuant to an order by the commissioner.

(4) The valuation manual shall specify the following:

(a) Minimum valuation standards for and definitions of the policies or contracts subject to subsection (2) of Section 8 of this Act. The minimum valuation standards shall be:

1. The commissioner's reserve valuation method for life insurance contracts, other than annuity contracts;
2. The commissioner's annuity valuation method for annuity contracts;  
and
3. Minimum reserves for all other policies or contracts.

(b) Which policies or contracts or types of policies or contracts that are subject to the requirements of a principle-based valuation, required by subsection (1) of Section 4 of this Act, and the minimum valuation standards consistent with those requirements;

(c) For policies and contracts subject to a principle-based valuation under subsection (2)(c) of Section 4 of this Act:

1. Requirements for the format of the reports to the commissioner, including information necessary to determine if the valuation is appropriate and in compliance with KRS 304.6-130 to 304.6-180;
2. Assumptions to be prescribed for risks over which the company does not have significant control or influence; and
3. Procedures for corporate governance and oversight of the actuarial function, and a process for appropriate waiver or modification of the procedures;

(d) For policies not subject to a principle-based valuation under Section 4 of this Act, the minimum valuation standard shall either:

1. Be consistent with the minimum standard of valuation prior to the operative date of the valuation manual; or
2. Develop reserves that quantify the benefits and guarantees, and the funding associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring;

(e) Other requirements, including but not limited to:

1. Those relating to reserve methods;
2. Models for measuring risk;
3. Generation of economic scenarios;
4. Assumptions;
5. Margins;
6. Use of company experience;
7. Risk measurement;
8. Disclosure;
9. Certifications;
10. Reports;
11. Actuarial opinions and memorandums;
12. Transition rules; and
13. Internal controls; and

(f) The data and form of the data required by Section 5 of this Act and with whom the data shall be submitted, and may specify other requirements including data analyses and reporting of analyses.

(5) In the absence of a specific valuation requirement or if a specific valuation requirement in the valuation manual is not, in the opinion of the commissioner, in compliance with Section 4 of this Act, the company shall, with respect to the requirements, comply with minimum valuation standards prescribed by the

commissioner by administrative regulation.

(6) The commissioner may engage a qualified actuary, at the expense of the company, to perform an actuarial examination of the company and to opine on the appropriateness of a reserve assumption or method used by the company, or to review and opine on a company's compliance with any requirement set forth in KRS 304.6-130 to 304.6-180. The commissioner may rely upon the opinion of a qualified actuary, regarding KRS 304.6-130 to 304.6-180, who is engaged by the commissioner of another state, district, or territory of the United States. As used in this subsection, the term "engage" includes employment or contracting.

(7) The commissioner may require a company to change any assumption or method that in the opinion of the commissioner is necessary to comply with the requirement of the valuation manual or KRS 304.6-130 to 304.6-180. The company shall adjust the reserves as required by the commissioner. The commissioner may take other disciplinary action as permitted under this subtitle.

➔SECTION 4. A NEW SECTION OF KRS 304.6-130 TO 304.6-180 IS CREATED TO READ AS FOLLOWS:

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

(a) Quantification of the benefits and guarantees, and the funding associated with the contracts and their risks, at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring during the lifetime of the contracts. For policies or contracts with significant tail risk, the valuation shall also reflect conditions appropriately adverse to quantify the tail risk;

(b) Incorporation of assumptions, risk analysis methods, financial models, and management techniques that are consistent with but not necessarily

identical to those utilized within the company's overall risk assessment process, while recognizing potential differences in financial reporting structures and any prescribed assumptions or methods;

(c) Incorporation of assumptions that are derived in one (1) of the following manners:

1. The assumption is prescribed in the valuation manual;

2. For assumptions that are not prescribed, the assumptions shall:

a. Be established utilizing the company's available experience, to the extent it is relevant and statistically credible; or

b. To the extent that company data is not available, relevant, or statistically credible, be established utilizing other relevant, statistically credible experience; and

(d) Provision of margins for uncertainty, including adverse deviation and estimation error, to ensure that the greater the uncertainty the larger the margin and resulting reserve.

