AMENDED IN ASSEMBLY JULY 2, 2015

AMENDED IN ASSEMBLY JUNE 29, 2015

AMENDED IN SENATE MAY 5, 2015

AMENDED IN SENATE APRIL 14, 2015

SENATE BILL No. 696

Introduced by Senator Roth

February 27, 2015

An act to amend Sections 10159.1, 10163.2, 10489.15, 10489.2, 10489.3, 10489.5, 10489.6, 10489.7, 10489.8, 10489.9, 10489.93, and 10489.94 of, to add Sections 10489.12, 10489.96, 10489.97, 10489.98, 10489.99, and 10489.992 to, and to repeal and add Sections 10489.1, 10489.4, and 10489.95 of, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 696, as amended, Roth. Insurance: principle-based valuation.

Existing law governs the issuance of life and disability insurance and authorizes the Insurance Commissioner to regulate those insurers. Existing law requires every life and disability insurer doing business in this state to 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 regulation are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable state law. Among other things, existing law requires insurers to calculate the minimum standard for the valuation of those policies and contracts using specified mortality tables approved by the commissioner, sets forth the applicable interest rates, and establishes the reserve requirements for various types of life and disability policies and contracts.

This bill would explicitly refer to the body of laws imposing those requirements, as specified, as the Standard Valuation Law. The bill would require the commissioner and companies engaging in specified activities relating to the business of life insurance to incorporate the methodology employed by a specified manual of valuation instructions adopted by the National Association of Insurance Commissioners in making determinations relating to reserve requirements and the minimum standard of valuation for policies and contracts, as specified. The bill would require a company to establish reserves using a principle-based valuation that meets specified conditions in that manual, including quantifying the benefits, guarantees, and funding associated with the contracts, and would require the company to develop and file with the commissioner upon request, a principle-based valuation report. The bill would require a company to submit mortality, morbidity, policyholder behavior, or expense experience and other data as prescribed in the valuation manual. The bill would authorize the commissioner to impose an annual assessment on each company, based on the company's gross annual life insurance premium written by an insurer in California during the immediately preceding year, thereby imposing a tax. The bill would exempt certain information submitted by a company to the commissioner from disclosure pursuant to the California Public Records Act and would provide that it is not subject to subpoena or discovery or admissible in evidence in any private civil action. The bill would also authorize the commissioner to hire and assign department staff, and retain nondepartmental actuaries and other consultants, to assist the commissioner in implementing principle-based valuation.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The bill would provide that changes made by the bill would become operative on the date that the Insurance Commissioner certifies that adequate funding has been appropriated by the Legislature, and all other necessary resources, including, but not limited to, adequate staff, are available and sufficient to enable the commissioner to carry out *the duties required by the bill. The bill would require the commissioner to make that certification by submitting a letter to the Chairs of the Assembly Committee on Insurance and the Senate Committee on Insurance stating that the funding and other necessary resources are available and sufficient to carry out those duties. The bill would also require the commissioner to post a notice on the department's Internet Web site immediately after submitting that certification letter stating that the certification letter has been submitted and that the provisions of the bill are in effect.*

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 10159.1 of the Insurance Code is amended to read:

10159.1. (a) This article is applicable only to policies and contracts issued on or after the operative date as to such policies or contracts of this article.

(b) The term "operative date of the valuation manual" means the January 1 of the first calendar year that the valuation manual, as defined in Section 10489.1, is effective.

SEC. 2. Section 10163.2 of the Insurance Code is amended to read:

10163.2. (a) This section shall apply to all policies issued on or after the operative date of this section as defined herein. Except as provided in subdivision (g), 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 (1) the then present value of the future guaranteed benefits provided for by the policy; (2) 1 percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years; and (3) 125 percent of the nonforfeiture net level premium as hereinafter defined. Provided, however, that in applying the percentage specified in (3) no nonforfeiture net level premium shall be deemed to exceed 4 percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years. The 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.

(b) 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 1 percent per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due.

(c) 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.

(d) Except as otherwise provided in subdivision (g), 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 (1) the sum of (A) the then present value of the then future guaranteed benefits provided for by the policy and (B) the additional expense allowance, if any, over (2) the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

(e) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of (1) 1 percent of the excess, if positive, of the average amount of insurance at the beginning of each of the first 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 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 (2) 125 percent of the increase, if positive, in the nonforfeiture net level premium.

(f) The recalculated nonforfeiture net level premium shall be equal to the result obtained by dividing (1) by (2) where:

(1) It equals the sum of:

(A) The nonforfeiture net level premium applicable prior to the change times the present value of an annuity of 1 percent 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

(B) The present value of the increase in future guaranteed benefits provided for by the policy, and

(2) It equals the present value of an annuity of 1 percent per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.

(g) 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.

(h) All adjusted premiums and present values referred to in this article shall for all policies of ordinary insurance be calculated on the basis of (1) the Commissioners 1980 Standard Ordinary Mortality Table or (2) at the election of the company for any one 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:

(1) At the option of the company, 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.

(2) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by Section 10160, 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.

(3) A company 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.

(4) 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.

(5) 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.

(6) (A) For policies issued prior to the operative date of the valuation manual, any Commissioners Standard Ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, or its successor, that are approved by regulation promulgated or bulletin issued 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.

(B) 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 approves by regulation any Commissioners Standard Ordinary mortality table adopted by the National Association of Insurance Commissioners 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.

