

7168

I N S E N A T E

April 5, 2016

Introduced by Sen. SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to establishing the interstate insurance product regulation compact (Part A); to amend the insurance law, in relation to valuation of life insurance policies and contracts (Part B); to amend the insurance law, in relation to insurance company corporate structure (Part C); to amend the insurance law, in relation to the replacement of individual life insurance policies or annuity contracts (Part D); and to amend the insurance law, in relation to reports required by insurers (Part E)

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. This act shall be known and may be cited as the "insurance
2 uniformity and accreditation act".
3 S 2. Legislative findings and intent. The regulatory framework for
4 providing oversight of the insurance industry in the United States is
5 largely unique in comparison to the other segments of the financial
6 service industry in this nation and most insurers and the rest of the
7 financial services industry in foreign jurisdictions. Insurers in the
8 United States are governed under a sometimes complex regulatory struc-
9 ture overseen by the states. This state-run insurance regulatory system
10 has essentially functioned well over recent history in ensuring that:
11 (1) the insurance industry remains solvent; (2) consumers of insurance
12 products are appropriately served with affordable, available insurance
13 products; and (3) the oversight of the insurance industry, particularly
14 the domestic industry in each state, is balanced enough to provide the
15 industry with the ability to grow their businesses and their market in
16 the state. The National Association of Insurance Commissioners (NAIC)
17 has been in existence since 1871 and is the U.S. standard-setting and
18 regulatory support organization created and governed by the chief insur-
19 ance regulators from the fifty states, the District of Columbia and five
20 U.S. territories. Through the NAIC, state insurance regulators establish
21 standards and best practices, conduct peer review, and coordinate regu-
22 latory oversight. The NAIC also functions in close collaboration with

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 state legislators who represent and support the National Conference of
2 Insurance Legislators (NCOIL). The state-run insurance marketplace has
3 benefited from the work of the NAIC, which establishes uniform state
4 laws, regulations and guidance. This framework provides the basis for an
5 insurance regulatory environment that is largely consistent among the
6 states, which supports the goals of a state-run regulatory system. It
7 provides states with a uniform structure for overseeing the state-run
8 insurance system, which benefits the entire insurance marketplace. In
9 2013, the Federal Insurance Office of the United States Treasury issued
10 a mandated study entitled "How to Modernize and Improve the System of
11 Insurance Regulation in the United States." That study recognized the
12 efforts of the NAIC by concluding support for the implementation of
13 several uniform state laws and regulations established by the NAIC,
14 including a recommendation that all non-participating states should join
15 the Interstate Insurance Product Regulation Compact (IIPRC). In 1989-90,
16 the NAIC adopted certain financial regulation standards that form the
17 basis for a formal accreditation program that relies on state certifi-
18 cation by other regulators (i.e., peer review) and that requires risk-
19 focused financial surveillance, including on-site examinations, as well
20 as implementation of certain solvency-related model laws, rules and
21 guidelines. The New York Department of Financial Services is one of the
22 jurisdictions currently accredited by this NAIC program.

23 The legislature therefore finds that it is in the interest of this
24 state to implement into New York law several provisions of NAIC Model
25 Laws or Regulations, some of which are or may be necessary for New York
26 to maintain their NAIC accreditation, and others of which serve to
27 further the public policy interest for insurance regulation in the State
28 of New York.

29 S 3. This act enacts into law major components of legislation which
30 are necessary to implement the "insurance uniformity and accreditation
31 act". Each component is wholly contained within a Part identified as
32 Parts A through E. The effective date for each particular provision
33 contained within such Part is set forth in the last section of such
34 Part. Any provision in any section contained within a Part, including
35 the effective date of the Part, which makes a reference to section "of
36 this act", when used in connection with that particular component, shall
37 be deemed to mean and refer to the corresponding section of the Part in
38 which it is found. Section five of this act sets forth the general
39 effective date of this act.

40

PART A

41 Section 1. Legislative findings and intent. An interstate compact is a
42 contract between the states that allows them to cooperate on multi-state
43 or national issues while still retaining state control. Interstate
44 compacts are specifically mentioned in the U.S. Constitution and have
45 been historically used to address border disputes and water rights. The
46 use of interstate compacts has expanded significantly in recent decades
47 to cover tax, motor vehicle licensing, environmental, emergency manage-
48 ment and other issues. Over 200 interstate compacts currently exist, and
49 on average every state belongs to at least 25 compacts. The Interstate
50 Insurance Product Regulation Compact, which to date has been adopted by
51 44 member states, representing approximately two-thirds of the premium
52 volume in the nation, created the Interstate Insurance Product Regu-
53 lation Commission (IIPRC). The IIPRC provides the States with a vehicle
54 to (1) develop uniform national product standards that will afford a

1 high level of protection to consumers of life insurance, annuities,
2 disability income and long-term care insurance products; (2) establish a
3 central point of filing for these insurance products; and (3) thoroughly
4 review product filings and make regulatory decisions according to the
5 uniform product standards. The IIPRC is an important modernization
6 initiative that benefits state insurance regulators, consumers, and the
7 insurance industry. The Compact enhances the efficiency and effective-
8 ness of the way insurance products are filed, reviewed, and approved
9 allowing insurance customers to have faster access to competitive insur-
10 ance products in an ever-changing global marketplace. The Compact
11 promotes uniformity through application of uniform product standards
12 embedded with strong consumer protections. The state of New York seeks
13 to join with other states as a member of the Interstate Insurance Prod-
14 uct Regulation Compact and Commission.

15 S 2. The insurance law is amended by adding a new article 82 to read
16 as follows:

17 ARTICLE 82

18 INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

19 SECTION 8201. SHORT TITLE.
20 8202. PURPOSE.
21 8203. DEFINITIONS.
22 8204. ESTABLISHMENT OF THE COMMISSION AND VENUE.
23 8205. POWERS OF THE COMMISSION.
24 8206. ORGANIZATION OF THE COMMISSION.
25 8207. MEETINGS AND ACTS OF THE COMMISSION.
26 8208. RULES AND OPERATING PROCEDURES; RULE MAKING FUNCTIONS OF
27 THE COMMISSION AND OPTING OUT OF UNIFORM STANDARDS.
28 8209. COMMISSION RECORDS AND ENFORCEMENT.
29 8210. DISPUTE RESOLUTION.
30 8211. PRODUCT FILING AND APPROVAL.
31 8212. REVIEW OF COMMISSION DECISIONS REGARDING FILINGS.
32 8213. FINANCE.
33 8214. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT.
34 8215. WITHDRAWAL, DEFAULT AND TERMINATION.
35 8216. SEVERABILITY AND CONSTRUCTION.
36 8217. BINDING EFFECT OF COMPACT AND OTHER LAWS.

37 S 8201. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS
38 THE "INTERSTATE INSURANCE PRODUCT REGULATION COMPACT".

39 S 8202. PURPOSE. THE PURPOSES OF THIS COMPACT ARE, THROUGH MEANS OF
40 JOINT AND COOPERATIVE ACTION AMONG THE COMPACTING STATES:

41 (A) TO PROMOTE AND PROTECT THE INTEREST OF CONSUMERS OF INDIVIDUAL AND
42 GROUP ANNUITY, LIFE INSURANCE, DISABILITY INCOME AND LONG-TERM CARE
43 INSURANCE PRODUCTS;

44 (B) TO DEVELOP UNIFORM STANDARDS FOR PRODUCTS COVERED UNDER THE
45 COMPACT;

46 (C) TO ESTABLISH A CENTRAL CLEARINGHOUSE TO RECEIVE AND PROVIDE PROMPT
47 REVIEW OF PRODUCTS COVERED UNDER THE COMPACT AND, IN CERTAIN CASES,
48 ADVERTISEMENTS RELATED THERETO, SUBMITTED BY INSURERS AUTHORIZED TO DO
49 BUSINESS IN ONE OR MORE COMPACTING STATES;

50 (D) TO GIVE APPROPRIATE REGULATORY APPROVAL TO THOSE PRODUCT FILINGS
51 AND ADVERTISEMENTS SATISFYING THE APPLICABLE UNIFORM STANDARD;

52 (E) TO IMPROVE COORDINATION OF REGULATORY RESOURCES AND EXPERTISE
53 BETWEEN STATE INSURANCE DEPARTMENTS REGARDING THE SETTING OF UNIFORM
54 STANDARDS AND REVIEW OF INSURANCE PRODUCTS COVERED UNDER THE COMPACT;

1 (F) TO CREATE THE INTERSTATE INSURANCE PRODUCT REGULATION COMMISSION;
2 AND

3 (G) TO PERFORM SUCH OTHER RELATED FUNCTIONS AS MAY BE CONSISTENT WITH
4 THE STATE REGULATION OF THE BUSINESS OF INSURANCE.

5 S 8203. DEFINITIONS. AS USED IN THIS ARTICLE:

6 (A) "ADVERTISEMENT" MEANS ANY MATERIAL DESIGNED TO CREATE PUBLIC
7 INTEREST IN A PRODUCT, OR INDUCE THE PUBLIC TO PURCHASE, INCREASE, MODI-
8 FY, REINSTATE, BORROW ON, SURRENDER, REPLACE OR RETAIN A POLICY, AS MORE
9 SPECIFICALLY DEFINED IN THE RULES AND OPERATING PROCEDURES OF THE
10 COMMISSION.

11 (B) "BY-LAWS" MEAN THOSE BY-LAWS ESTABLISHED BY THE COMMISSION FOR ITS
12 GOVERNANCE OR FOR DIRECTING OR CONTROLLING THE COMMISSION'S ACTIONS OR
13 CONDUCT.