(2) A company using a principle-based valuation for one (1) or more policies or contracts subject to this section, as specified in the valuation manual, shall:

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

(b) Provide to the commissioner and the company's board of directors, an annual certification of the effectiveness of the internal controls with respect to the principle-based valuation. The controls shall be designed to ensure 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 shall be based on the controls in place as of the end of the preceding calendar



year; and

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

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

➔SECTION 5. A NEW SECTION OF KRS 304.6-130 TO 304.6-180 IS CREATED TO READ AS FOLLOWS:

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

➔SECTION 6. A NEW SECTION OF KRS 304.6-130 TO 304.6-180 IS CREATED TO READ AS FOLLOWS:

(1) For purposes of this section:

(a) "Confidential information" means:

1. A memorandum in support of an opinion, submitted pursuant to Section 12 of this Act, and any other documents, materials, and other information, including but not limited to all working papers and copies created, produced, obtained by, or disclosed to the commissioner or any other person in connection with the memorandum;
2. All documents, materials, and other information, including but not limited to all working papers and copies created, produced, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under subsection (6) of Section 3 of this Act; except that if an examination report or other material prepared in connection with an examination made under KRS 304.2-250 is not held as private and confidential, an examination report or other

material prepared in connection with an examination under subsection (6) of Section 3 of this Act shall not be confidential information to the same extent as if the examination report or other material had been prepared under KRS 304.2-250;

3. Any reports, documents, materials, and other information developed by a company in support of, or in connection with an annual certification by the company under subsection (2)(b) of Section 4 of this Act evaluating the effectiveness of the company's internal controls with respect to a principle-based valuation and any other documents, materials, and other information, including but not limited to all working papers and copies created, produced, obtained by, or disclosed to the commissioner or any other person in connection with reports, documents, materials, and other information;
4. Any principle-based valuation report developed under subsection (2)(c) of Section 4 of this Act and any other documents, materials, and other information, including but not limited to all working papers and copies created, produced, obtained by, or disclosed to the commissioner or any other person in connection with the report; and
5. Any documents, materials, data and other information submitted by a company under Section 5 of this Act, collectively referred to as experience data, and any other documents, materials, data, and other information, including but not limited to all working papers and copies created or produced in connection with the experience data, in each case that includes any potential company-identifying or personal identifiable information that is provided to or obtained by the commissioner, with any experience data referred to as the experience materials, and any other documents, materials, data, and other

information, including but not limited to all working papers and copies created, produced, obtained by, or disclosed to the commissioner or any other person in connection with the experience materials; and

(b) "Regulatory agency," "law enforcement agency," and "NAIC" include, but are not limited to their employees, agents, or consultants.

(2) (a) Except as provided in this section, a company's confidential information:

1. Shall be confidential by law and privileged; and

2. Shall not be subject to:

a. The Kentucky Open Records Act, KRS 61.872 to 61.884;

b. Subpoena;

c. Discovery; or

d. Admission in evidence in any private civil action, except that the commissioner is authorized to use the confidential information in the furtherance of any regulatory or legal action brought against the company as part of the commissioner's official duties.

(b) Neither the commissioner nor any person who received confidential information, while acting under the authority of the commissioner, shall be permitted or required to testify in any private civil action concerning any confidential information.

(c) In order to assist in the performance of the commissioner's duties, the commissioner may share confidential information if the recipient agrees, and has the legal authority to agree, to maintain the confidentiality and privileged status of the documents, materials, data, and other information in the same manner and to the same extent as required for the commissioner with:

1. Other state, federal, and international regulatory agencies and with the NAIC and its affiliates and subsidiaries; and
  2. In the case of confidential information, defined in subsection (1)(a)1. and 4. of this section, the Actuarial Board for Counseling and Discipline or its successor upon request stating that the confidential information is required for the purpose of professional disciplinary proceedings and with state, federal, and international law enforcement officials.
- (d) The commissioner may receive documents, materials, data, and other information, including otherwise confidential and privileged documents, materials, data, and other information from the NAIC and its affiliates and subsidiaries, from regulatory or law enforcement officials of other foreign or domestic jurisdictions, and from the Actuarial Board for Counseling and Discipline, or its successor, and shall maintain as confidential or privileged any documents, materials, data, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or other information.
- (e) The commissioner may enter into agreements governing sharing and use of information consistent with this subsection.
- (f) No waiver of any applicable privilege or claim of confidentiality of confidential information shall occur as a result of disclosure to the commissioner under this section, or as a result of sharing the information as authorized by paragraph (c) of this subsection.
- (g) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection shall be available and enforced in any proceeding and in any court of this state.