(7) (A) For policies issued prior to the operative date of the valuation manual, any Commissioners Standard Industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, or its successor, that are approved by regulation promulgated or bulletin issued 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.

(B) 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 Ordinary Mortality Table or the Commissioners 1961 Industrial Extended Term Insurance Table. If the commissioner approves by regulation any Commissioners Standard Ordinary mortality table adopted by the National Association of Insurance Commissioners 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.

(i) The nonforfeiture interest rate.

(1) 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 125 percent of the calendar year statutory valuation interest rate for the policy as defined in the Standard Valuation Law, rounded to the nearer one-fourth of 1 percent, provided, however, that the nonforfeiture interest rate shall not be less than 4 percent.

(2) 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.

(j) 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.

(k) After the effective date of this section, any company may file with the commissioner a written notice of its election to comply with the provision of this section after a specified date before January 1, 1989, which shall be the operative date of this section for such company. If a company makes no such election, the operative date of this section for such company shall be January 1, 1989.

SEC. 3. Section 10489.1 of the Insurance Code is repealed.

SEC. 4. Section 10489.1 is added to the Insurance Code, to read:

10489.1. (a) This article shall be known as the Standard Valuation Law.

(b) For the purposes of this article, the following definitions shall apply:

(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) “Company” means an entity, which (A) has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and has at least one policy in force or on claim or (B) has written, issued, or

reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts 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.

(3) "Deposit-type contract" means contracts that do not incorporate mortality or morbidity risks and as may be specified in the valuation manual.

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

(5) "NAIC" means the National Association of Insurance Commissioners.

(6) "Principle-based valuation" means a reserve valuation that uses one or more methods or one or more assumptions determined by the insurer and is required to comply with Section 10489.97, as specified in the valuation manual.

(7) "Valuation manual" means the manual of valuation instructions adopted by the NAIC as specified in this article or as subsequently amended.

(c) For the purposes of this article, the following definitions shall apply on and after the operative date of the valuation manual:

(1) "Appointed actuary" means a qualified actuary who is appointed in accordance with the valuation manual to prepare the actuarial opinion required in subdivision (b) of Section 10489.15.

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

(3) "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 those statements and who meets the requirements specified in the valuation manual.

(4) "Tail risk" means a risk that occurs either when 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.

(d) This article and Sections 10480, 10481, 10483, 10484, and 10486 shall apply (1) to the valuation of policies and contracts subject to this article issued on or after the operative date of the valuation manual and (2) as provided in Section 10489.3 as to the valuation of benefits purchased under group annuity and pure endowment contracts issued prior to that operative date.

SEC. 5. Section 10489.12 is added to the Insurance Code, to read:

10489.12. (a) For policies and contracts issued prior to the operative date of the valuation manual, both of the following shall be satisfied:

(1) 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 insurance company doing business in this state issued prior to the operative date of the valuation manual. In calculating 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 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 this article.

(2) Sections 10489.2, 10489.3, 10489.4, 10489.5, 10489.6, 10489.7, 10489.8, 10489.9, 10489.93, and 10489.95 shall apply to all appropriate policies and contracts subject to this article and issued prior to the operative date of the valuation manual. Sections 10489.96 and 10489.97 shall not apply to any of those policies and contracts.

(b) For policies and contracts issued on or after the operative date of the valuation manual, both of the following shall be satisfied:

(1) The commissioner shall annually value, or cause to be valued, the 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 this article.

(2) Sections 10489.96 and 10489.97 shall apply to all policies and contracts issued on or after the operative date of the valuation manual.

SEC. 6. Section 10489.15 of the Insurance Code is amended to read:

10489.15. (a) Each of the following shall apply prior to the operative date of the valuation manual:

(1) For an actuarial opinion, 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 regulation 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 commissioner shall define by regulation the specifics of this opinion and add any other items deemed to be necessary to its scope.

(2) (A) For an actuarial analysis of reserves and assets supporting reserves, every life insurance company, except as exempted by regulation, shall also annually include in the opinion required by paragraph (1), 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 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 regulation for a transition period for establishing any higher reserves that the qualified actuary may deem necessary in order to render the opinion required by this section.

(3) An opinion required by paragraph (2) shall be governed by the following:

(A) A memorandum, in form and substance acceptable to the commissioner as specified by regulation, shall be prepared to support each actuarial opinion.

(B) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by regulation, or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the 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 required by the commissioner.

(4) Every opinion required by this subdivision shall be governed by the following provisions:

(A) The opinion shall be submitted with the annual statement reflecting the valuation of the reserve liabilities for each year ending on or after December 31, 1992.

(B) The opinion shall apply to all business in force, including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by regulation.

(C) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on any additional standards as the commissioner may by 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 paragraph, “qualified actuary” means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in the regulation.

(F) The qualified actuary shall be liable for his or her negligence or other tortious conduct.

(G) Disciplinary action by the commissioner against the company or the qualified actuary may be defined in regulations by the commissioner.

(H) Except as provided in subparagraphs (L), (M), and (N), documents, materials, or other information in the possession or control of the Department of Insurance that are a memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection with the memorandum, shall be confidential by law and privileged, shall not be subject to the California Public Records Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.

(I) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subparagraph (H).

(J) In order to assist in the performance of the commissioner's duties, the commissioner may do any of the following:

(i) Share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subparagraph (H), with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information.

(ii) Receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or 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 information.

(iii) Enter into agreements governing sharing and use of information consistent with subparagraphs (H) to (J), inclusive.

