

ACT No. 370

2021 Regular Session

HOUSE BILL NO. 576

BY REPRESENTATIVE FRIEMAN

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~~
23 ~~Society~~, to provide to the commissioner an annual actuarial reserves analysis as
24 required by the commissioner.

25 * * *

1 §550.21. Annual report of financial condition to commissioner; regulations
2 designating form; alternative date to file annual report

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

5 * * *

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

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

14 * * *

15 §751. Commissioner of insurance to make valuation

16 A.

17 * * *

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

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

23 * * *

24 §753. Policies under standard valuation law

25 * * *

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

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

30 * * *

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

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

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

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

8 (iii) Minimum reserves for all other policies or contracts subject to R.S.
 9 22:751(A).

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

13 (c) For policies and contracts subject to a principle-based valuation pursuant
 14 to Subsection G of this Section:

15 (i) Requirements for the format of reports to the commissioner pursuant to
 16 Subparagraph (G)(2)(c) of this Section and which shall include information
 17 necessary to determine if the valuation is appropriate and in compliance with this
 18 Subpart.

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

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

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

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

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

1 (5) The valuation manual shall specify other requirements, including but not
 2 limited to those relating to reserve methods, models for measuring risk, generation
 3 of economic scenarios, assumptions, margins, use of company experience, risk
 4 measurement, disclosure, certifications, reports, actuarial opinions and
 5 memorandums, transition rules, and internal controls.

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

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

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

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

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

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

29 (b) Incorporate assumptions, risk analysis methods, financial models, and
 30 management techniques that are consistent with, but not necessarily identical to,

1 those utilized within the company's overall risk assessment process, while
 2 recognizing potential differences in financial reporting structures and any prescribed
 3 assumptions or methods.

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

5 (i) The valuation manual.

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

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

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

10 (d) Provide margins for uncertainty including adverse deviation and
 11 estimation error, such that the greater the uncertainty the larger the margin and
 12 resulting reserve.

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

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

17 (b) Provide to the commissioner and the board of directors an annual
 18 certification of the effectiveness of the principle-based valuation internal controls.

19 The controls shall be designed to assure that all material risks are included in the
 20 valuation in accordance with the valuation manual. The certification shall be based
 21 on the controls in place as of the end of the preceding calendar year.

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

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

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

29 ~~F.~~ I. Any such insurer which at any time shall have adopted any standard of
 30 valuation producing greater aggregate reserves than those calculated according to the

1 minimum standard provided in this Section may, with the approval of the
 2 commissioner of insurance, adopt any lower standard of valuation, but not lower than
 3 the minimum provided in this Section. However, for purposes of this Section, the
 4 holding of additional reserves previously determined by a qualified actuary to be
 5 necessary to render the opinion required by this Subpart shall not be deemed to be
 6 the adoption of a higher standard of valuation.

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

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

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

24 (3) Any reports, documents, materials, and other information developed by
 25 a company in support of, or in connection with, an annual certification by the
 26 company under this Section evaluating the effectiveness of the company's internal
 27 controls with respect to a principle-based valuation and any other documents,
 28 materials, and other information, including but not limited to all working papers, and
 29 copies thereof, created, produced, or obtained by or disclosed to the commissioner

1 or any other person in connection with such reports, documents, materials, and other
 2 information.

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

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

18 ~~H. K.~~ K. Privilege for, and confidentiality of, confidential information.

19 (1) Except as provided in this Section, a company's confidential information
 20 is confidential by law and privileged, and shall not be subject to the Public Records
 21 Law, R.S. 44:1.1 et seq., shall not be subject to subpoena, and shall not be subject
 22 to discovery or admissible in evidence in any private civil action; however, the
 23 commissioner is authorized to use the confidential information in the furtherance of
 24 any regulatory or legal action brought against the company as a part of the
 25 commissioner's official duties.

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

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

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

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

24 ~~(6)~~ (5) No waiver of any applicable privilege or claim of confidentiality in
 25 the confidential information shall occur as a result of disclosure to the commissioner
 26 under this Section or as a result of sharing as authorized in Paragraph (3) of this
 27 Subsection.

28 ~~(7)~~ (6) A privilege established under the law of any state or jurisdiction that
 29 is substantially similar to the privilege established under this Subsection shall be
 30 available and enforced in any proceeding in, and in any court of, this state.

1 ~~(8)~~ (7) In this Section "regulatory agency", "law enforcement agency", and
 2 the "NAIC" include but are not limited to their employees, agents, consultants, and
 3 contractors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 * * *

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

1 SUBPART D. RESERVES FOR HEALTH INSURANCE

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

3 For accident and health insurance contracts issued on or after the operative
4 date of the valuation manual, the standard prescribed in the valuation manual is the
5 minimum standard of valuation required under R.S. 22:751(A). For health and
6 accident insurance contracts issued on or after July 1, 1948, and prior to the operative
7 date of the valuation manual, the minimum standard of valuation is the standard
8 adopted by the commissioner by regulation.

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____