14 (C) "COMPACTING STATE" MEANS ANY STATE WHICH HAS ENACTED THIS COMPACT
15 LEGISLATION AND WHICH HAS NOT WITHDRAWN OR BEEN TERMINATED PURSUANT TO
16 SECTION EIGHT THOUSAND TWO HUNDRED FIFTEEN OF THIS ARTICLE.

17 (D) "COMMISSION" MEANS THE "INTERSTATE INSURANCE PRODUCT REGULATION
18 COMMISSION" ESTABLISHED BY THE COMPACT.

19 (E) "COMMISSIONER" MEANS THE CHIEF INSURANCE REGULATORY OFFICIAL OF A
20 STATE INCLUDING, BUT NOT LIMITED TO COMMISSIONER, SUPERINTENDENT, DIREC-
21 TOR OR ADMINISTRATOR.

22 (F) "DOMICILIARY STATE" MEANS THE STATE IN WHICH AN INSURER IS INCOR-
23 PORATED OR ORGANIZED OR, IN THE CASE OF AN ALIEN INSURER, ITS STATE OF
24 ENTRY.

25 (G) "INSURER" MEANS ANY ENTITY LICENSED BY A STATE TO ISSUE CONTRACTS
26 OF INSURANCE FOR ANY OF THE LINES OF INSURANCE COVERED BY THIS ARTICLE.

27 (H) "MEMBER" MEANS THE PERSON, OR HIS OR HER DESIGNEE, CHOSEN BY A
28 COMPACTING STATE FOR SERVICE ON THE COMMISSION.

29 (I) "NON-COMPACTING STATE" MEANS ANY STATE WHICH IS NOT AT THE TIME A
30 COMPACTING STATE.

31 (J) "OPERATING PROCEDURES" MEAN PROCEDURES PROMULGATED BY THE COMMIS-
32 SION IMPLEMENTING A RULE, UNIFORM STANDARD OR A PROVISION OF THIS
33 COMPACT.

34 (K) "PRODUCT" MEANS THE FORM OF THE CONTRACT, POLICY APPLICATION,
35 ENDORSEMENTS, CERTIFICATE FORMS, EVIDENCE OF COVERAGE FORMS AND RELATED
36 FORMS FOR AN INDIVIDUAL OR GROUP ANNUITY, LIFE INSURANCE, DISABILITY
37 INCOME OR LONG-TERM CARE INSURANCE PRODUCT, WHICH AN INSURER IS AUTHOR-
38 IZED TO ISSUE.

39 (L) "RULE" MEANS A STATEMENT OF GENERAL OR PARTICULAR APPLICABILITY
40 AND FUTURE EFFECT PROMULGATED BY THE COMMISSION, INCLUDING A UNIFORM
41 STANDARD DEVELOPED PURSUANT TO SECTION EIGHT THOUSAND TWO HUNDRED EIGHT
42 OF THIS ARTICLE, DESIGNED TO IMPLEMENT, INTERPRET, OR PRESCRIBE LAW OR
43 POLICY OR DESCRIBING THE ORGANIZATION, PROCEDURE, OR PRACTICE REQUIRE-
44 MENTS OF THE COMMISSION, WHICH SHALL HAVE THE FORCE AND EFFECT OF LAW IN
45 THE COMPACTING STATES.

46 (M) "STATE" MEANS ANY STATE, DISTRICT OR TERRITORY OF THE UNITED
47 STATES OF AMERICA.

48 (N) "THIRD-PARTY FILER" MEANS AN ENTITY THAT SUBMITS A PRODUCT FILING
49 TO THE COMMISSION ON BEHALF OF AN INSURER.

50 (O) "UNIFORM STANDARD" MEANS A STANDARD ADOPTED BY THE COMMISSION FOR
51 A PRODUCT LINE, PURSUANT TO SECTION EIGHT THOUSAND TWO HUNDRED EIGHT OF
52 THIS ARTICLE AND SHALL INCLUDE ALL OF THE PRODUCT REQUIREMENTS IN AGGRE-
53 GATE; PROVIDED, THAT EACH UNIFORM STANDARD SHALL BE CONSTRUED, WHETHER
54 EXPRESS OR IMPLIED, TO PROHIBIT THE USE OF ANY INCONSISTENT, MISLEADING
55 OR AMBIGUOUS PROVISIONS IN A PRODUCT AND THE FORM OF SUCH PRODUCT MADE

1 AVAILABLE TO THE PUBLIC SHALL NOT BE UNFAIR, INEQUITABLE OR AGAINST
2 PUBLIC POLICY AS DETERMINED BY THE COMMISSION.

3 S 8204. ESTABLISHMENT OF THE COMMISSION AND VENUE. (A) THE COMPACTING
4 STATES HEREBY ESTABLISH A JOINT PUBLIC AGENCY KNOWN AS THE "INTERSTATE
5 INSURANCE PRODUCT REGULATION COMMISSION". PURSUANT TO SECTION EIGHT
6 THOUSAND TWO HUNDRED EIGHT OF THIS ARTICLE, THE COMMISSION SHALL HAVE
7 THE POWER TO DEVELOP UNIFORM STANDARDS FOR PRODUCT LINES, RECEIVE AND
8 PROVIDE PROMPT REVIEW OF PRODUCTS FILED THEREWITH, AND GIVE APPROVAL TO
9 THOSE PRODUCT FILINGS SATISFYING APPLICABLE UNIFORM STANDARDS; PROVIDED,
10 HOWEVER, THAT IT IS NOT INTENDED FOR THE COMMISSION TO BE THE EXCLUSIVE
11 ENTITY FOR RECEIPT AND REVIEW OF INSURANCE PRODUCT FILINGS. NOTHING IN
12 THIS SECTION SHALL PROHIBIT ANY INSURER FROM FILING ITS PRODUCT IN ANY
13 STATE WHEREIN SUCH INSURER IS LICENSED TO CONDUCT THE BUSINESS OF INSUR-
14 ANCE AND SUCH FILING SHALL BE SUBJECT TO THE LAWS OF THE STATE WHERE
15 FILED.

16 (B) THE COMMISSION IS A BODY CORPORATE AND POLITIC, AND AN INSTRUMEN-
17 TALITY OF THE COMPACTING STATES.

18 (C) THE COMMISSION IS A NOT-FOR-PROFIT ENTITY, SEPARATE AND DISTINCT
19 FROM THE INDIVIDUAL COMPACTING STATES.

20 (D) THE COMMISSION IS SOLELY RESPONSIBLE FOR ITS LIABILITIES UNLESS
21 OTHERWISE SPECIFICALLY PROVIDED IN THIS COMPACT, EXCEPT THAT, IN NO
22 EVENT SHALL THE OBLIGATIONS OF THE COMMISSION BE THE DEBT OF THE STATE
23 OF NEW YORK NOR SHALL ANY REVENUES OR PROPERTY OF THE STATE OF NEW YORK
24 BE LIABLE THEREFOR.

25 (E) VENUE IN PROPER AND JUDICIAL PROCEEDINGS BY OR AGAINST THE COMMIS-
26 SION SHALL BE BROUGHT SOLELY AND EXCLUSIVELY IN A COURT OF COMPETENT
27 JURISDICTION WHERE THE PRINCIPAL OFFICE OF THE COMMISSION IS LOCATED.

28 S 8205. POWERS OF THE COMMISSION. (A) THE COMMISSION SHALL HAVE THE
29 FOLLOWING POWERS:

30 (1) TO PROMULGATE RULES, PURSUANT TO SECTION EIGHT THOUSAND TWO
31 HUNDRED EIGHT OF THIS ARTICLE, WHICH SHALL HAVE THE FORCE AND EFFECT OF
32 LAW AND SHALL BE BINDING IN THE COMPACTING STATES TO THE EXTENT AND IN
33 THE MANNER PROVIDED IN THIS ARTICLE;

34 (2) TO EXERCISE ITS RULE MAKING AUTHORITY AND ESTABLISH REASONABLE
35 UNIFORM STANDARDS FOR PRODUCTS COVERED UNDER THE COMPACT, AND ADVERTISE-
36 MENT RELATED THERETO, WHICH SHALL HAVE THE FORCE AND EFFECT OF LAW AND
37 SHALL BE BINDING IN THE COMPACTING STATES, BUT ONLY FOR SUCH PRODUCTS
38 FILED WITH THE COMMISSION; PROVIDED, HOWEVER, THAT A COMPACTING STATE
39 SHALL HAVE THE RIGHT TO OPT OUT OF SUCH UNIFORM STANDARD PURSUANT TO
40 SECTION EIGHT THOUSAND TWO HUNDRED EIGHT OF THIS ARTICLE TO THE EXTENT
41 AND IN THE MANNER PROVIDED IN THIS ARTICLE, AND PROVIDED FURTHER THAT
42 ANY UNIFORM STANDARD ESTABLISHED BY THE COMMISSIONER FOR LONG-TERM CARE
43 INSURANCE PRODUCTS MAY PROVIDE THE SAME OR GREATER PROTECTIONS FOR
44 CONSUMERS AS, BUT SHALL NOT PROVIDE LESS THAN, THOSE PROTECTIONS SET
45 FORTH IN THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS' (HEREIN-
46 AFTER REFERRED TO AS THE "NAIC") LONG-TERM CARE INSURANCE MODEL ACT AND
47 LONG-TERM CARE INSURANCE MODEL REGULATION, RESPECTIVELY, ADOPTED AS OF
48 2001. THE COMMISSION SHALL CONSIDER WHETHER ANY SUBSEQUENT AMENDMENTS TO
49 THE NAIC LONG-TERM CARE INSURANCE MODEL ACT OR LONG-TERM CARE INSURANCE
50 MODEL REGULATION ADOPTED BY THE NAIC REQUIRE AMENDING OF THE UNIFORM
51 STANDARDS ESTABLISHED BY THE COMMISSION FOR LONG-TERM INSURANCE
52 PRODUCTS;