(K) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subparagraph (J).

(L) A memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection with the memorandum, may be subject to subpoena for the purpose of defending an action seeking damages from the actuary submitting the memorandum by reason of an action required by this section or by regulations promulgated pursuant to this section.

(M) The memorandum or the 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 the other material.

(N) Once any portion of the confidential memorandum is cited by the company in its marketing efforts or is cited before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum shall no longer be confidential.

(b) Each of the following shall apply after the operative date of the valuation manual:

(1) For an actuarial opinion, every company with outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and subject to regulation by the commissioner shall annually submit the opinion of the appointed actuary as to 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 to be necessary to its scope.

(2) For an actuarial analysis of reserves and assets supporting reserves, every company with outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and subject to regulation by the commissioner, except

as exempted in the valuation manual, shall also annually include in the opinion required by paragraph (1) an opinion of the same appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified in the valuation manual, 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, adequately provide 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.

(3) Every opinion required by this subdivision shall be governed by both of the following provisions:

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

(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.

(4) Every opinion subject to this subdivision shall be governed by the following provisions:

(A) The opinion shall be in form and substance as 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 liabilities 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 paragraph (2), 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) If an opinion is 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) The qualified actuary shall be liable for his or her negligence or other tortious conduct.

(G) Disciplinary action by the commissioner against the company or the appointed actuary may be defined in regulations by the commissioner.

SEC. 7. Section 10489.2 of the Insurance Code is amended to read:

10489.2. For a computation of minimum standard, except as provided in Sections 10489.3, 10489.4, and 10489.95, the minimum standard for the valuation of policies and contracts issued prior to the effective date of the amendments to this section shall be that provided by the laws in effect immediately prior to that date. Except as otherwise provided in Sections 10489.3, 10489.4, and 10489.95, the minimum standard for the valuation of those policies and contracts shall be the commissioners reserve valuation methods defined in Sections 10489.5, 10489.6, 10489.9, and 10489.95, 3 1/2 percent per annum interest, or in the case of life insurance policies and contracts, other than certain annuity and pure endowment contracts, issued on or after January 1, 1970, 4 percent per annum interest for policies issued prior to January 1, 1980, 5 1/2 percent per annum interest may be used for single premium life insurance policies and 4 1/2 percent per annum interest for all other policies issued on or after January 1, 1980, and the following tables:

(a) For ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in those policies—the Commissioners 1941 Standard Ordinary Mortality Table for policies issued prior to the operative date of subdivision (a) of Section 10163.1, and the Commissioners 1958 Standard Ordinary Mortality Table for policies issued on or after the operative date of subdivision (a) of Section 10163.1, as amended by Chapter 940 of the Statutes of 1982, and prior to the operative date of Section 10163.2, as amended by Chapter 28 of the Statutes of 1997, provided that for any category of policies issued on female risks, all modified net premiums and present values referred to in this article may be calculated according to an age not more than six years younger than the actual age of the insured. For policies issued on or after the original operative date of Section 10163.2, as amended by Chapter 28 of the Statutes of 1997, the following shall apply:

(1) The Commissioners 1980 Standard Ordinary Mortality Table.

(2) At the election of the company for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors.

(3) Any ordinary mortality table, adopted after 1980 by the National Association of Insurance Commissioners (NAIC), or its successor, that is approved by regulation promulgated or bulletin issued by the commissioner for use in determining the minimum standard of valuation for such policies.

(b) For industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in the policies, the 1941 Standard Industrial Mortality Table for policies issued prior to the operative date of subdivision (b) of Section 10163.1, of the Standard Nonforfeiture Law for Life Insurance as amended, and for policies issued on or after the operative date the Commissioners 1961 Standard Industrial Mortality Table or any industrial mortality table adopted after 1980 by the NAIC that is approved by regulation promulgated or bulletin issued by the commissioner for use in determining the minimum standard of valuation for the policies.

(c) For individual annuity and pure endowment contracts issued prior to the compliance date of Section 10489.3, excluding any disability and accidental death benefits in the policies: 1937 Standard Annuity Mortality Table or, at the option of the company, the Annuity Mortality Table for 1949, Ultimate, or any modification of these tables approved by the commissioner. However, the minimum standard for such contracts issued from January 1, 1968, through December 31, 1968, with commencement of benefits deferred not more than one year from date of issue, may be, at the option of the company, 4 percent per annum interest, and for contracts issued from January 1, 1969, to the compliance date of Section 10489.3, with commencement of benefits deferred not more than 10 years from date of issue and with premiums payable in one sum may be, at the option of the company, 5 percent per annum interest.

(d) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in the policies: the Group Annuity Mortality Table for 1951, a modification of the table approved by the commissioner, or, at the option of the company, any of the tables or modifications of the tables specified for individual annuity and pure endowment contracts. However, the minimum standard for annuities and pure endowments purchased or to be purchased prior to the compliance date of Section 10489.3, under group annuity and pure endowment contracts with considerations received on or after January 1, 1968, through December 31, 1968, may be, at the option of the company, 4 percent per annum interest, and for annuities and pure endowments purchased or to be purchased prior to the compliance date of Section 10489.3, under group annuity and pure endowment contracts with considerations received from January 1, 1969, to the compliance date of Section 10489.3, may be at the option of the company, 5 percent per annum interest.