(3) (a) Notwithstanding subsection (2) of this section, any confidential information specified in subsection (1)(a)1. and 4. of this section:

1. May be subject to subpoena for the purpose of defending an action seeking damages from the appointed actuary submitting the related memorandum in support of an opinion submitted under Section 12 of this Act, or the principle-based valuation report developed under subsection (2)(c) of Section 4 of this Act, by reason of an action required by KRS 304.6-130 to 304.6-180, or by administrative regulation.

2. May otherwise be released by the commissioner with the written consent of the company; and

(b) All portions of a memorandum or report shall no longer be confidential if any portion of a memorandum in support of an opinion, submitted under Section 12 of this Act, or a principle-based valuation report, developed under subsection (2)(c) of Section 4 of this Act, is cited by the company in its marketing, is publicly volunteered to or before a governmental agency, other than a state insurance department, or is released by the company to the news media.

➔SECTION 7. A NEW SECTION OF KRS 304.6-130 TO 304.6-180 IS CREATED TO READ AS FOLLOWS:

(1) The commissioner may exempt specific product forms or product lines of a domestic company, that is licensed and doing business only in Kentucky, from the requirements of Section 3 of this Act if:

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

(b) The company computes reserves using assumptions and methods used prior to the operative date of the valuation manual and any requirements

established by the commissioner and promulgated by administrative regulation.

(2) A domestic company that has less than three hundred million dollars (\$300,000,000) of ordinary life premiums or a company that is a member of a group of life insurers that has combined ordinary life premiums of less than six hundred million dollars (\$600,000,000) and that is licensed and doing business in Kentucky is exempt from the requirements of Sections 3 and 4 of this Act if:

(a) The company reported total adjusted capital of at least four hundred fifty percent (450%) of authorized control level risk-based capital in the risk-based capital report for the prior calendar year;

(b) The appointed actuary has provided an unqualified opinion on the reserves in accordance with Section 12 of this Act for the prior calendar year; and

(c) The company has provided a certification by a qualified actuary that any universal life policy with a secondary guarantee, issued or assumed by the company after the operative date of the valuation manual, meets the definition of a nonmaterial secondary guarantee universal life product as defined in the valuation manual.

(3) For purposes of subsection (2) of this section, ordinary life premiums are measured as direct, plus reinsurance assumed from an unaffiliated company, from the prior calendar year annual statement.

(4) A domestic company that meets the requirements of subsection (2) of this section shall file a statement with the commissioner certifying that these requirements have been met for the current calendar year based on premiums and other values from the prior calendar year's financial statements prior to July 1 of the current calendar year.

(5) For a domestic company that files a statement under subsection (4) of this section, Sections 2, 5, 6, 8, 9, 10, 11, and 12 of this Act, KRS 304.6-140, 304.6-

145, 304.6-155, 304.6-170, 304.6-180, and 304.15-410 shall be applicable; however any references to Sections 3 and 4 of this Act shall not apply.

→Section 8. KRS 304.6-130 is amended to read as follows:

- (1) (a) For policies and contracts issued prior to the operative date of the valuation manual, the commissioner shall annually value, or cause to be valued, the reserve liabilities, hereinafter called reserves, for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer transacting business in this state, except that in the case of an alien insurer, such valuation shall be limited to its United States business; and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods, net leveled premium method or other, used in the calculation of such reserves. In calculating such reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves required of any foreign or alien insurer, the commissioner may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard~~]~~ ~~herein]~~ provided in KRS 304.6-130 to 304.6-180 and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner 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 law of that state or jurisdiction. Where any such valuation is made by the commissioner, the commissioner may use the actuary of the department or employ an actuary for the purpose, and the reasonable compensation and expenses of the actuary, at a rate approved by the commissioner, upon demand by the commissioner supported by an itemized

statement of such compensation and expenses, shall be paid by the insurer. When a domestic insurer furnishes the commissioner with a valuation of its outstanding policies as computed by its own actuary or by an actuary deemed satisfactory for the purpose by the commissioner, the valuation shall be verified by the actuary of the department without cost to the insurer.

~~(b)(2)~~ Any such insurer which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided.

(c) The provisions of Sections 2, 9, 10, and 11 of this Act, and KRS 304.6-140, 304.6-145, 304.6-155, 304.6-170, 304.6-180, and 304.15-410 shall apply to all policies and contracts as appropriate, issued on or after June 18, 1970, and prior to the operative date of the valuation manual. The provisions of Sections 3 and 4 of this Act shall not apply to the policies and contracts issued on or after June 18, 1970, and prior to the operative date of the valuation manual.