53 (3) TO RECEIVE AND REVIEW IN AN EXPEDITIOUS MANNER PRODUCTS FILED WITH
54 THE COMMISSION, INCLUDING RATE FILINGS FOR DISABILITY INCOME AND
55 LONG-TERM CARE INSURANCE PRODUCTS, AND GIVE APPROVAL OF THOSE PRODUCTS
56 AND RATE FILINGS THAT SATISFY THE APPLICABLE UNIFORM STANDARD, WHERE

1 SUCH APPROVAL SHALL HAVE THE FORCE AND EFFECT OF LAW AND BE BINDING ON
2 THE COMPACTING STATES TO THE EXTENT AND IN THE MANNER PROVIDED IN THE
3 COMPACT;

4 (4) TO RECEIVE AND REVIEW IN AN EXPEDITIOUS MANNER ADVERTISEMENT
5 RELATING TO LONG-TERM CARE INSURANCE PRODUCTS FOR WHICH UNIFORM STAND-
6 ARDS HAVE BEEN ADOPTED BY THE COMMISSION, AND GIVE APPROVAL OF SUCH
7 ADVERTISEMENT THAT SATISFIES THE APPLICABLE UNIFORM STANDARD. FOR ANY
8 PRODUCT COVERED UNDER THIS ARTICLE, OTHER THAN LONG-TERM CARE INSURANCE
9 PRODUCTS, THE COMMISSION SHALL HAVE THE AUTHORITY TO REQUIRE AN INSURER
10 TO SUBMIT ALL OR ANY PART OF ITS ADVERTISEMENT WITH RESPECT TO THAT
11 PRODUCT FOR REVIEW OR APPROVAL PRIOR TO USE IF THE COMMISSION DETERMINES
12 THAT THE NATURE OF THE PRODUCT IS SUCH THAT AN ADVERTISEMENT OF THE
13 PRODUCT COULD HAVE THE CAPACITY OR TENDENCY TO MISLEAD THE PUBLIC. THE
14 ACTIONS OF THE COMMISSION AS PROVIDED IN THIS SECTION SHALL HAVE THE
15 FORCE AND EFFECT OF LAW AND SHALL BE BINDING IN THE COMPACTING STATES TO
16 THE EXTENT AND IN THE MANNER PROVIDED IN THE COMPACT;

17 (5) TO EXERCISE RULE MAKING AUTHORITY AND DESIGNATE PRODUCTS AND
18 ADVERTISEMENT THAT MAY BE SUBJECT TO A SELF-CERTIFICATION PROCESS WITH-
19 OUT THE NEED FOR PRIOR APPROVAL BY THE COMMISSION;

20 (6) TO PROMULGATE OPERATING PROCEDURES, PURSUANT TO SECTION EIGHT
21 THOUSAND TWO HUNDRED EIGHT OF THIS ARTICLE, WHICH SHALL BE BINDING IN
22 THE COMPACTING STATES TO THE EXTENT AND IN THE MANNER PROVIDED IN THE
23 COMPACT;

24 (7) TO BRING AND PROSECUTE LEGAL PROCEEDINGS OR ACTIONS IN ITS NAME AS
25 THE COMMISSION; PROVIDED, THAT THE STANDING OF ANY STATE INSURANCE
26 DEPARTMENT TO SUE OR BE SUED UNDER APPLICABLE LAW SHALL NOT BE AFFECTED;

27 (8) TO ISSUE SUBPOENAS REQUIRING THE ATTENDANCE AND TESTIMONY OF
28 WITNESSES AND THE PRODUCTION OF EVIDENCE;

29 (9) TO ESTABLISH AND MAINTAIN OFFICES;

30 (10) TO PURCHASE AND MAINTAIN INSURANCE AND BONDS;

31 (11) TO BORROW, ACCEPT OR CONTRACT FOR SERVICES OF PERSONNEL, INCLUD-
32 ING, BUT NOT LIMITED TO, EMPLOYEES OF A COMPACTING STATE;

33 (12) TO HIRE EMPLOYEES AND ELECT OR APPOINT OFFICERS, AND TO FIX THEIR
34 COMPENSATION, DEFINE THEIR DUTIES AND GIVE THEM APPROPRIATE AUTHORITY TO
35 CARRY OUT THE PURPOSES OF THE COMPACT, AND DETERMINE THEIR QUALIFICA-
36 TIONS; AND TO ESTABLISH THE COMMISSION'S PERSONNEL POLICIES AND PROGRAMS
37 RELATING TO, AMONG OTHER THINGS, CONFLICTS OF INTEREST, RATES OF COMPEN-
38 SATION AND QUALIFICATIONS OF PERSONNEL;

39 (13) TO ACCEPT ANY AND ALL APPROPRIATE DONATIONS AND GRANTS OF MONEY,
40 EQUIPMENT, SUPPLIES, MATERIALS AND SERVICES, AND TO RECEIVE, UTILIZE AND
41 DISPOSE OF THE SAME; PROVIDED THAT AT ALL TIMES THE COMMISSION SHALL
42 STRIVE TO AVOID ANY APPEARANCE OF IMPROPRIETY;

43 (14) TO LEASE, PURCHASE, ACCEPT APPROPRIATE GIFTS OR DONATIONS OF, OR
44 OTHERWISE TO OWN, HOLD, IMPROVE OR USE, ANY PROPERTY, REAL, PERSONAL OR
45 MIXED; PROVIDED THAT AT ALL TIMES THE COMMISSION SHALL STRIVE TO AVOID
46 ANY APPEARANCE OF IMPROPRIETY;

47 (15) TO SELL, CONVEY, MORTGAGE, PLEDGE, LEASE, EXCHANGE, ABANDON OR
48 OTHERWISE DISPOSE OF ANY PROPERTY, REAL, PERSONAL OR MIXED;

49 (16) TO REMIT FILING FEES TO COMPACTING STATES AS MAY BE SET FORTH IN
50 THE BY-LAWS, RULES OR OPERATING PROCEDURES;

51 (17) TO ENFORCE COMPLIANCE BY COMPACTING STATES WITH RULES, UNIFORM
52 STANDARDS, OPERATING PROCEDURES AND BY-LAWS;

53 (18) TO PROVIDE FOR DISPUTE RESOLUTION AMONG COMPACTING STATES;

54 (19) TO ADVISE COMPACTING STATES ON ISSUES RELATING TO INSURERS DOMI-
55 CILED OR DOING BUSINESS IN NON-COMPACTING JURISDICTIONS, CONSISTENT WITH
56 THE PURPOSES OF THE COMPACT;

1 (20) TO PROVIDE ADVICE AND TRAINING TO THOSE PERSONNEL IN STATE INSUR-
2 ANCE DEPARTMENTS RESPONSIBLE FOR PRODUCT REVIEW, AND TO BE A RESOURCE
3 FOR STATE INSURANCE DEPARTMENTS;

4 (21) TO ESTABLISH A BUDGET AND MAKE EXPENDITURES;

5 (22) TO BORROW MONEY;

6 (23) TO APPOINT COMMITTEES, INCLUDING ADVISORY COMMITTEES COMPRISING
7 MEMBERS, STATE INSURANCE REGULATORS, STATE LEGISLATORS OR THEIR REPRE-
8 SENTATIVES, INSURANCE INDUSTRY AND CONSUMER REPRESENTATIVES, AND SUCH
9 OTHER INTERESTED PERSONS AS MAY BE DESIGNATED IN THE BY-LAWS;

10 (24) TO PROVIDE AND RECEIVE INFORMATION FROM, AND TO COOPERATE WITH
11 LAW ENFORCEMENT AGENCIES;

12 (25) TO ADOPT AND USE A CORPORATE SEAL; AND

13 (26) TO PERFORM SUCH OTHER FUNCTIONS AS MAY BE NECESSARY OR APPROPRI-
14 ATE TO ACHIEVE THE PURPOSES OF THIS COMPACT CONSISTENT WITH THE STATE
15 REGULATION OF THE BUSINESS OF INSURANCE.

16 (B) ALL DONATIONS, GRANTS OF MONEY, EQUIPMENT, SUPPLIES, MATERIALS OR
17 SERVICES, PURCHASES, GIFTS, DONATIONS, CONVEYANCES, MORTGAGES, PLEDGES,
18 LEASES AND EXCHANGES, AS AUTHORIZED BY SUBSECTION (A) OF THIS SECTION,
19 RECEIVED BY OR ON BEHALF OF THE COMMISSION SHALL BE LIMITED TO THE
20 DIRECT FUNDING OF THE LAWFUL AND AUTHORIZED OPERATIONS OF THE COMMIS-
21 SION.