(e) For total and permanent disability benefits in or supplementary to ordinary policies or contracts: for policies or contracts issued on or after January 1, 1966, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates, adopted after 1980 by the NAIC that are approved by regulation promulgated or bulletin issued by the commissioner for use in determining the minimum standard of valuation for those policies; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either those tables or, at the option of the company, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(f) For accidental death benefits in or supplementary to policies issued on or after January 1, 1966: the 1959 Accidental Death Benefits Table or any accidental death benefits table, adopted after 1980 by the NAIC that is approved by regulation promulgated or bulletin issued by the commissioner for use in determining the minimum standard of valuation for those policies, for policies issued on or after January 1, 1961, and prior to January 1, 1966, either that table or, at the option of the company, the Inter-Company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined with a mortality table for calculating the reserves for life insurance policies.

(g) For group life insurance, life insurance issued on the substandard basis and other special benefits: tables approved by the commissioner.

(h) The commissioner may by bulletin withdraw approval to use tables replaced by newly adopted tables.

SEC. 8. Section 10489.3 of the Insurance Code is amended to read:

10489.3. (a) Except as provided in Section 10489.4, the minimum standard of valuation for individual annuity and pure endowment contracts issued on or after the operative date of this section and for annuities and pure endowments purchased on or after that operative date under group annuity and pure endowment contracts, shall be the commissioners reserve valuation methods defined in Sections 10489.5 and 10489.6 and the following tables and interest rates:

(1) For individual annuity and pure endowment contracts issued prior to January 1, 1980, excluding any disability and accidental death benefits in those contracts: the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the commissioner, and 6 percent per annum interest rate for all contracts with commencement of benefits deferred not more than 10 years from the date of issue and with premiums payable in one sum and 4 percent per annum interest for all other individual annuity and pure endowment contracts.

(2) For individual single premium immediate annuity contracts issued on or after January 1, 1980, excluding any disability and accidental death benefits in those contracts: the 1971 Individual Annuity Mortality Table or any individual annuity mortality table adopted after 1980 by the NAIC that is approved by regulation promulgated or bulletin issued by the commissioner for use in determining the minimum standard of valuation for these contracts,

or any modification of these tables approved by the commissioner, and 7½ percent per annum interest.

(3) For individual annuity and pure endowment contracts issued on or after January 1, 1980, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in those contracts, the 1971 Individual Annuity Mortality Table or any individual annuity mortality table, adopted after 1980 by the NAIC that is approved by regulation promulgated or bulletin issued by the commissioner for use in determining the minimum standard of valuation for those contracts, or any modification of these tables approved by the commissioner, and 5½ percent per annum interest for single premium deferred annuity and pure endowment contracts and 4½ percent per annum interest for all other individual annuity and pure endowment contracts.

(4) For annuities and pure endowments purchased prior to January 1, 1980, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under those contracts: the 1971 Group Annuity Mortality Table or any modification of this table approved by the commissioner, and 6 percent per annum interest.

(5) For annuities and pure endowments purchased on or after January 1, 1980, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under those contracts: the 1971 Group Annuity Mortality Table, or any group annuity mortality table adopted after 1980 by the NAIC that is approved by regulation promulgated or bulletin issued by the commissioner for use in determining the minimum standard of valuation for annuities and pure endowments, or any modification of these tables approved by the commissioner, and 7½ percent interest.

(6) All individual annuity and pure endowment contracts entered into prior to January 1, 1980, and all annuities and pure endowments purchased prior to January 1, 1980, under group annuity and pure endowment contracts shall remain subject to the provisions of Article 3A (commencing with Section 10489.1) as it existed prior to January 1, 1980.

(b) The commissioner may, by bulletin, withdraw approval to use tables replaced by newly adopted tables.

SEC. 9. Section 10489.4 of the Insurance Code is repealed.

SEC. 10. Section 10489.4 is added to the Insurance Code, to read:

10489.4. (a) The interest rates used in determining the minimum standard for the valuation of the following shall be the calendar year statutory valuation interest rates as defined in this section:

(1) Life insurance policies issued in a particular calendar year, on or after the operative date of Section 10163.2 as amended by Section 28 of the Statutes of 1997.

(2) Individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1982.

(3) Annuities and pure endowments purchased in a particular calendar year on or after January 1, 1982, under group annuity and pure endowment contracts.

(4) The net increase, if any, in a particular calendar year after January 1, 1982, in amounts held under guaranteed interest contracts.

(b) (1) The calendar year statutory valuation interest rates, expressed in the following formulas as "I," shall be determined as follows and the results rounded to the nearest one-fourth of 1 percent:

(A) For life insurance:

$$I = .03 + W(R_1 - .03) + {}^{W}\!/_{2}\,(R_2 - .09)$$

Where

R_1 is the lesser of R and .09,

R_2 is the greater of R and .09,

R is the reference interest rate defined in this section,

W is the weighting factor defined in this section.

(B) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options:

$$I = .03 + W(R - .03)$$

Where

R is the reference interest rate defined in this section, W is the weighting factor defined in this section.

(C) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in subparagraph (B), the formula for life insurance stated in subparagraph (A) shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of 10 years and the formula for single premium immediate annuities stated in subparagraph (B) shall apply to annuities and guaranteed interest contracts with guarantee duration of 10 years or less.

(D) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in subparagraph (B) shall apply.

(E) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in subparagraph (B) shall apply.

(2) However, if the calendar year statutory valuation interest rate for a life insurance policy issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of 1 percent, the calendar year statutory valuation interest rate for the life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980 (using the reference interest rate defined in 1979) and shall be determined for each subsequent calendar year regardless of when Section 10163.2, as amended, becomes operative.