(2) (a) Except for a company that is exempt under Section 7 of this Act, for policies and contracts issued on or after the operative date of the valuation manual, the commissioner shall annually value or cause to be valued the reserve liabilities, hereinafter called reserves, for all outstanding life insurance contracts, annuity and pure endowment contracts, accident and health contracts, and deposit-type contracts of every company issued on or after the operative date of the valuation manual. In lieu of the valuation of the reserves required of a foreign or alien company, the commissioner may accept a valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when the valuation



*complies with the minimum standard provided in KRS 304.6-130 to 304.6-180.*

*(b) Except for a company that is exempt under Section 7 of this Act, Sections 3 and 4 of this Act shall apply to all policies and contracts issued on or after the operative date of the valuation manual.*

➔Section 9. KRS 304.6-150 is amended to read as follows:

- (1) Except as otherwise provided in KRS 304.6-155, ~~and~~ 304.6-180, *and Section 2 of this Act,* reserves according to the commissioners reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (a) over (b), as follows:
- (a) Net level annual premium. A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one (1) per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due. Such net level annual premium shall not exceed the net level annual premium on the nineteen (19) year premium whole life plan for insurance of the same amount at an age one (1) year higher than the age at issue of such policy.
- (b) Net one (1) year term premium. A net one (1) year term premium for such benefits provided for in the first policy year.

Provided that for any life insurance policy issued on or after January 1, 1986, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the commissioners reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in KRS 304.6-180, be the greater of the reserve as of such policy anniversary calculated as described in the preceding subsection and the reserve as of such policy anniversary calculated as described in that subsection, but with the value defined in paragraph (a) of that subsection being reduced by fifteen percent (15%) of the amount of such excess first year premium, all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date, the policy being assumed to mature on such date as an endowment, and the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in KRS 304.6-140 and 304.6-145 shall be used.

- (2) Reserves according to the commissioners reserve valuation method for:
  - (a) Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums,
  - (b) Group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement

accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended,

- (c) Disability and accidental death benefits in all policies and contracts, and
- (d) All other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the provisions of this section, except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums.

➔Section 10. KRS 304.6-160 is amended to read as follows:

- (1) In no event shall an insurer's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, which are subject to subsection (2) of KRS 304.6-140, be less than the aggregate reserves calculated in accordance with the methods set forth in KRS 304.6-150, 304.6-155, 304.6-180 and 304.15-410, and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.
- (2) In no event shall the aggregate reserves for all policies, contracts, and benefits be less than the aggregate reserves determined by the appointed~~qualified~~ actuary to be necessary to render the opinion required by KRS 304.6-171.

➔Section 11. KRS 304.6-170 is amended to read as follows:

- (1) Reserves for any category of policies, contracts, or benefits as established by the commissioner, which are subject to subsection (2) of KRS 304.6-140, may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be greater~~higher~~ than the corresponding rate or rates of interest used in calculating

any nonforfeiture benefits provided for therein.

- (2) Any such company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum **required by this subtitle, except**~~[herein provided; provided, however,]~~ that for the purposes of this section, the holding of additional reserves previously determined by **the appointed**~~[a qualified]~~ actuary to be necessary to render the opinion requested by KRS 304.6-171 shall not be deemed to be the adoption of a higher standard of valuation.

➔Section 12. KRS 304.6-171 is amended to read as follows:

- (1) **Subsections (2) to (5) of** this section shall become operative at the end of the first full calendar year following the year of enactment **and shall be applicable prior to the operative date of the valuation manual.**
- (2) Every life 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 commissioner by administrative regulation are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The commissioner by administrative regulation shall define the specifics of this opinion and add any other items deemed to be necessary to its scope.
- (3) (a) Every life insurance company, except as exempted by or pursuant to administrative regulation, shall also annually include in the opinion required by subsection (2) of this section, an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by administrative regulation,

when considered in light of the assets held by the company 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 company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts.