22 S 8206. ORGANIZATION OF THE COMMISSION. (A) EACH COMPACTING STATE
23 SHALL HAVE AND BE LIMITED TO ONE MEMBER. THE SUPERINTENDENT, OR HIS OR
24 HER DESIGNATED REPRESENTATIVE, SHALL BE NEW YORK'S MEMBER OF SUCH
25 COMMISSION. EACH MEMBER SHALL BE QUALIFIED TO SERVE IN SUCH CAPACITY
26 PURSUANT TO APPLICABLE LAW OF THE COMPACTING STATE. ANY MEMBER MAY BE
27 REMOVED OR SUSPENDED FROM OFFICE AS PROVIDED BY THE LAW OF THE STATE
28 FROM WHICH HE OR SHE SHALL BE APPOINTED. ANY VACANCY OCCURRING IN THE
29 COMMISSION SHALL BE FILLED IN ACCORDANCE WITH THE LAWS OF THE COMPACTING
30 STATE WHEREIN SUCH VACANCY EXISTS. NOTHING HEREIN SHALL BE CONSTRUED TO
31 AFFECT THE MANNER IN WHICH A COMPACTING STATE DETERMINES THE ELECTION OR
32 APPOINTMENT AND QUALIFICATION OF ITS OWN SUPERINTENDENT.

33 (B) EACH MEMBER SHALL BE ENTITLED TO ONE VOTE AND SHALL HAVE AN OPPOR-
34 TUNITY TO PARTICIPATE IN THE GOVERNANCE OF THE COMMISSION IN ACCORDANCE
35 WITH THE BY-LAWS. NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE TO THE
36 CONTRARY, NO ACTION OF THE COMMISSION WITH RESPECT TO THE PROMULGATION
37 OF A UNIFORM STANDARD SHALL BE EFFECTIVE UNLESS TWO-THIRDS OF THE
38 MEMBERS VOTE IN FAVOR THEREOF.

39 (C) THE COMMISSION SHALL, BY A MAJORITY OF THE MEMBERS, PRESCRIBE
40 BY-LAWS TO GOVERN ITS CONDUCT AS MAY BE NECESSARY OR APPROPRIATE TO
41 CARRY OUT THE PURPOSES, AND EXERCISE THE POWERS, OF THE COMPACT, INCLUD-
42 ING, BUT NOT LIMITED TO:

43 (1) ESTABLISHING THE FISCAL YEAR OF THE COMMISSION;

44 (2) PROVIDING REASONABLE PROCEDURES FOR HOLDING MEETINGS OF THE
45 MANAGEMENT COMMITTEE;

46 (3) PROVIDING REASONABLE STANDARDS AND PROCEDURES FOR THE ESTABLISH-
47 MENT OF OTHER COMMITTEES, AND GOVERNING ANY GENERAL OR SPECIFIC DELEG-
48 ATION OF ANY AUTHORITY OR FUNCTION OF THE COMMISSION;

49 (4) PROVIDING REASONABLE PROCEDURES FOR CALLING AND CONDUCTING MEET-
50 INGS OF THE COMMISSION THAT CONSIST OF A MAJORITY OF COMMISSION MEMBERS,
51 ENSURING REASONABLE ADVANCE NOTICE OF EACH SUCH MEETING, AND PROVIDING
52 FOR THE RIGHT OF CITIZENS TO ATTEND EACH SUCH MEETING WITH ENUMERATED
53 EXCEPTIONS DESIGNED TO PROTECT THE PUBLIC'S INTEREST, THE PRIVACY OF
54 INDIVIDUALS AND INSURERS' PROPRIETARY INFORMATION, INCLUDING TRADE
55 SECRETS. THE COMMISSION MAY MEET IN CAMERA ONLY AFTER A MAJORITY OF THE
56 ENTIRE MEMBERSHIP VOTES TO CLOSE A MEETING IN TOTO OR IN PART. AS SOON

1 AS PRACTICABLE, THE COMMISSION MUST MAKE PUBLIC A COPY OF THE VOTE TO
2 CLOSE THE MEETING REVEALING THE VOTE OF EACH MEMBER WITH NO PROXY VOTES
3 ALLOWED, AND VOTES TAKEN DURING SUCH MEETING;

4 (5) ESTABLISHING THE TITLES, DUTIES AND AUTHORITY AND REASONABLE
5 PROCEDURES FOR THE ELECTION OF THE OFFICERS OF THE COMMISSION;

6 (6) PROVIDING REASONABLE STANDARDS AND PROCEDURES FOR THE ESTABLISH-
7 MENT OF THE PERSONNEL POLICIES AND PROGRAMS OF THE COMMISSION. NOTWITH-
8 STANDING ANY CIVIL SERVICE OR OTHER SIMILAR LAWS OF ANY COMPACTING
9 STATE, THE BY-LAWS SHALL EXCLUSIVELY GOVERN THE PERSONNEL POLICIES AND
10 PROGRAMS OF THE COMMISSION;

11 (7) PROMULGATING A CODE OF ETHICS TO ADDRESS PERMISSIBLE AND PROHIBIT-
12 ED ACTIVITIES OF COMMISSION MEMBERS AND EMPLOYEES; AND

13 (8) PROVIDING A MECHANISM FOR WINDING UP THE OPERATIONS OF THE COMMIS-
14 SION AND THE EQUITABLE DISPOSITION OF ANY SURPLUS FUNDS THAT MAY EXIST
15 AFTER THE TERMINATION OF THE COMPACT AFTER THE PAYMENT AND/OR RESERVING
16 OF ALL OF ITS DEBTS AND OBLIGATIONS.

17 (D) THE COMMISSION SHALL PUBLISH ITS BY-LAWS IN A CONVENIENT FORM AND
18 FILE A COPY THEREOF AND A COPY OF ANY AMENDMENT THERETO, WITH THE APPRO-
19 PRIATE AGENCY OR OFFICER IN EACH OF THE COMPACTING STATES.

20 (E) A MANAGEMENT COMMITTEE COMPRISING NO MORE THAN FOURTEEN MEMBERS
21 SHALL BE ESTABLISHED AS FOLLOWS:

22 (1) ONE MEMBER FROM EACH OF THE SIX COMPACTING STATES WITH THE LARGEST
23 PREMIUM VOLUME FOR INDIVIDUAL AND GROUP ANNUITIES, LIFE, DISABILITY
24 INCOME AND LONG-TERM CARE INSURANCE PRODUCTS, DETERMINED FROM THE
25 RECORDS OF THE NAIC AS OF DECEMBER THIRTY-FIRST OF THE PRIOR YEAR;

26 (2) FOUR MEMBERS FROM THOSE COMPACTING STATES WITH AT LEAST TWO
27 PERCENT OF THE MARKET BASED ON THE PREMIUM VOLUME DESCRIBED IN PARAGRAPH
28 ONE OF THIS SUBSECTION, OTHER THAN SIX COMPACTING STATES WITH THE LARG-
29 EST PREMIUM VOLUME, SELECTED ON A ROTATING BASIS AS PROVIDED IN THE
30 BY-LAWS; AND

31 (3) FOUR MEMBERS FROM THOSE COMPACTING STATES WITH LESS THAN TWO
32 PERCENT OF THE MARKET, BASED ON THE PREMIUM VOLUME DESCRIBED IN PARA-
33 GRAPH ONE OF THIS SUBSECTION, WITH ONE SELECTED FROM EACH OF THE FOUR
34 ZONE REGIONS OF THE NAIC AS PROVIDED IN THE BY-LAWS.

35 (F) THE MANAGEMENT COMMITTEE SHALL HAVE SUCH AUTHORITY AND DUTIES AS
36 MAY BE SET FORTH IN THE BY-LAWS, INCLUDING BUT NOT LIMITED TO:

37 (1) MANAGING THE AFFAIRS OF THE COMMISSION IN A MANNER CONSISTENT WITH
38 THE BY-LAWS AND PURPOSES OF THE COMMISSION;

39 (2) ESTABLISHING AND OVERSEEING AN ORGANIZATIONAL STRUCTURE WITHIN,
40 AND APPROPRIATE PROCEDURES FOR, THE COMMISSION TO PROVIDE FOR THE
41 CREATION OF UNIFORM STANDARDS AND OTHER RULES, RECEIPT AND REVIEW OF
42 PRODUCT FILINGS, ADMINISTRATIVE AND TECHNICAL SUPPORT FUNCTIONS, REVIEW
43 OF DECISIONS REGARDING THE DISAPPROVAL OF A PRODUCT FILING, AND THE
44 REVIEW OF ELECTIONS MADE BY A COMPACTING STATE TO OPT OUT OF A UNIFORM
45 STANDARD; PROVIDED THAT A UNIFORM STANDARD SHALL NOT BE SUBMITTED TO THE
46 COMPACTING STATES FOR ADOPTION UNLESS APPROVED BY TWO-THIRDS OF THE
47 MEMBERS OF THE MANAGEMENT COMMITTEE;

48 (3) OVERSEEING THE OFFICES OF THE COMMISSION; AND

49 (4) PLANNING, IMPLEMENTING, AND COORDINATING COMMUNICATIONS AND ACTIV-
50 ITIES WITH OTHER STATE, FEDERAL AND LOCAL GOVERNMENT ORGANIZATIONS IN
51 ORDER TO ADVANCE THE GOALS OF THE COMMISSION.

52 (G) THE COMMISSION SHALL ELECT ANNUALLY OFFICERS FROM THE MANAGEMENT
53 COMMITTEE, WITH EACH HAVING SUCH AUTHORITY AND DUTIES, AS MAY BE SPECI-
54 FIED IN THE BY-LAWS.

55 (H) THE MANAGEMENT COMMITTEE MAY, SUBJECT TO THE APPROVAL OF THE
56 COMMISSION, APPOINT OR RETAIN AN EXECUTIVE DIRECTOR FOR SUCH PERIOD,

1 UPON SUCH TERMS AND CONDITIONS AND FOR SUCH COMPENSATION AS THE COMMIS-
2 SION MAY DEEM APPROPRIATE. THE EXECUTIVE DIRECTOR SHALL SERVE AS SECRE-
3 TARY TO THE COMMISSION, BUT SHALL NOT BE A MEMBER OF THE COMMISSION. THE
4 EXECUTIVE DIRECTOR SHALL HIRE AND SUPERVISE SUCH OTHER STAFF AS MAY BE
5 AUTHORIZED BY THE COMMISSION.