(c) The weighting factors referred to in the formulas stated above are given in the following tables:

(1) Weighting Factors for Life Insurance:

Guarantee Duration (Years)	Weighting Factors
10 or less	.50
More than 10, but not more than 20	.45

More than 20	.35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy.

(2) Weighting factors for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options shall be .80.

(3) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in paragraph (2), shall be as specified in subparagraphs (A), (B), and (C), according to the rules and definitions in subparagraphs (D), (E), and (F):

(A) For annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration (Years)	Weighting Factor for Plan Type		
	A	B	C
5 or less:	.80	.60	.50
More than 5, but not more than 10:	.75	.60	.50
More than 10, but not more than 20:	.65	.50	.45
More than 20:	.45	.35	.35

(B) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in subparagraph (A) increased by:

Plan Type		
A	B	C
.15	.25	.05

(C) For annuities and guaranteed interest contracts valued on an issue year basis, other than those with no cash settlement options, that do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis that do not guarantee interest rates on considerations received more than 12 months beyond the valuation date, the factors shown in subparagraph (A) or derived in subparagraph (B) increased by:

Plan Type		
A	B	C
.05	.05	.05

(D) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of 20 years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guaranteed duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(E) Plan type as used in the above tables is defined as follows:

(i) For Plan Type A: At any time a policyholder may withdraw funds only (I) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, (II) without an adjustment but installments over five years or more, (III) as an immediate life annuity, or (IV) no withdrawal permitted.

(ii) For Plan Type B: Before expiration of the interest rate guarantee, a policyholder may withdraw funds only (I) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, (II) without an adjustment but in installments over five years or more, or (III) no withdrawal permitted. At the end of the interest rate guarantee, funds may be withdrawn without an adjustment in a single sum or installments over less than five years.

(iii) For Plan Type C: Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either (I) without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or (II) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(F) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options shall be valued on an issue year basis. As used in this section, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(d) The reference interest rate referred to in subdivision (b) shall be defined as follows:

(1) For life insurance, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year preceding the year of issue, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(2) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or year of purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(3) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subdivision (b), with guarantee duration in excess of 10 years, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(4) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subparagraph (B) of

paragraph (1) of subdivision (c), with guarantee duration of 10 years or less, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(5) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(6) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in subparagraph (B) of paragraph (1) of subdivision (c), the average over a period of 12 months, ending on June 30 of the calendar year of the change in the fund, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(e) If the monthly average of the composite yield on seasoned corporate bonds is no longer published by Moody's Investors Service, Inc., or in the event that the NAIC determines that the monthly average of the composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc., is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate adopted by the NAIC and approved by regulation promulgated by the commissioner may be substituted.

(f) This section shall apply to all certificates and contracts issued by a fraternal benefit society.

SEC. 11. Section 10489.5 of the Insurance Code is amended to read:

10489.5. (a) Except as otherwise provided in Sections 10489.6, 10489.9, and 10489.95, 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 the future guaranteed benefits provided for by those policies, over the then present value of any future modified net premiums therefor. The modified net premiums for a policy shall be the uniform percentage of the respective contract premiums for the benefits such that the present value, at the date of issue of the policy, of all modified net premiums shall be equal to the sum of the then present value of the benefits provided for by the policy and the excess of paragraph (1) over paragraph (2), as follows:

(1) A net level annual premium equal to the present value, at the date of issue of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the 19-year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of the policy.

(2) A net one-year term premium for the benefits provided for in the first policy year.

(b) For a 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 the excess and which provides an endowment benefit or a cash surrender value or a combination in an amount greater than the 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 the excess premium shall, except as otherwise provided in Section 10489.9, be the greater of the reserve as of the policy anniversary calculated as described in subdivision (a) and the reserve as of the policy anniversary calculated as described in subdivision (a), but with (1) the value defined in paragraph (1) of subdivision (a) being reduced by 15 percent of the amount of the excess first year premium, (2) 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, (3) the policy being assumed to mature on that date as an endowment, and (4) the cash surrender value provided on that date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in Sections 10489.2 and 10489.4 shall be used.

(c) Reserves according to the commissioners reserve valuation method shall be calculated by a method consistent with subdivisions (a) and (b) for paragraphs (1) to (4), inclusive. However, any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums.

(1) Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums.

(2) 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.

(3) Disability and accidental death benefits in all policies and contracts.

(4) All other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts.

SEC. 12. Section 10489.6 of the Insurance Code is amended to read:

10489.6. (a) This section shall apply to all annuity and pure endowment contracts other than 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.

(b) Reserves according to the commissioners annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in the contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by the contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of the contract, that become payable prior to the end of the respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in the contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of the contracts to determine nonforfeiture values.

SEC. 13. Section 10489.7 of the Insurance Code is amended to read:

10489.7. (a) A company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, shall not be less than the aggregate reserves calculated in accordance with the methods set forth in Sections 10489.5, 10489.6, 10489.9, and 10489.93 and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for the policies.

(b) The aggregate reserves for all policies, contracts, and benefits shall not be less than the aggregate reserves determined by the appointed actuary to be necessary to render the opinion required by Section 10489.15.

SEC. 14. Section 10489.8 of the Insurance Code is amended to read:

10489.8. (a) Reserves for any category of policies, contracts, or benefits established by the commissioner may be calculated, at the option of the company, according to any standards that produce greater aggregate reserves for the category than those calculated according to the minimum standard provided in this article, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be greater than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided in the policies or contracts.

