

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), and 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), and 753(C)(1) and (4)
11 through (6), and (D) through (J) are hereby amended and reenacted and R.S. 22:753(K)
12 through (M) and Subpart D of Part IV of Chapter 2 of Title 22 of the Louisiana Revised
13 Statutes of 1950, 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 ~~(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) The valuation manual shall specify other requirements, including but not
7 limited to those relating to reserve methods, models for measuring risk, generation
8 of economic scenarios, assumptions, margins, use of company experience, risk
9 measurement, disclosure, certifications, reports, actuarial opinions and
10 memorandums, transition rules, and internal controls.

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

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

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

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

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

1 (a) Quantify the benefits, guarantees, and funding associated with the
2 contracts and their risk at a level of conservatism that reflects conditions that include
3 unfavorable events that have a reasonable probability of occurring during the lifetime
4 of the contracts, including conditions appropriately adverse to quantify any
5 significant tail risk.

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

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

12 (i) The valuation manual.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 if such examination report or other material had been prepared under Chapter 8 of
2 this Title.

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

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

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

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

27 ~~(+)~~ (2) Except as provided in this Section, a company's confidential
28 information is confidential by law and privileged, and shall not be subject to the
29 Public Records Law, R.S. 44:1.1 et seq., shall not be subject to subpoena, and shall

1 not be subject to discovery or admissible in evidence in any private civil action;
2 however, the commissioner is authorized to use the confidential information in the
3 furtherance of any regulatory or legal action brought against the company as a part
4 of the commissioner's official duties.

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

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

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

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

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

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

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

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

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

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

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

28 J. M. For the purposes of this Subpart, the following definitions shall apply
29 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.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

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 Reengrossed

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), and 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))