- (b) The commissioner may provide by administrative regulation for a transition period for establishing any higher reserves which the qualified actuary may deem necessary in order to render the opinion required by this section.
- (4) Each opinion required by subsection (2) of this section shall be governed by the following provisions:
- (a) A memorandum, in form and substance acceptable to the commissioner as specified by administrative regulation, shall be prepared to support each actuarial opinion; and
  - (b) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by administrative regulation or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the administrative regulations or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting memorandum as is required by the commissioner.
- (5) Every opinion shall be governed by the following provisions:
- (a) The opinion shall be submitted with the annual statement reflecting the valuation of reserve liabilities for each year ending on or after December 31, 1996;

- (b) The opinion shall apply to business in force including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by administrative regulation;
- (c) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on such additional standards as the commissioner may by administrative regulation prescribe;
- (d) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state;
- (e) For the purposes of this section, "qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in administrative regulations;
- (f) Except in cases of fraud or willful misconduct, the qualified actuary shall not be liable for damages to any person, other than the insurance company and the commissioner, for any act, error, omission, decision, or conduct with respect to the actuary's opinion;
- (g) Disciplinary action by the commissioner against the company or the qualified actuary shall be defined in administrative regulations by the commissioner; and
- (h) Any memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection therewith, shall be kept confidential by the commissioner and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by administrative regulations promulgated hereunder. The

memorandum or other material may otherwise be released by the commissioner with the written consent of the 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 commissioner for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited by the company in its marketing, or is cited before any governmental agency other than a state insurance department or office, or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.

**(6) Unless a company is exempt under Section 7 of this Act, subsections (7) to (10) of this section shall become operative after the operative date of the valuation manual.**

**(7) Every company with outstanding life insurance, accident and health insurance, or deposit-type contracts in this state, subject to regulation by the commissioner, shall annually submit the opinion of the appointed actuary stating whether the reserves and related actuarial items held in support of the policies and contracts are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The valuation manual shall prescribe the specifics of this opinion, including any items deemed necessary to its scope.**

**(8) Every company with outstanding life insurance, accident and health insurance, or deposit-type contracts in this state, subject to regulation by the commissioner, except as exempted in the valuation manual, shall also annually include in the opinion required by subsection (7) of this section an opinion of the same appointed actuary stating whether the reserves and related actuarial items held in support of the policies and contracts specified in the valuation manual, when**

considered with respect to the assets held by the company, 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, making adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under, and expenses associated with, the policies and contracts.

(9) Each opinion required by subsection (8) of this section shall be governed by the following provisions:

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

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

(10) Every opinion required by subsections (7) and (8) of this section shall be governed by the following provisions:

(a) The opinion shall be in the form and contain the substance specified in the valuation manual and acceptable to the commissioner;

(b) The opinion shall be submitted with the annual statement reflecting the valuation of the reserve liability for each year ending on or after the operative date of the valuation manual;

(c) The opinion shall apply to all policies and contracts subject to subsection



- (8) of this section, plus other actuarial liabilities as may be specified in the valuation manual;
- (d) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board or its successor, and on such additional standards as may be prescribed in the valuation manual;
- (e) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state;
- (f) Except in cases of fraud or willful misconduct, the appointed actuary shall not be liable for damages to any person, other than the insurance company and the commissioner, for any act, error, omission, decision, or conduct with respect to the appointed actuary's opinion; and
- (g) Disciplinary action by the commissioner against the company or the appointed actuary shall be established by administrative regulation, promulgated by the commissioner.

➔SECTION 13. A NEW SECTION OF KRS 304.15-310 TO 304.15-360 IS CREATED TO READ AS FOLLOWS:

The term "operative date of the valuation manual" means January 1 of the first calendar year that the valuation manual is operative, as defined in subsection (11) of Section 1 of this Act.

➔Section 14. KRS 304.15-342 is amended to read as follows:

- (1) This section shall apply to all policies issued on or after the effective date of this section as defined in subsection (11) of this section. Except as provided in subsection (7) of this section, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective

premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums shall be equal to the sum of:

- (a) The then present value of the future guaranteed benefits provided for by the policy;
- (b) One percent (1%) of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years; and
- (c) One hundred twenty-five percent (125%) of the nonforfeiture net level premium as hereinafter defined.

Provided, however, that in applying the percentage specified in (c) above, no nonforfeiture net level premium shall be deemed to exceed four percent (4%) of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years. This date of issue of a policy for the purpose of this section shall be the date as of which the rated age of the insured is determined.

- (2) The nonforfeiture net level premium shall be equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one (1) per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due.
- (3) In the case of policies which cause, on a basis guaranteed in the policy, unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and

present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any such change in the benefits or premiums the future adjusted premiums, nonforfeiture net level premiums and present values shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.

- (4) Except as otherwise provided in subsection (7) of this section, the recalculated future adjusted premiums for any such policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall be equal to the excess of (a) the sum of the then present value of the then future guaranteed benefits provided for by the policy and the additional expense allowance, if any, over (b) the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.
- (5) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of:
- (a) One percent (1%) of the excess, if positive, of the average amount of insurance at the beginning of each of the first ten (10) policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first ten (10) policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy; and
  - (b) One hundred twenty-five percent (125%) of the increase, if positive, in the

nonforfeiture net level premium.