(b) A company, which adopts at any time a standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided under this article, may adopt a lower standard of valuation with the approval of the commissioner, but not lower than the minimum provided in this article. However, for the purposes of this section, the holding of additional reserves previously determined by a qualified actuary to be necessary to render the opinion required by Section 10489.15

shall not be deemed to be the adoption of a higher standard of valuation.

SEC. 15. Section 10489.9 of the Insurance Code is amended to read:

10489.9. (a) If in any contract year the gross premium charged by any life insurer on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in Sections 10489.2, 10489.3, and 10489.4.

(b) For a life insurance policy issued on or after January 1, 1986, for which the gross 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 foregoing provisions of this section shall be applied as if the method actually used in calculating the reserve for such policy were the method described in Section 10489.5, ignoring the second paragraph of Section 10489.5. The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with Section 10489.5, including the second paragraph of that section, and the minimum reserve calculated in accordance with this section.

SEC. 16. Section 10489.93 of the Insurance Code is amended to read:

10489.93. In the case of a plan of life insurance that provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of a plan of life insurance or annuity that is of a nature that the minimum reserves cannot be determined by the methods described in Sections 10489.5, 10489.6, and 10489.9, the reserves that are held under the plan shall:

(a) Be appropriate in relation to the benefits and the pattern of premiums for that plan; and

(b) Be computed by a method that is consistent with the principles of this Standard Valuation Law, as determined by regulations promulgated by the commissioner.

SEC. 17. Section 10489.94 of the Insurance Code is amended to read:

10489.94. (a) The commissioner may issue a bulletin to provide tables of select mortality factors and rules for their use, rules concerning a minimum standard for the valuation of plans with nonlevel premiums of benefits, and rules concerning a minimum standard for the valuation of plans with secondary guarantees. The bulletin authorized by this subdivision shall have the same force and effect, and may be enforced by the commissioner to the same extent and degree, as regulations issued by the commissioner. The commissioner may also adopt regulations to implement this section.

(b) It is the intent of the Legislature that the bulletin described in subdivision (a) and the superseding regulations shall contain the provisions of the National Association of Insurance Commissioners Valuation of Life Insurance Policies Model Regulation Number 830.

SEC. 18. Section 10489.95 of the Insurance Code is repealed.

SEC. 19. Section 10489.95 is added to the Insurance Code, to read:

10489.95. 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 under subdivision (b) of Section 10489.12. For disability and accident and health insurance contracts issued prior to the operative date of the valuation manual, the minimum standard of valuation is the standard adopted by the commissioner by regulation.

SEC. 20. Section 10489.96 is added to the Insurance Code, to read:

10489.96. (a) For policies 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 under subdivision (b) of Section 10489.12, except as provided under subdivision (e) or (g).

(b) The operative date of the valuation manual is January 1 of the first calendar year following the first July 1 as of which all the following have occurred:

(1) The valuation manual has been adopted by the NAIC by an affirmative vote of at least 42 members, or three-fourths of the members voting, whichever is greater.

(2) 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 75 percent of the direct premiums written as reported in the following annual statements submitted for 2008: life, accident, and health annual statements, health annual statements, or fraternal annual statements.

(3) The Standard Valuation Law, as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by at least 42 of the following 55 jurisdictions: The 50 states of the United States, American Samoa, the United States Virgin Islands, the District of Columbia, Guam, and Puerto Rico.

(c) 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 of the members of the NAIC voting, but not less than a majority of the total membership.

(B) Members of the NAIC representing jurisdictions totaling greater than 75 percent of the direct premiums written as reported in the following annual statements most recently available prior to the vote in subparagraph (A): life, accident, and health annual statement, health annual statements, or fraternal annual statements.

(2) The commissioner has issued an order adopting the valuation manual with the changes. The commissioner shall issue the order only if he or she finds that the conditions set forth in paragraph (1) have been satisfied.

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

(1) Minimum valuation standards for and definitions of the policies or contracts subject to subdivision (b) of Section 10489.12. Those minimum valuation standards shall be:

(A) The commissioners reserve valuation method for life insurance contracts, other than annuity contracts, subject to subdivision (b) of Section 10489.12.

(B) The commissioners annuity reserve valuation method for annuity contracts subject to subdivision (b) of Section 10489.12.

(C) Minimum reserves for all other policies or contracts subject to subdivision (b) of Section 10489.12.

(2) Which policies or contracts or types of policies or contracts are subject to the requirements of a principle-based valuation in subdivision (a) of Section 10489.97 and the minimum valuation standards consistent with those requirements.

(3) For policies and contracts subject to a principle-based valuation under Section 10489.97:

(A) Requirements for the format of reports to the commissioner under paragraph (3) of subdivision (b) of Section 10489.97, which shall include information necessary to determine if the valuation is appropriate and in compliance with this article.

(B) Assumptions for risks over which the company does not have significant control or influence.

(C) Procedures for corporate governance and oversight of the actuarial function, and a process for appropriate waiver or modification of those procedures.

(4) For policies not subject to a principle-based valuation under Section 10489.97, the minimum valuation standard, which shall either:

(A) Be consistent with the minimum standard of valuation prior to the operative date of the valuation manual.

(B) 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.

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

(6) The data and form of the data required under Section 10489.98, with whom the data is required to be submitted, and may specify other requirements including data analyses and reporting of analyses.

