

2020 Regular Session

HOUSE BILL NO. 682

BY REPRESENTATIVE FRIEMAN

INSURANCE: Provides relative to reserves for insurers

1 AN ACT

2 To amend and reenact R.S. 22:65(11)(a), 550.21(3), 751(A)(2)(a)(i), 753(C)(1) and (4)
3 through (6), and (D) through (J), to enact R.S. 22:753(K) through (M) and Subpart
4 D of Part IV of Chapter 2 of Title 22 of the Louisiana Revised Statutes of 1950, to
5 be comprised of R.S. 22:782, and to repeal R.S. 22:753(C)(7), relative to reserves for
6 insurers; to provide for standards for property and casualty independent qualified
7 actuaries; to provide for valuation manual requirements; to provide for reserve
8 valuation standards and methods; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 22:65(11)(a), 550.21(3), 751(A)(2)(a)(i), 753(C)(1) and (4) through
11 (6), and (D) through (J) are hereby amended and reenacted and R.S. 22:753(K) through (M)
12 and Subpart D of Part IV of Chapter 2 of Title 22 of the Louisiana Revised Statutes of 1950,
13 comprised of R.S. 22:782, is hereby enacted to read as follows:

14 §65. Application for certificate of authority

15 An application shall be made by the first directors to the commissioner of
16 insurance for a certificate of authority which shall be accompanied by:

17 * * *

18 (11)(a) If a property or casualty insurer, an agreement, at least three
19 consecutive years in duration, signed by its president engaging an independent
20 qualified actuary as defined in the National Association of Insurance Commissioners
21 Quarterly and Annual Statement Instructions—Property/Casualty ~~who is a member~~
22 ~~in good standing of the American Academy of Actuaries or the Casualty Actuarial~~

1 Society, to provide to the commissioner an annual actuarial reserves analysis as
2 required by the commissioner.

3 * * *

4 §550.21. Annual report of financial condition to commissioner; regulations
5 designating form; alternative date to file annual report

6 Every captive insurer licensed in this state shall file each of the following
7 with the department:

8 * * *

9 (3) An annual actuarial certification of loss reserves and loss expense
10 reserves which includes an opinion of the adequacy of the loss reserves and loss
11 expense reserves of the captive insurer, in a format acceptable to the commissioner.

12 The person that certifies the reserves ~~must~~ shall be approved by the commissioner
13 and ~~must~~ shall be a ~~Fellow of the Casualty Actuarial Society, and a member in good~~
14 ~~standing of the American Academy of Actuaries~~ qualified actuary as defined in the
15 National Association of Insurance Commissioners Quarterly and Annual Statement
16 Instructions—Property/Casualty.

17 * * *

18 §751. Commissioner of insurance to make valuation

19 A.

20 * * *

21 (2)(a) Every foreign life insurance company or fraternal order shall either:

22 (i) ~~Submit a valuation certificate from their domiciliary state~~ made, or caused
23 to be made, by the insurance supervisory official of any state or other jurisdiction
24 when the valuation complies with the minimum standard provided in this Subpart
25 before August first of the year following the year of valuation.

26 * * *

27 §753. Policies under standard valuation law

28 * * *

29 C. For policies issued on or after the operative date of the valuation manual:

1 (1) The standard prescribed in the valuation manual is the minimum standard
2 of valuation required under R.S. 22:751(A), except as provided ~~under Paragraph (5)~~
3 ~~or (7) of this Subsections D and F of this Section.~~

4 * * *

5 (4) The valuation manual shall specify all of the following:

6 (a) Minimum valuation standards for and definitions of the policies or
7 contracts subject to R.S. 22:751(A). Such minimum valuation standards shall be:

8 (i) The commissioner's reserve valuation method for life insurance contracts,
9 other than annuity contracts, pursuant to R.S. 22:751(A).

10 (ii) The commissioner's annuity reserve valuation method for annuity
11 contracts pursuant to R.S. 22:751(A).