6 (I) A LEGISLATIVE COMMITTEE COMPRISING STATE LEGISLATORS OR THEIR
7 DESIGNEES SHALL BE ESTABLISHED TO MONITOR THE OPERATIONS OF, AND MAKE
8 RECOMMENDATIONS TO, THE COMMISSION; PROVIDED THAT THE MANNER OF
9 SELECTION AND TERM OF ANY LEGISLATIVE COMMITTEE MEMBER SHALL BE AS SET
10 FORTH IN THE BY-LAWS. PRIOR TO THE ADOPTION BY THE COMMISSION OF ANY
11 UNIFORM STANDARD, REVISION TO THE BY-LAWS, ANNUAL BUDGET OR OTHER
12 SIGNIFICANT MATTER AS MAY BE PROVIDED IN THE BY-LAWS, THE MANAGEMENT
13 COMMITTEE SHALL CONSULT WITH AND REPORT TO THE LEGISLATIVE COMMITTEE.

14 (J) THE COMMISSION SHALL ESTABLISH TWO ADVISORY COMMITTEES, ONE OF
15 WHICH SHALL COMPRISE CONSUMER REPRESENTATIVES INDEPENDENT OF THE INSUR-
16 ANCE INDUSTRY AND THE OTHER COMPRISING INSURANCE INDUSTRY REPRESEN-
17 TATIVES.

18 (K) THE COMMISSION MAY ESTABLISH ADDITIONAL ADVISORY COMMITTEES AS ITS
19 BY-LAWS MAY PROVIDE FOR THE CARRYING OUT OF ITS FUNCTIONS.

20 (L) THE COMMISSION SHALL MAINTAIN ITS CORPORATE BOOKS AND RECORDS IN
21 ACCORDANCE WITH THE BY-LAWS.

22 (M) THE MEMBERS, OFFICERS, EXECUTIVE DIRECTOR, EMPLOYEES AND REPRESEN-
23 TATIVES OF THE COMMISSION SHALL BE IMMUNE FROM SUIT AND LIABILITY,
24 EITHER PERSONALLY OR IN THEIR OFFICIAL CAPACITY, FOR ANY ACTION TAKEN
25 REASONABLY AND IN GOOD FAITH WHICH RESULTS IN A CLAIM FOR DAMAGE TO OR
26 LOSS OF PROPERTY OR PERSONAL INJURY OR OTHER CIVIL LIABILITY CAUSED BY
27 OR ARISING OUT OF ANY ACTUAL OR ALLEGED ACT, ERROR OR OMISSION THAT
28 OCCURRED, OR THAT SUCH PERSON HAD A REASONABLE BASIS FOR BELIEVING
29 OCCURRED WITHIN THE SCOPE OF COMMISSION EMPLOYMENT, DUTIES OR RESPONSI-
30 BILITIES; PROVIDED, THAT NOTHING IN THIS SECTION SHALL BE CONSTRUED TO
31 PROTECT ANY SUCH PERSON FROM SUIT AND/OR LIABILITY FOR ANY DAMAGE, LOSS,
32 INJURY OR LIABILITY CAUSED BY THE INTENTIONAL OR WILLFUL AND WANTON
33 MISCONDUCT OF THAT PERSON.

34 (N) THE COMMISSION SHALL DEFEND ANY MEMBER, OFFICER, EXECUTIVE DIREC-
35 TOR, EMPLOYEE OR REPRESENTATIVE OF THE COMMISSION IN ANY CIVIL ACTION
36 SEEKING TO IMPOSE LIABILITY ARISING OUT OF ANY ACTUAL OR ALLEGED ACT,
37 ERROR OR OMISSION THAT OCCURRED WITHIN THE SCOPE OF COMMISSION EMPLOY-
38 MENT, DUTIES OR RESPONSIBILITIES, OR THAT THE DEFENDANT HAD A REASONABLE
39 BASIS FOR BELIEVING OCCURRED WITHIN THE SCOPE OF COMMISSION EMPLOYMENT,
40 DUTIES OR RESPONSIBILITIES; PROVIDED, THAT NOTHING IN THIS SECTION SHALL
41 BE CONSTRUED TO PROHIBIT THAT PERSON FROM RETAINING HIS OR HER OWN COUN-
42 SEL; AND PROVIDED FURTHER, THAT THE ACTUAL OR ALLEGED ACT, ERROR OR
43 OMISSION DID NOT RESULT FROM THAT PERSON'S INTENTIONAL OR WILLFUL AND
44 WANTON MISCONDUCT.

45 (O) THE COMMISSION SHALL INDEMNIFY AND HOLD HARMLESS ANY MEMBER, OFFI-
46 CER, EXECUTIVE DIRECTOR, EMPLOYEE OR REPRESENTATIVE OF THE COMMISSION
47 FOR THE AMOUNT OF ANY SETTLEMENT OR JUDGMENT OBTAINED AGAINST SUCH
48 PERSONS ARISING OUT OF ANY ACTUAL OR ALLEGED ACT, ERROR OR OMISSION THAT
49 OCCURRED WITHIN THE SCOPE OF COMMISSION EMPLOYMENT, DUTIES OR RESPONSI-
50 BILITIES, OR THAT SUCH PERSON HAD A REASONABLE BASIS FOR BELIEVING
51 OCCURRED WITHIN THE SCOPE OF COMMISSION EMPLOYMENT, DUTIES OR RESPONSI-
52 BILITIES, PROVIDED, THAT THE ACTUAL OR ALLEGED ACT, ERROR OR OMISSION
53 DID NOT RESULT FROM THE INTENTIONAL OR WILLFUL AND WANTON MISCONDUCT OF
54 ANY SUCH PERSON.

1 S 8207. MEETINGS AND ACTS OF THE COMMISSION. (A) THE COMMISSION SHALL
2 MEET AND TAKE SUCH ACTIONS AS ARE CONSISTENT WITH THE PROVISIONS OF THIS
3 COMPACT AND THE BY-LAWS.

4 (B) EACH MEMBER OF THE COMMISSION SHALL HAVE THE RIGHT AND POWER TO
5 CAST A VOTE TO WHICH THAT COMPACTING STATE IS ENTITLED AND TO PARTIC-
6 IPATE IN THE BUSINESS AND AFFAIRS OF THE COMMISSION. A MEMBER SHALL VOTE
7 IN PERSON OR BY SUCH OTHER MEANS AS PROVIDED IN THE BY-LAWS. THE BY-LAWS
8 MAY PROVIDE FOR MEMBERS' PARTICIPATION IN MEETINGS BY TELEPHONE OR OTHER
9 MEANS OF COMMUNICATION.

10 (C) THE COMMISSION SHALL MEET AT LEAST ONCE DURING EACH CALENDAR YEAR.
11 ADDITIONAL MEETINGS SHALL BE HELD AS SET FORTH IN THE BY-LAWS.

12 S 8208. RULES AND OPERATING PROCEDURES; RULE MAKING FUNCTIONS OF THE
13 COMMISSION AND OPTING OUT OF UNIFORM STANDARDS. (A) THE COMMISSION SHALL
14 PROMULGATE REASONABLE RULES, INCLUDING UNIFORM STANDARDS AND OPERATING
15 PROCEDURES, IN ORDER TO EFFECTIVELY AND EFFICIENTLY ACHIEVE THE PURPOSES
16 OF THE COMPACT. NOTWITHSTANDING THE FOREGOING, IN THE EVENT THE COMMIS-
17 SION EXERCISES ITS RULE MAKING AUTHORITY IN A MANNER THAT IS BEYOND THE
18 SCOPE OF THE PURPOSES OF THIS ARTICLE, OR THE POWERS GRANTED IN THIS
19 SECTION, THEN SUCH ACTION BY THE COMMISSION SHALL BE INVALID AND HAVE NO
20 FORCE AND EFFECT.

21 (B) RULES AND OPERATING PROCEDURES SHALL BE MADE PURSUANT TO A RULE
22 MAKING PROCESS THAT CONFORMS TO THE STATE ADMINISTRATIVE PROCEDURE ACT
23 OF 1981 AS AMENDED, AS MAY BE APPROPRIATE TO THE OPERATIONS OF THE
24 COMMISSION. BEFORE THE COMMISSION ADOPTS A UNIFORM STANDARD, THE COMMIS-
25 SION SHALL GIVE WRITTEN NOTICE TO THE RELEVANT STATE LEGISLATIVE COMMIT-
26 TEE IN EACH COMPACTING STATE RESPONSIBLE FOR INSURANCE ISSUES OF ITS
27 INTENTION TO ADOPT SUCH UNIFORM STANDARD. THE COMMISSION IN ADOPTING A
28 UNIFORM STANDARD SHALL CONSIDER FULLY ALL SUBMITTED MATERIALS AND ISSUE
29 A CONCISE EXPLANATION OF ITS DECISION.

30 (C) A UNIFORM STANDARD SHALL BECOME EFFECTIVE NINETY DAYS AFTER ITS
31 PROMULGATION BY THE COMMISSION OR SUCH LATER DATE AS THE COMMISSION MAY
32 DETERMINE; PROVIDED, HOWEVER, THAT A COMPACTING STATE MAY OPT OUT OF A
33 UNIFORM STANDARD AS PROVIDED IN THIS ARTICLE. "OPT OUT" SHALL BE DEFINED
34 AS ANY ACTION BY A COMPACTING STATE TO DECLINE TO ADOPT OR PARTICIPATE
35 IN A PROMULGATED UNIFORM STANDARD. ALL OTHER RULES AND OPERATING PROCE-
36 DURES, AND AMENDMENTS THERETO, SHALL BECOME EFFECTIVE AS OF THE DATE
37 SPECIFIED IN EACH RULE, OPERATING PROCEDURE OR AMENDMENT.