(e) 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, or conflicts with, this code, then the company shall, with respect to those requirements, comply with the minimum valuation standards prescribed by the code or by the commissioner by regulation or bulletin.

(f) The commissioner may engage a qualified actuary, at the expense of the company, to perform an actuarial examination of the company and opine on the appropriateness of any reserve assumption or method used by the company, or to review and opine on a company's compliance with any requirement set forth in this article. The commissioner may rely upon the opinion, regarding the provisions contained within this article, of a qualified actuary engaged by the commissioner of another state, district, or territory of the United States. As used in this subdivision, the term "engage" includes employment and contracting.

(g) The commissioner may require a company to change any assumption or method that in the opinion of the commissioner is necessary in order to comply with the requirements of the valuation manual or this article, and the company shall adjust the reserves as required by the commissioner. The commissioner may take other disciplinary action as permitted pursuant to all other applicable law.

SEC. 21. Section 10489.97 is added to the Insurance Code, to read:

10489.97. (a) A company shall establish reserves using a principle-based valuation that meets the following conditions for policies or contracts as specified in the valuation manual:

(1) Quantify the benefits, 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, reflects conditions appropriately adverse to quantify the tail risk.

(2) Incorporate assumptions, risk analysis methods, and 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.

(3) Incorporate assumptions that are derived in one of the following manners:

(A) The assumption is prescribed in the valuation manual.

(B) For assumptions that are not prescribed, the assumptions shall:

(i) Be established utilizing the company's available experience, to the extent it is relevant and statistically credible.

(ii) To the extent that company data is not available, relevant, or statistically credible, be established utilizing other relevant, statistically credible experience.

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

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

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

(2) Provide to the commissioner and the board of directors of the company 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 such 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.

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

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

SEC. 22. Section 10489.98 is added to the Insurance Code, to read:

10489.98. A company shall submit mortality, morbidity, policyholder behavior, or expense experience and other data as prescribed in the valuation manual.

SEC. 23. Section 10489.99 is added to the Insurance Code, to read:

10489.99. (a) For purposes of this section, "confidential information" shall mean:

(1) A memorandum in support of an opinion submitted under Section 10489.15 and any other documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or 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 thereof, created, produced, or obtained by or disclosed to the commissioner or any other person in the course of an examination made under subdivision (f) of Section 10489.96. However, if an examination report or other material prepared in connection with an examination made under Article 4 (commencing with Section 729) of Chapter 1 of Part 2 of Division 1 is not held as private and confidential information under that article, an examination report or other material prepared in connection with an examination made under subdivision (f) of Section 10489.96 shall not be "confidential information" to the same extent as if the examination report or other material had been prepared under Article 4.

(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 paragraph (2) of subdivision (b) of Section 10489.97 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 thereof, created, produced, or obtained by or disclosed to the commissioner or any other person in connection with those reports, documents, materials, and other information.

(4) Any principle-based valuation report developed under paragraph (3) of subdivision (b) of Section 10489.97 and any other

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

(5) All of the following:

(A) Any documents, materials, data, and other information submitted by a company under Section 10489.98, to be known collectively, as "experience data."

(B) Experience data plus any other documents, materials, data, and other information, including, but not limited to, all working papers, and copies thereof, created or produced in connection with the experience data, in each case that includes any potentially company-identifying or personally identifiable information, that is provided to or obtained by the commissioner, to be known, collectively, as "experience materials."

(C) Any other documents, materials, data, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the commissioner or any other person in connection with the experience materials.

(b) (1) Except as provided in this section, a company's confidential information is confidential by law and privileged, it shall not be subject to the California Public Records Act, and shall not be subject to subpoena or discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the confidential information in a regulatory or legal action brought against the company as a part of the commissioner's official duties.

(2) The commissioner, and any person who received confidential information while acting under the authority of the commissioner, shall not be permitted or required to testify in a private civil action concerning any confidential information.

(3) In order to assist in the performance of the commissioner's duties, the commissioner may share confidential information with the following recipients, provided that 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:

(A) Other state, federal, and international regulatory agencies and with the NAIC and its affiliates and subsidiaries.

(B) In the case of confidential information specified in paragraphs (1) and (4) of subdivision (a) of Section 10489.99 only, with 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.

(4) The commissioner may receive documents, materials, data, and other information, including otherwise confidential and privileged documents, materials, data, or 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 document, material, 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.

(5) The commissioner may enter into agreements governing sharing and use of information consistent with this subdivision.

(6) A waiver of any applicable privilege or claim of confidentiality in the information shall not occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in paragraph (3).

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

(8) For purposes of this section, “regulatory agency,” “law enforcement agency,” and the “NAIC” include, but are not limited to, their employees, agents, consultants, and contractors.

(c) Notwithstanding subdivision (b), any confidential information specified in paragraphs (1) and (4) of subdivision (a):

(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 10489.15 or principle-based valuation report developed under paragraph (3) of subdivision (b) of Section 10489.97 by reason of an action required by this article or by regulations promulgated pursuant to this article.

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

(3) Once any portion of a memorandum in support of an opinion submitted under Section 10489.15 or a principle-based valuation report developed under paragraph (3) of subdivision (b) of Section 10489.97 is cited by the company in its marketing or 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, all portions of the memorandum or report shall no longer be confidential.