12 (iii) Minimum reserves for all other policies or contracts subject to R.S.
13 22:751(A).

14 (b) Which policies or contracts or types of policies or contracts that are
15 subject to the requirements of a principle-based valuation in Subsection G of this
16 Section and the minimum valuation standards consistent with those requirements.

17 (c) For policies and contracts subject to a principle-based valuation under
18 Subsection G of this Section:

19 (i) Requirements for the format of reports to the commissioner under
20 Subparagraph (G)(2)(c) of this Section and which shall include information
21 necessary to determine if the valuation is appropriate and in compliance with this
22 Subpart.

23 (ii) Assumptions shall be prescribed for risks over which the company does
24 not have significant control or influence.

25 (iii) Procedures for corporate governance and oversight of the actuarial
26 function and a process for appropriate waiver or modification of such procedures.

27 (d) For policies not subject to a principle-based valuation under Subsection
28 ~~D~~ G of this Section, the minimum valuation standard shall use one of the following:

1 ~~(a)~~ (i) The minimum valuation standard that was in effect prior to the
2 operative date of the valuation manual.

3 ~~(b)~~ (ii) A reserve standard that quantifies the benefits, guarantees, and
4 funding associated with the contract risk and a level of conservatism that reflects all
5 unfavorable events that have a reasonable probability of occurring.

6 (5) Other requirements, including, but not limited to, those relating to reserve
7 methods, models for measuring risk, generation of economic scenarios, assumptions,
8 margins, use of company experience, risk measurement, disclosure, certifications,
9 reports, actuarial opinions and memorandums, transition rules, and internal controls.

10 (6) The data and form of the data required pursuant to Subsection H of this
11 Section, with whom the data must be submitted, and may specify other requirements
12 including data analyses and reporting analyses.

13 ~~(5)~~ D. In the absence of a specific valuation requirement, the company shall
14 comply with minimum valuation standards prescribed by the commissioner by rule
15 or regulation.

16 ~~(6)~~ E. The commissioner may engage a qualified actuary, at the expense of
17 the company, to perform an actuarial examination of the company and opine on the
18 appropriateness of any reserve assumption or method used by the company, or to
19 review and opine on a company's compliance with any valuation requirement. The
20 commissioner may rely upon the opinion of a qualified actuary engaged by the
21 commissioner of another state, district, or territory of the United States.

22 ~~(7)~~ F. The commissioner may require a company to change any assumption
23 or method that in the opinion of the commissioner is necessary to comply with the
24 requirements of the valuation manual, and the company shall adjust the reserves as
25 required by the commissioner.

26 ~~D.(1)~~ G.(1) For policies or contracts specified in the valuation manual as
27 being subject to principle-based valuation, a company shall establish reserves that:

28 (a) Quantify the benefits, guarantees, and funding associated with the
29 contracts and their risk at a level of conservatism that reflects conditions that include

1 unfavorable events that have a reasonable probability of occurring during the lifetime
2 of the contracts, including conditions appropriately adverse to quantify any
3 significant tail risk.

4 (b) Incorporate assumptions, risk analysis methods, financial models, and
5 management techniques that are consistent with, but not necessarily identical to,
6 those utilized within the company's overall risk assessment process, while
7 recognizing potential differences in financial reporting structures and any prescribed
8 assumptions or methods.

9 (c) Incorporate assumptions that are derived from one of the following:

10 (i) The valuation manual.

11 (ii) When not prescribed in the valuation manual, one of the following:

12 (aa) The company's available, relevant, and statistically credible experience.

13 (bb) To the extent that company data are not available, relevant, or
14 statistically credible, other available, relevant, and statistically credible experience.