38 (D) A COMPACTING STATE MAY OPT OUT OF A UNIFORM STANDARD, EITHER BY
39 LEGISLATION OR REGULATION DULY PROMULGATED BY THE SUPERINTENDENT UNDER
40 THE STATE ADMINISTRATIVE PROCEDURE ACT. IF A COMPACTING STATE ELECTS TO
41 OPT OUT OF A UNIFORM STANDARD BY REGULATION, IT MUST GIVE WRITTEN NOTICE
42 TO THE COMMISSION NO LATER THAN TEN BUSINESS DAYS AFTER THE UNIFORM
43 STANDARD IS PROMULGATED OR AT THE TIME THE STATE BECOMES A COMPACTING
44 STATE, AND FIND THAT THE UNIFORM STANDARD DOES NOT PROVIDE REASONABLE
45 PROTECTIONS TO THE CITIZENS OF THE STATE GIVEN THE CONDITIONS IN THE
46 STATE. THE SUPERINTENDENT SHALL MAKE SPECIFIC FINDINGS OF FACT AND
47 CONCLUSIONS OF LAW, BASED ON A PREPONDERANCE OF THE EVIDENCE, DETAILING
48 THE CONDITIONS IN THE STATE WHICH WARRANT A DEPARTURE FROM THE UNIFORM
49 STANDARD AND DETERMINING THAT THE UNIFORM STANDARD WOULD NOT REASONABLY
50 PROTECT THE CITIZENS OF THE STATE. THE SUPERINTENDENT MUST CONSIDER AND
51 BALANCE THE FOLLOWING FACTORS AND FIND THAT THE CONDITIONS IN THE STATE
52 AND NEEDS OF THE CITIZENS OF THE STATE OUTWEIGH:

53 (1) THE INTENT OF THE LEGISLATURE TO PARTICIPATE IN, AND THE BENEFITS
54 OF, AN INTERSTATE AGREEMENT TO ESTABLISH NATIONAL UNIFORM CONSUMER
55 PROTECTIONS FOR THE PRODUCTS SUBJECT TO THIS ARTICLE; AND

(2) THE PRESUMPTION THAT A UNIFORM STANDARD ADOPTED BY THE COMMISSION PROVIDES REASONABLE PROTECTIONS TO CONSUMERS OF THE RELEVANT PRODUCT.

NOTWITHSTANDING THE FOREGOING, A COMPACTING STATE MAY, AT THE TIME OF ITS ENACTMENT OF THE COMPACT, PROSPECTIVELY OPT OUT OF ALL UNIFORM STANDARDS INVOLVING THE LONG-TERM CARE INSURANCE PRODUCTS BY EXPRESSLY PROVIDING FOR SUCH OPT OUT IN THE ENACTED COMPACT, AND SUCH OPT OUT SHALL NOT BE TREATED AS A MATERIAL VARIANCE IN THE OFFER OR ACCEPTANCE OF ANY STATE TO PARTICIPATE IN THE COMPACT. SUCH AN OPT OUT SHALL BE EFFECTIVE AT THE TIME OF ENACTMENT OF THE COMPACT BY THE COMPACTING STATE AND SHALL APPLY TO ALL EXISTING UNIFORM STANDARDS INVOLVING LONG-TERM CARE INSURANCE PRODUCTS AND THOSE SUBSEQUENTLY PROMULGATED.

(E) IF A COMPACTING STATE ELECTS TO OPT OUT OF A UNIFORM STANDARD, THE UNIFORM STANDARD SHALL REMAIN APPLICABLE IN THE COMPACTING STATE ELECTING TO OPT OUT UNTIL SUCH TIME THE OPT OUT LEGISLATION IS ENACTED INTO LAW OR THE REGULATION IS PROMULGATED.

(F) ONCE THE OPT OUT OF A UNIFORM STANDARD BY A COMPACTING STATE BECOMES EFFECTIVE AS PROVIDED UNDER THE LAWS OF THAT STATE, THE UNIFORM STANDARD SHALL HAVE NO FURTHER FORCE AND EFFECT IN THAT STATE UNLESS AND UNTIL THE LEGISLATION OR REGULATION IMPLEMENTING THE OPT OUT IS REPEALED OR OTHERWISE BECOMES INEFFECTIVE UNDER THE LAWS OF THE STATE. IF A COMPACTING STATE OPTS OUT OF A UNIFORM STANDARD AFTER THE UNIFORM STANDARD HAS BEEN MADE EFFECTIVE IN THAT STATE, THE OPT OUT SHALL HAVE THE SAME PROSPECTIVE EFFECT AS PROVIDED UNDER SECTION EIGHT THOUSAND TWO HUNDRED FIFTEEN OF THIS ARTICLE FOR WITHDRAWALS.

(G) IF A COMPACTING STATE HAS FORMALLY INITIATED THE PROCESS OF OPTING OUT OF A UNIFORM STANDARD BY REGULATION, AND WHILE THE REGULATORY OPT OUT IS PENDING, THE COMPACTING STATE MAY PETITION THE COMMISSION, AT LEAST FIFTEEN DAYS BEFORE THE EFFECTIVE DATE OF THE UNIFORM STANDARD, TO STAY THE EFFECTIVENESS OF THE UNIFORM STANDARD IN THAT STATE. THE COMMISSION MAY GRANT A STAY IF IT DETERMINES THE REGULATORY OPT OUT IS BEING PURSUED IN A REASONABLE MANNER AND THERE IS A LIKELIHOOD OF SUCCESS. IF A STAY IS GRANTED OR EXTENDED BY THE COMMISSION, THE STAY OR EXTENSION THEREOF MAY POSTPONE THE EFFECTIVE DATE BY UP TO NINETY DAYS, UNLESS AFFIRMATIVELY EXTENDED BY THE COMMISSION; PROVIDED HOWEVER, A STAY MAY NOT BE PERMITTED TO REMAIN IN EFFECT FOR MORE THAN ONE YEAR UNLESS THE COMPACTING STATE CAN SHOW EXTRAORDINARY CIRCUMSTANCES WHICH WARRANT A CONTINUANCE OF THE STAY INCLUDING, BUT NOT LIMITED TO, THE EXISTENCE OF A LEGAL CHALLENGE WHICH PREVENTS THE COMPACTING STATE FROM OPTING OUT. A STAY MAY BE TERMINATED BY THE COMMISSION UPON NOTICE THAT THE RULE MAKING PROCESS HAS BEEN TERMINATED.

(H) NOT LATER THAN THIRTY DAYS AFTER A RULE OR OPERATING PROCEDURE IS PROMULGATED, ANY PERSON MAY FILE A PETITION FOR JUDICIAL REVIEW OF THE RULE OR OPERATING PROCEDURE; PROVIDED, HOWEVER, THAT THE FILING OF SUCH A PETITION SHALL NOT STAY OR OTHERWISE PREVENT THE RULE OR OPERATING PROCEDURE FROM BECOMING EFFECTIVE UNLESS THE COURT FINDS THAT THE PETITIONER HAS A SUBSTANTIAL LIKELIHOOD OF SUCCESS. THE COURT SHALL GIVE DEFERENCE TO THE ACTIONS OF THE COMMISSION CONSISTENT WITH APPLICABLE LAW AND SHALL NOT FIND THE RULE OR OPERATING PROCEDURE TO BE UNLAWFUL IF THE RULE OR OPERATING PROCEDURE REPRESENTS A REASONABLE EXERCISE OF THE COMMISSION'S AUTHORITY.

S 8209. COMMISSION RECORDS AND ENFORCEMENT. (A) THE COMMISSION SHALL PROMULGATE RULES ESTABLISHING CONDITIONS AND PROCEDURES FOR PUBLIC INSPECTION AND COPYING OF ITS INFORMATION AND OFFICIAL RECORDS, EXCEPT SUCH INFORMATION AND RECORDS INVOLVING THE PRIVACY OF INDIVIDUALS AND INSURERS' TRADE SECRETS. THE COMMISSION MAY PROMULGATE ADDITIONAL RULES UNDER WHICH IT MAY MAKE AVAILABLE TO FEDERAL AND STATE AGENCIES, INCLUD-

1 ING LAW ENFORCEMENT AGENCIES, RECORDS AND INFORMATION OTHERWISE EXEMPT
2 FROM DISCLOSURE, AND MAY ENTER INTO AGREEMENTS WITH SUCH AGENCIES TO
3 RECEIVE OR EXCHANGE INFORMATION OR RECORDS SUBJECT TO NONDISCLOSURE AND
4 CONFIDENTIALITY PROVISIONS.

5 (B) EXCEPT AS TO PRIVILEGED RECORDS, DATA AND INFORMATION, THE LAWS OF
6 ANY COMPACTING STATE PERTAINING TO CONFIDENTIALITY OR NONDISCLOSURE
7 SHALL NOT RELIEVE ANY COMPACTING STATE COMMISSIONER OF THE DUTY TO
8 DISCLOSE ANY RELEVANT RECORDS, DATA OR INFORMATION TO THE COMMISSION;
9 PROVIDED HOWEVER, THAT DISCLOSURE TO THE COMMISSION SHALL NOT BE DEEMED
10 TO WAIVE OR OTHERWISE AFFECT ANY CONFIDENTIALITY REQUIREMENT; AND
11 PROVIDED FURTHER THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS
12 ARTICLE, THE COMMISSION SHALL NOT BE SUBJECT TO THE LAWS OF ANY COMPACT-
13 ING STATE PERTAINING TO CONFIDENTIALITY AND NONDISCLOSURE WITH RESPECT
14 TO RECORDS, DATA AND INFORMATION IN ITS POSSESSION. CONFIDENTIAL INFOR-
15 MATION OF THE COMMISSION SHALL REMAIN CONFIDENTIAL AFTER SUCH INFORMA-
16 TION IS PROVIDED TO ANY COMMISSIONER.