SEC. 24. Section 10489.992 is added to the Insurance Code, to read:

10489.992. (a) (1) The commissioner may hire and assign department staff, and retain nondepartment actuaries and other consultants, to assist the commissioner with preparing to implement and implementing, directly or indirectly, principle-based valuation.

(2) The commissioner may appoint a person to serve as an expert in preparing to implement and implementing, directly or indirectly, principle-based valuation. That person may be an employee of the department exempt from the state civil service system within the meaning of Section 4 of Article VII of the California Constitution. The person's salary or compensation shall be fixed by the commissioner and effective and payable without approval of the Department of Human Resources, pursuant to Section 19825 of the Government Code.

(b) (1) Notwithstanding any other law, the commissioner may annually assess all companies that are subject to this article to defray costs the department incurs preparing to implement and implementing, directly or indirectly, principle-based valuation, including, but not limited to, department salaries and overhead, and actuary and consultant fees and expenses.

(2) The commissioner shall annually set an "aggregate assessment amount" and an assessment amount for each tier listed in paragraph (4). The aggregate assessment amount shall be the amount necessary to provide sufficient moneys to carry out the projected workload to implement, directly or indirectly, principle-based valuation. The annual aggregate assessment amount shall be no less than one million dollars ($1,000,000).

(3) At least 90 days before finalizing the annual aggregate assessment amount and assessment amount for the tiers listed in

paragraph (4), the commissioner shall provide notice of the commissioner's preliminary determination of those amounts. The notice shall explain how the commissioner derived the amounts and provide no less than 45 days for interested parties to provide comments.

(4) Not less than 45 days after the due date for comments specified in paragraph (3), the commissioner shall by bulletin establish the annual aggregate assessment amount according to the company's annual premium based on the below tiers. For purposes of this section, "annual premium" shall mean the gross annual life insurance premium written by a company in California during the immediately preceding year as reported in its annual statutory financial statement. The commissioner may adjust the initial assessment amount for each tier to ensure a sufficient annual aggregate assessment amount as defined in paragraph (2) if he or she adopts a change to the valuation manual pursuant to paragraph (2) of subdivision (c) of Section 10489.96 that warrants the adjustment, and provides an accounting explaining the need for the adjustment.

Annual Premium	Initial Annual Assessment Per Company
$500,000,001 +	$75,000
$400,000,001 - $500,000,000	$50,000
$300,000,001 - $400,000,000	$40,000
$200,000,001 - $300,000,000	$30,000
$150,000,001 - $200,000,000	$20,000
$100,000,001 - $150,000,000	$10,000
$50,000,001 - $100,000,000	$5,000

(5) All examinations and analyses of reserves and principle-based valuation methodologies performed under Section 730 may be at the expense of the company, organization, or person examined, pursuant to Section 736.

(c) Before retaining an independent actuary or consultant under paragraph (1) of subdivision (a), the commissioner shall require a written declaration by the actuary or consultant that:

(1) The actuary shall not disclose to another party, other than the department, and shall protect from unauthorized use, any confidential information, as defined in Section 10489.99, obtained

in the course of his or her work for the commissioner, unless authorized to do so by the commissioner or required by law.

(2) The actuary or consultant shall not disclose to another party and shall protect from unauthorized use, all confidential information obtained from the department in the course of his or her work for the commissioner.

(d) Before retaining an independent actuary or consultant under paragraph (1) of subdivision (a), the commissioner shall require a written declaration by the actuary or consultant that:

(1) The actuary or consultant will not perform professional services involving an actual or potential conflict of interest unless all of the following are satisfied:

(A) The actuary's or consultant's ability to perform the services fairly is unimpaired.

(B) There has been disclosure of the conflict to all present, or known prospective, clients or employers of the actuary or consultant whose interests would be affected by the conflict.

(C) All present, or known prospective, clients or employers of the actuary or consultant have expressly agreed to the performance of the services by the actuary or consultant.

(2) The actuary or actuarial firm with which the actuary is affiliated was not involved in developing the reserves or principle-based valuation methodology under consideration by the actuary.

(3) The actuary or consultant has disclosed any financial interest in the companies whose reserves or principle-based valuation methodologies may be affected by the actuary's or consultant's services.

(e) The commissioner may develop and amend regulations to implement or modify subdivisions (c) and (d). The initial adoption of the regulations shall be deemed to be an emergency and necessary in order to address a situation calling for immediate action to avoid serious harm to the public peace, health, safety, or general welfare. Any emergency regulation adopted or amended by the commissioner pursuant to this section shall be adopted or amended in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and shall remain in effect for 180 days.

SEC. 25. The Legislature finds and declares that ~~Section 6 of~~ this act, which amends Section 10489.15 of the Insurance Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect proprietary information, it is necessary to enact legislation to ensure that information provided pursuant to the Standard Valuation Law provided pursuant to this act is kept confidential.

SEC. 26. This act shall become operative on the date that the Insurance Commissioner certifies that adequate funding has been appropriated by the Legislature, and that all other necessary resources, including, but not limited to, adequate staff, are available and sufficient to enable the commissioner to carry out the duties required pursuant to Section 10489.992, and all other duties imposed on the commissioner pursuant to the act. The commissioner shall make that certification by submitting a letter to the Chairs of the Assembly Committee on Insurance and the Senate Committee on Insurance stating that the funding and other necessary resources are available and sufficient to carry out those duties. The commissioner shall post a notice on the department's Internet Web site immediately after submitting that certification letter stating that the certification letter has been submitted and that the provisions of the act are in effect.

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