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

18 (2) As specified in the valuation manual, a company using a principle-based
19 valuation for one or more policies or contracts shall:

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

22 (b) Provide to the commissioner and the board of directors an annual
23 certification of the effectiveness of the principle-based valuation internal controls.
24 The controls shall be designed to assure that all material risks are included in the
25 valuation in accordance with the valuation manual. The certification shall be based
26 on the controls in place as of the end of the preceding calendar year.

27 (c) Develop a principle-based valuation report that complies with standards
28 prescribed in the valuation manual and file it with the commissioner when requested.

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

3 E. H. For policies in force on or after the operative date of the valuation
4 manual, a company shall submit mortality, morbidity, policyholder behavior, or
5 expense experience and other data as prescribed in the valuation manual.

6 F. I. Any such insurer which at any time shall have adopted any standard of
7 valuation producing greater aggregate reserves than those calculated according to the
8 minimum standard provided in this Section may, with the approval of the
9 commissioner of insurance, adopt any lower standard of valuation, but not lower than
10 the minimum provided in this Section. However, for purposes of this Section, the
11 holding of additional reserves previously determined by a qualified actuary to be
12 necessary to render the opinion required by this Subpart shall not be deemed to be
13 the adoption of a higher standard of valuation.

14 G. J. For purposes of this Subpart, "confidential information" shall mean:

15 (1) A memorandum in support of an opinion submitted under this Section
16 and any other documents, materials, and other information, including but not limited
17 to all working papers, and copies thereof, created, produced, or obtained by or
18 disclosed to the commissioner or any other person in connection with such
19 memorandum.

20 (2) All documents, materials, and other information, including but not
21 limited to all working papers, and copies thereof, created, produced, or obtained by
22 or disclosed to the commissioner or any other person in the course of an examination
23 made under this Section provided, however, that if an examination report or other
24 material prepared in connection with an examination made under Chapter 8 of this
25 Title is not held as private and confidential information under Chapter 8 of this Title,
26 an examination report or other material prepared in connection with an examination
27 made under this Section shall not be confidential information to the same extent as
28 if such examination report or other material had been prepared under Chapter 8 of
29 this Title.

1 (3) Any reports, documents, materials, and other information developed by
 2 a company in support of, or in connection with, an annual certification by the
 3 company under this Section evaluating the effectiveness of the company's internal
 4 controls with respect to a principle-based valuation and any other documents,
 5 materials, and other information, including but not limited to all working papers, and
 6 copies thereof, created, produced, or obtained by or disclosed to the commissioner
 7 or any other person in connection with such reports, documents, materials, and other
 8 information.

9 (4) Any principle-based valuation report developed under this Section and
 10 any other documents, materials, and other information, including but not limited to
 11 all working papers, and copies thereof, created, produced, or obtained by or disclosed
 12 to the commissioner or any other person in connection with such report.

13 (5) Any documents, materials, data, and other information submitted by a
 14 company under this Section, to be known collectively as "experience data", and any
 15 other documents, materials, data, and other information, including but not limited to
 16 all working papers, and copies thereof, created or produced in connection with such
 17 experience data, in each case that include any potentially company-identifying or
 18 personally identifiable information, that is provided to or obtained by the
 19 commissioner together with any experience data, the experience materials, and any
 20 other documents, materials, data, and other information, including but not limited to
 21 all working papers, and copies thereof, created, produced, or obtained by or disclosed
 22 to the commissioner or any other person in connection with such experience
 23 materials.

24 H: K(1). Privilege for, and confidentiality of, confidential information.

25 (+) (2) Except as provided in this Section, a company's confidential
 26 information is confidential by law and privileged, and shall not be subject to the
 27 Public Records Law, R.S. 44:1.1 et seq., shall not be subject to subpoena, and shall
 28 not be subject to discovery or admissible in evidence in any private civil action;
 29 however, the commissioner is authorized to use the confidential information in the

1 furtherance of any regulatory or legal action brought against the company as a part
2 of the commissioner's official duties.