- (6) The recalculated nonforfeiture net level premium shall be equal to the result obtained by dividing (a) by (b) where:
- (a) Equals the sum of:
1. The nonforfeiture net level premium applicable prior to the change times the present value of an annuity of one (1) per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred, and
  2. The present value of the increase in future guaranteed benefits provided for by the policy, and
- (b) Equals the present value of an annuity of one (1) per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.
- (7) Notwithstanding any other provisions of this section to the contrary, in the case of a policy issued on a substandard basis which provides reduced graded amounts of insurance so that, in each policy year, such policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for such substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.
- (8) 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 or at the election of the insurer for any one (1) or more specified plans of life insurance, the commissioners 1980 standard ordinary mortality table with ten-year select mortality factors; shall for all policies of industrial insurance be calculated on the basis of the commissioners 1961 standard

industrial mortality table; 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 section for policies issued in that calendar year. Provided, however, that:

- (a) At the option of the insurer, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this section, for policies issued in the immediately preceding calendar year;
- (b) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by KRS 304.15-310, 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;
- (c) Any 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;
- (d) 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 for policies of ordinary insurance and not more than the commissioners 1961 industrial extended term insurance table for policies of industrial insurance;
- (e) 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;
- (f) **For policies issued prior to the operative date of the valuation manual, any**

Commissioner's Standard~~[Any]~~ ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the commissioner 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;~~[and]~~

(g) For policies issued on or after the operative date of the valuation manual, the valuation manual shall provide the Commissioners' Standard mortality table for use in determining the minimum nonforfeiture standard that 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. If the commissioner promulgates an administrative regulation adopting any Commissioners' 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, then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual;

(h) For policies issued prior to the operative date of the valuation manual, any Commissioners' Standard~~[Any]~~ industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the commissioners 1961 standard industrial mortality table or the commissioners 1961 industrial extended term insurance table; and

(i) For policies issued on or after the operative date of the valuation manual,

*the valuation manual shall provide the Commissioners' Standard mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the Commissioners' 1961 Standard Industrial Mortality Table or the Commissioners' 1961 Industrial Extended Term Insurance Table. If the commissioner promulgates an administrative regulation adopting the Commissioners' Standard industrial mortality table as 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, then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.*

(9) *(a) For policies issued prior to the operative date of the valuation manual,* the nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred twenty-five percent (125%) of the calendar year statutory valuation interest rate for such policy as defined in KRS 304.6-130 to 304.6-180, inclusive to the nearer one quarter of one percent (0.25%), *except that the nonforfeiture interest rate shall not be less than four percent (4%).*

*(b) For policies issued on or after the operative date of the valuation manual, the nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be provided by the valuation manual.*

(10) Notwithstanding any other provision in this code to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form which involves only a change in the interest rate or mortality table used to compute nonforfeiture values shall not require refiling of any other provisions of that policy form.

(11) Any insurer may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1,

1989, which shall be the effective date of this section for such insurer. If an insurer makes no such election, the effective date of this section for such insurer shall be January 1, 1989.

➔ SECTION 15. A NEW SECTION OF SUBTITLE 14 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

**(1) For purposes of this section:**

**(a) "Policy" means the written contract of, or written agreement for, or affecting group insurance, by whatever name called, including all certificates of coverage or similar documents evidencing coverage, clauses, riders, indorsements, and any papers attached thereto; and**

**(b) "Discretionary clause" is broadly defined to mean any language that has the effect of conferring to an insurer final authority to determine claims for policy benefits, to resolve questions of fact, and to interpret policy language.**

**(2) Any discretionary clause contained in a policy that provides insurance coverage for a Kentucky resident or employee shall be void and unenforceable.**

**(3) The commissioner may adopt administrative regulations reasonably necessary to implement the provisions of this section to ensure compliance with this section.**

**(4) Notwithstanding KRS 304.14-010, this section shall apply to all policies as defined in subsection (1)(a) of this section.**

**(5) Nothing in this section shall be construed to limit an insurer's ability to contract with a licensed administrator in accordance with KRS 304.9-371 to 304.9-377.**

**(6) This section shall apply to any discretionary clause contained in a policy issued, renewed, or in force on or after the effective date of this Act.**