17 (C) THE COMMISSION SHALL MONITOR COMPACTING STATES FOR COMPLIANCE WITH
18 DULY ADOPTED BY-LAWS, RULES, INCLUDING UNIFORM STANDARDS, AND OPERATING
19 PROCEDURES. THE COMMISSION SHALL NOTIFY SUCH NONCOMPLYING COMPACTING
20 STATE IN WRITING OF ITS NONCOMPLIANCE WITH COMMISSION BY-LAWS, RULES OR
21 OPERATING PROCEDURES. IF THE NONCOMPLYING COMPACTING STATE FAILS TO
22 REMEDY SUCH NONCOMPLIANCE WITHIN THE TIME SPECIFIED IN THE NOTICE OF
23 NONCOMPLIANCE, THE COMPACTING STATE SHALL BE DEEMED TO BE IN DEFAULT AS
24 SET FORTH IN SECTION EIGHT THOUSAND TWO HUNDRED FIFTEEN OF THIS ARTICLE.

25 (D) THE COMMISSIONER OF ANY STATE IN WHICH AN INSURER IS AUTHORIZED TO
26 DO BUSINESS, OR IS CONDUCTING THE BUSINESS OF INSURANCE, SHALL CONTINUE
27 TO EXERCISE HIS OR HER AUTHORITY TO OVERSEE THE MARKET REGULATION OF THE
28 ACTIVITIES OF THE INSURER IN ACCORDANCE WITH THE PROVISIONS OF THE
29 STATE'S LAW. THE COMMISSIONER'S ENFORCEMENT OF COMPLIANCE WITH THE
30 COMPACT IS GOVERNED BY THE FOLLOWING PROVISIONS:

31 (1) WITH RESPECT TO THE COMMISSIONER'S MARKET REGULATION OF A PRODUCT
32 OR ADVERTISEMENT THAT IS APPROVED OR CERTIFIED BY THE COMMISSION, THE
33 CONTENT OF THE PRODUCT OR ADVERTISEMENT SHALL NOT CONSTITUTE A VIOLATION
34 OF THE PROVISIONS, STANDARDS OR REQUIREMENTS OF THE COMPACT EXCEPT UPON
35 A FINAL ORDER OF THE COMMISSION, ISSUED AT THE REQUEST OF A COMMISSIONER
36 AFTER PRIOR NOTICE TO THE INSURER AND AN OPPORTUNITY FOR HEARING BEFORE
37 THE COMMISSION.

38 (2) BEFORE A COMMISSIONER MAY BRING AN ACTION FOR VIOLATION OF ANY
39 PROVISION, STANDARD OR REQUIREMENT OF THE COMPACT RELATING TO THE
40 CONTENT OF AN ADVERTISEMENT NOT APPROVED OR CERTIFIED BY THE COMMISSION,
41 THE COMMISSION OR AN AUTHORIZED COMMISSION OFFICER OR EMPLOYEE, MUST
42 AUTHORIZE THE ACTION. HOWEVER, AUTHORIZATION PURSUANT TO THIS PARAGRAPH
43 DOES NOT REQUIRE NOTICE TO THE INSURER, OPPORTUNITY FOR HEARING OR
44 DISCLOSURE OF REQUESTS FOR AUTHORIZATION OR RECORDS OF THE COMMISSION'S
45 ACTION ON SUCH REQUESTS.

46 S 8210. DISPUTE RESOLUTION. THE COMMISSION SHALL ATTEMPT, UPON THE
47 REQUEST OF A MEMBER, TO RESOLVE ANY DISPUTES OR OTHER ISSUES THAT ARE
48 SUBJECT TO THIS COMPACT AND WHICH MAY ARISE BETWEEN TWO OR MORE COMPACT-
49 ING STATES, OR BETWEEN COMPACTING STATES AND NON-COMPACTING STATES, AND
50 THE COMMISSION SHALL PROMULGATE AN OPERATING PROCEDURE PROVIDING FOR
51 RESOLUTION OF SUCH DISPUTES.

52 S 8211. PRODUCT FILING AND APPROVAL. (A) INSURERS AND THIRD-PARTY
53 FILERS SEEKING TO HAVE A PRODUCT APPROVED BY THE COMMISSION SHALL FILE
54 SUCH PRODUCT WITH, AND PAY APPLICABLE FILING FEES TO, THE COMMISSION.
55 NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO RESTRICT OR OTHERWISE
56 PREVENT AN INSURER FROM FILING ITS PRODUCT WITH THE INSURANCE DEPARTMENT

1 IN ANY STATE WHEREIN SUCH INSURER IS LICENSED TO CONDUCT THE BUSINESS OF
2 INSURANCE, AND SUCH FILING SHALL BE SUBJECT TO THE LAWS OF THE STATES
3 WHERE FILED.

4 (B) THE COMMISSION SHALL ESTABLISH APPROPRIATE FILING AND REVIEW PROC-
5 ESSES AND PROCEDURES PURSUANT TO COMMISSION RULES AND OPERATING PROCE-
6 DURES. NOTWITHSTANDING ANY PROVISION IN THIS SECTION TO THE CONTRARY,
7 THE COMMISSION SHALL PROMULGATE RULES TO ESTABLISH CONDITIONS AND PROCE-
8 DURES UNDER WHICH THE COMMISSION WILL PROVIDE PUBLIC ACCESS TO PRODUCT
9 FILING INFORMATION. IN ESTABLISHING SUCH RULES, THE COMMISSION SHALL
10 CONSIDER THE INTERESTS OF THE PUBLIC IN HAVING ACCESS TO SUCH INFORMA-
11 TION, AS WELL AS PROTECTION OF PERSONAL MEDICAL AND FINANCIAL INFORMA-
12 TION AND TRADE SECRETS, THAT MAY BE CONTAINED IN A PRODUCT FILING OR
13 SUPPORTING INFORMATION.

14 (C) ANY PRODUCT APPROVED BY THE COMMISSION MAY BE SOLD OR OTHERWISE
15 ISSUED IN THOSE COMPACTING STATES IN WHICH THE INSURER IS LEGALLY
16 AUTHORIZED TO DO BUSINESS.

17 S 8212. REVIEW OF COMMISSION DECISIONS REGARDING FILINGS. (A) NOT
18 LATER THAN THIRTY DAYS AFTER THE COMMISSION HAS GIVEN NOTICE OF A DISAP-
19 PROVED PRODUCT OR ADVERTISEMENT FILED WITH THE COMMISSION, THE INSURER
20 OR THIRD PARTY FILER WHOSE FILING WAS DISAPPROVED MAY APPEAL THE DETER-
21 MINATION TO A REVIEW PANEL APPOINTED BY THE COMMISSION. THE COMMISSION
22 SHALL PROMULGATE RULES TO ESTABLISH PROCEDURES FOR APPOINTING SUCH
23 REVIEW PANEL AND PROVIDE FOR NOTICE AND HEARING. AN ALLEGATION THAT THE
24 COMMISSION, IN DISAPPROVING A PRODUCT OR ADVERTISEMENT FILED WITH THE
25 COMMISSION, ACTED ARBITRARILY, CAPRICIOUSLY OR IN A MANNER THAT IS AN
26 ABUSE OF DISCRETION OR OTHERWISE NOT IN ACCORDANCE WITH LAW, IS SUBJECT
27 TO JUDICIAL REVIEW IN ACCORDANCE WITH SUBSECTION (E) OF SECTION EIGHT
28 THOUSAND TWO HUNDRED FOUR OF THIS ARTICLE.

29 (B) THE COMMISSION SHALL HAVE AUTHORITY TO MONITOR, REVIEW AND RECON-
30 sider PRODUCTS AND ADVERTISEMENT SUBSEQUENT TO THEIR FILING OR APPROVAL
31 UPON A FINDING THAT THE PRODUCT DOES NOT MEET THE RELEVANT UNIFORM STAN-
32 DARD. WHERE APPROPRIATE, THE COMMISSION MAY WITHDRAW OR MODIFY ITS
33 APPROVAL AFTER PROPER NOTICE AND HEARING, SUBJECT TO THE APPEAL PROCESS
34 SET FORTH IN SUBSECTION (A) OF THIS SECTION.

35 S 8213. FINANCE. (A) THE COMMISSION SHALL PAY OR PROVIDE FOR THE
36 PAYMENT OF THE REASONABLE EXPENSES OF ITS ESTABLISHMENT AND ORGANIZA-
37 TION. TO FUND THE COST OF ITS INITIAL OPERATIONS, THE COMMISSION MAY
38 ACCEPT CONTRIBUTIONS AND OTHER FORMS OF FUNDING FROM THE NAIC, COMPACT-
39 ING STATES AND OTHER SOURCES. CONTRIBUTIONS AND OTHER FORMS OF FUNDING
40 FROM OTHER SOURCES SHALL BE OF SUCH A NATURE THAT THE INDEPENDENCE OF
41 THE COMMISSION CONCERNING THE PERFORMANCE OF ITS DUTIES SHALL NOT BE
42 COMPROMISED.