3 ~~(2)~~ (3) Neither the commissioner nor any person who received confidential
4 information while acting under the authority of the commissioner shall be permitted
5 or required to testify in any private civil action concerning any confidential
6 information.

7 ~~(3)~~ (4) In order to assist in the performance of the commissioner's duties, the
8 commissioner may share confidential information ~~(a)~~ with other state, federal, and
9 international regulatory agencies and with the NAIC and its affiliates and
10 subsidiaries; and ~~(b)~~ in the case of confidential information specified in Paragraphs
11 ~~(G)(1)~~ (J)(1) and (4) of this Section only, with the Actuarial Board for Counseling
12 and Discipline, or its successor, upon request stating that the confidential information
13 is required for the purpose of professional disciplinary proceedings and with state,
14 federal, and international law enforcement officials; ~~in the case of Subparagraphs (a)~~
15 ~~and (b) of.~~ In the cases specified in this Paragraph, provided that such recipient
16 agrees, and has the legal authority to agree, to maintain the confidentiality and
17 privileged status of such documents, materials, data, and other information in the
18 same manner and to the same extent as required for the commissioner.

19 ~~(4)(a)~~ (5)(a) The commissioner may receive documents, materials, data and
20 other information, including otherwise confidential and privileged documents,
21 materials, data or information, from the NAIC and its affiliates and subsidiaries,
22 from regulatory or law enforcement officials of other foreign or domestic
23 jurisdictions, and from the Actuarial Board for Counseling and Discipline, or its
24 successor, and shall maintain as confidential or privileged any document, material,
25 data or other information received with notice or the understanding that it is
26 confidential or privileged under the laws of the jurisdiction that is the source of the
27 document, material, or other information.

28 (b) The commissioner may enter into agreements governing sharing and use
29 of information consistent with this Subsection.

1 (6) No waiver of any applicable privilege or claim of confidentiality in the
2 confidential information shall occur as a result of disclosure to the commissioner
3 under this Section or as a result of sharing as authorized in Paragraph ~~(3)~~ (4) of this
4 Subsection.

5 (7) A privilege established under the law of any state or jurisdiction that is
6 substantially similar to the privilege established under this Subsection shall be
7 available and enforced in any proceeding in, and in any court of, this state.

8 (8) In this Section "regulatory agency", "law enforcement agency", and the
9 "NAIC" include but are not limited to their employees, agents, consultants, and
10 contractors.

11 ~~F. L.~~ Notwithstanding Subsection ~~H~~ K of this Section, any confidential
12 information specified in Paragraphs ~~(G)(1)~~ (J)(1) and (4) of this Section:

13 (1) May be subject to subpoena for the purpose of defending an action
14 seeking damages from the appointed actuary submitting the related memorandum in
15 support of an opinion submitted under R.S. 22:752 or principle-based valuation
16 report developed under this Section by reason of an action required by this Subpart
17 or by regulations promulgated hereunder.

18 (2) May otherwise be released by the commissioner with the written consent
19 of the company.

20 (3) Once any portion of a memorandum in support of an opinion submitted
21 under R.S. 22:752 or a principle-based valuation report developed under this Section
22 is cited by the company in its marketing or is publicly volunteered to or before a
23 governmental agency other than a state insurance department or is released by the
24 company to the news media, all portions of such memorandum or report shall no
25 longer be confidential.

26 ~~F. M.~~ M. For the purposes of this Subpart, the following definitions shall apply
27 on and after the operative date of the valuation manual:

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

4 (2) "Appointed actuary" means a qualified actuary who is appointed in
5 accordance with the valuation manual to prepare the actuarial opinion required by
6 R.S. 22:752.

7 (3) "Company" means an entity that has written, issued, or reinsured life
8 insurance contracts, accident and health insurance contracts, or deposit-type
9 contracts and one of the following:

10 (a) Has at least one such policy or contract in force or on claim in this state.

11 (b) Meets the requirement to hold a certificate of authority to write such
12 policies or contracts in this state and has written, issued, or reinsured such policies
13 or contracts in any state.

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

16 (5) "Life insurance" means contracts that incorporate mortality risk,
17 including annuity and pure endowment contracts, and as may be specified in the
18 valuation manual.

19 (6) "Policyholder behavior" means any action a policyholder, contract
20 holder, or any other person with the right to elect options, such as a certificate holder,
21 may take under a policy or contract subject to this Subpart including but not limited
22 to lapse, withdrawal, transfer, deposit, premium payment, loan, annuitization, or
23 benefit elections prescribed by the policy or contract but excluding events of
24 mortality or morbidity that result in benefits prescribed in their essential aspects by
25 the terms of the policy or contract.

26 (7) "Principle-based valuation" means a reserve valuation that uses one or
27 more methods or one or more assumptions determined by the insurer and is required
28 to comply with Subsection ~~D~~ G of this Section as specified in the valuation manual.

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

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

8 (10) "Valuation manual" means the manual of valuation instructions adopted
9 by the NAIC as specified in this Subpart including any subsequent amendments.

10 * * *

11 SUBPART D. RESERVES FOR HEALTH INSURANCE

12 §782. Minimum standard for accident and health insurance contracts

13 For accident and health insurance contracts issued on or after the operative
14 date of the valuation manual, the standard prescribed in the valuation manual is the
15 minimum standard of valuation required under R.S. 22:751(A). For health and
16 accident insurance contracts issued on or after July 1, 1948, and prior to the operative
17 date of the valuation manual the minimum standard of valuation is the standard
18 adopted by the commissioner by regulation.

19 Section 2. R.S. 22:753(C)(7) is hereby repealed in its entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 682 Engrossed

2020 Regular Session

Frieman

Abstract: Provides for qualification standards of property and casualty independent actuaries and provides for valuation manual standards used to value reserves for insurers.

Present law requires property and casualty insurers who apply for a certificate of authority to include a three-year agreement with an independent qualified actuary who is a member of the American Academy of Actuaries or the Casualty Actuarial Society and in good standing and who provides and certifies an annual actuarial reserves analysis.

Proposed law changes the requirement of the independent qualified actuary from one who is a member of the American Academy of Actuaries or the Casualty Actuarial Society to an

independent qualified actuary as defined in the National Association of Insurance Commissioners Quarterly and Annual Statement Instructions.

Present law requires foreign life insurers and fraternal orders to submit a valuation certificate issued by their domiciliary state before Aug. 1 of the year following the year of valuation.

Proposed law retains present law but changes the certificate from one issued by the insurer's domiciliary state to one issued by the proper authority of any state or jurisdiction when the valuation complies with the minimum standards provided in proposed law.

Proposed law sets forth what requirements the valuation manual should meet, including specifying the following minimum valuation standards:

- (1) The commissioner's reserve valuation method for life insurance contracts.
- (2) The commissioner's annuity reserve valuation method for life insurance contracts.
- (3) Minimum reserves for all other policies or contracts.

Proposed law also requires the valuation manual to state the policies or contracts that are subject to the requirements of principle-based valuation.

Proposed law requires, when contracts are subject to a principle-based valuation, that the valuation manual specify the required format for reports to the commissioner and to policies, that assumptions are required to for risks not within the company's control, and corporate oversight and governance procedures.

Proposed law requires any accident and health insurance contracts issued by an insurance company to use the minimum standard prescribed in the valuation manual pursuant to present law. Proposed law further requires any health and accident insurance contracts issued on or after July 1, 1948, to use the minimum standard valuation adopted by the commissioner.

Proposed law makes technical and organizational changes.

(Amends R.S. 22:65(11)(a), 550.21(3), 751(A)(2)(a)(i), 753(C)(1) and (4) through (6), and (D) through (J); Adds R.S. 22:753(K) through (M) and 782; Repeals R.S. 22:753(C)(7))