43 (B) THE COMMISSION SHALL COLLECT A FILING FEE FROM EACH INSURER AND
44 THIRD PARTY FILER FILING A PRODUCT WITH THE COMMISSION TO COVER THE COST
45 OF THE OPERATIONS AND ACTIVITIES OF THE COMMISSION AND ITS STAFF IN A
46 TOTAL AMOUNT SUFFICIENT TO COVER THE COMMISSION'S ANNUAL BUDGET.

47 (C) THE COMMISSION'S BUDGET FOR A FISCAL YEAR SHALL NOT BE APPROVED
48 UNTIL IT HAS BEEN SUBJECT TO NOTICE AND COMMENT AS SET FORTH IN SECTION
49 EIGHT THOUSAND TWO HUNDRED EIGHT OF THIS ARTICLE.

50 (D) THE COMMISSION SHALL BE EXEMPT FROM ALL TAXATION IN AND BY THE
51 COMPACTING STATES.

52 (E) THE COMMISSION SHALL NOT PLEDGE THE CREDIT OF ANY COMPACTING
53 STATE, EXCEPT BY AND WITH THE APPROPRIATE LEGAL AUTHORITY OF THAT
54 COMPACTING STATE.

55 (F) THE COMMISSION SHALL KEEP COMPLETE AND ACCURATE ACCOUNTS OF ALL
56 ITS INTERNAL RECEIPTS, INCLUDING GRANTS AND DONATIONS AND DISBURSEMENTS

1 OF ALL FUNDS UNDER ITS CONTROL. THE INTERNAL FINANCIAL ACCOUNTS OF THE
2 COMMISSION SHALL BE SUBJECT TO THE ACCOUNTING PROCEDURES ESTABLISHED
3 UNDER ITS BY-LAWS. THE FINANCIAL ACCOUNTS AND REPORTS INCLUDING THE
4 SYSTEM OF INTERNAL CONTROLS AND PROCEDURES OF THE COMMISSION SHALL BE
5 AUDITED ANNUALLY BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT. UPON THE
6 DETERMINATION OF THE COMMISSION, BUT NO LESS FREQUENTLY THAN EVERY THREE
7 YEARS, THE REVIEW OF SUCH INDEPENDENT AUDITOR SHALL INCLUDE A MANAGEMENT
8 AND PERFORMANCE AUDIT OF THE COMMISSION. THE COMMISSION SHALL MAKE AN
9 ANNUAL REPORT TO THE GOVERNOR AND LEGISLATURE OF THE COMPACTING STATES,
10 WHICH SHALL INCLUDE A REPORT OF SUCH INDEPENDENT AUDIT. THE COMMISSION'S
11 INTERNAL ACCOUNTS SHALL NOT BE CONFIDENTIAL AND SUCH MATERIALS MAY BE
12 SHARED WITH THE COMMISSIONER OF ANY COMPACTING STATE UPON REQUEST,
13 PROVIDED, HOWEVER, THAT ANY WORK PAPERS RELATED TO ANY INTERNAL OR INDE-
14 PENDENT AUDIT AND ANY INFORMATION REGARDING THE PRIVACY OF INDIVIDUALS
15 AND INSURERS' PROPRIETARY INFORMATION, INCLUDING TRADE SECRETS, SHALL
16 REMAIN CONFIDENTIAL.

17 (G) NO COMPACTING STATE SHALL HAVE ANY CLAIM TO OR OWNERSHIP OF ANY
18 PROPERTY HELD BY OR VESTED IN THE COMMISSION OR TO ANY COMMISSION FUNDS
19 HELD PURSUANT TO THE PROVISIONS OF THIS COMPACT.

20 S 8214. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT. (A) ANY STATE
21 IS ELIGIBLE TO BECOME A COMPACTING STATE.

22 (B) THE COMPACT SHALL BECOME EFFECTIVE AND BINDING UPON LEGISLATIVE
23 ENACTMENT OF THE COMPACT INTO LAW BY TWO COMPACTING STATES; PROVIDED
24 HOWEVER, THAT THE COMMISSION SHALL BECOME EFFECTIVE FOR PURPOSES OF
25 ADOPTING UNIFORM STANDARDS FOR REVIEWING, AND GIVING APPROVAL OR DISAP-
26 PROVAL OF, PRODUCTS FILED WITH THE COMMISSION THAT SATISFY APPLICABLE
27 UNIFORM STANDARDS ONLY AFTER TWENTY-SIX STATES ARE COMPACTING STATES OR,
28 ALTERNATIVELY, BY STATES REPRESENTING GREATER THAN FORTY PERCENT OF THE
29 PREMIUM VOLUME FOR LIFE INSURANCE, ANNUITY, DISABILITY INCOME AND LONG-
30 TERM CARE INSURANCE PRODUCTS, BASED ON RECORDS OF THE NAIC FOR THE PRIOR
31 YEAR. THEREAFTER, IT SHALL BECOME EFFECTIVE AND BINDING AS TO ANY OTHER
32 COMPACTING STATE UPON ENACTMENT OF THE COMPACT INTO LAW BY THAT STATE.

33 (C) AMENDMENTS TO THE COMPACT MAY BE PROPOSED BY THE COMMISSION FOR
34 ENACTMENT BY THE COMPACTING STATES. NO AMENDMENT SHALL BECOME EFFECTIVE
35 AND BINDING UPON THE COMMISSION AND THE COMPACTING STATES UNLESS AND
36 UNTIL ALL COMPACTING STATES ENACT THE AMENDMENT INTO LAW.

37 S 8215. WITHDRAWAL, DEFAULT AND TERMINATION. (A)(1) ONCE EFFECTIVE,
38 THE COMPACT SHALL CONTINUE IN FORCE AND REMAIN BINDING UPON EACH AND
39 EVERY COMPACTING STATE; PROVIDED THAT A COMPACTING STATE MAY WITHDRAW
40 FROM THE COMPACT ("WITHDRAWING STATE") BY ENACTING A STATUTE SPECIF-
41 ICALLY REPEALING THE STATUTE WHICH ENACTED THE COMPACT INTO LAW.

42 (2) THE EFFECTIVE DATE OF WITHDRAWAL IS THE EFFECTIVE DATE OF THE
43 REPEALING STATUTE. HOWEVER, THE WITHDRAWAL SHALL NOT APPLY TO ANY PROD-
44 UCT FILINGS APPROVED OR SELF-CERTIFIED, OR ANY ADVERTISEMENT OF SUCH
45 PRODUCTS, ON THE DATE THE REPEALING STATUTE BECOMES EFFECTIVE, EXCEPT BY
46 MUTUAL AGREEMENT OF THE COMMISSION AND THE WITHDRAWING STATE UNLESS THE
47 APPROVAL IS RESCINDED BY THE WITHDRAWING STATE AS PROVIDED IN PARAGRAPH
48 FIVE OF THIS SUBSECTION.

49 (3) THE COMMISSIONER OF THE WITHDRAWING STATE SHALL IMMEDIATELY NOTIFY
50 THE MANAGEMENT COMMITTEE IN WRITING UPON THE INTRODUCTION OF LEGISLATION
51 REPEALING THIS COMPACT IN THE WITHDRAWING STATE.

52 (4) THE COMMISSION SHALL NOTIFY THE OTHER COMPACTING STATES OF THE
53 INTRODUCTION OF SUCH LEGISLATION WITHIN TEN DAYS AFTER ITS RECEIPT OF
54 NOTICE THEREOF.

55 (5) THE WITHDRAWING STATE IS RESPONSIBLE FOR ALL OBLIGATIONS, DUTIES
56 AND LIABILITIES INCURRED THROUGH THE EFFECTIVE DATE OF WITHDRAWAL,

1 INCLUDING ANY OBLIGATIONS, THE PERFORMANCE OF WHICH EXTEND BEYOND THE
2 EFFECTIVE DATE OF WITHDRAWAL, EXCEPT TO THE EXTENT THOSE OBLIGATIONS MAY
3 HAVE BEEN RELEASED OR RELINQUISHED BY MUTUAL AGREEMENT OF THE COMMISSION
4 AND THE WITHDRAWING STATE. THE COMMISSION'S APPROVAL OF PRODUCTS AND
5 ADVERTISEMENT PRIOR TO THE EFFECTIVE DATE OF WITHDRAWAL SHALL CONTINUE
6 TO BE EFFECTIVE AND BE GIVEN FULL FORCE AND EFFECT IN THE WITHDRAWING
7 STATE, UNLESS FORMALLY RESCINDED BY THE WITHDRAWING STATE IN THE SAME
8 MANNER AS PROVIDED BY THE LAWS OF THE WITHDRAWING STATE FOR THE PROSPEC-
9 TIVE DISAPPROVAL OF PRODUCTS OR ADVERTISEMENT PREVIOUSLY APPROVED UNDER
10 STATE LAW.

11 (6) REINSTATEMENT FOLLOWING WITHDRAWAL OF ANY COMPACTING STATE SHALL
12 OCCUR UPON THE EFFECTIVE DATE OF THE WITHDRAWING STATE'S LEGISLATION
13 REENACTING THE COMPACT.

14 (B) (1) IF THE COMMISSION DETERMINES THAT ANY COMPACTING STATE HAS AT
15 ANY TIME DEFAULTED ("DEFAULTING STATE") IN THE PERFORMANCE OF ANY OF ITS
16 OBLIGATIONS OR RESPONSIBILITIES UNDER THIS COMPACT, THE BY-LAWS OR DULY
17 PROMULGATED RULES OR OPERATING PROCEDURES, THEN, AFTER NOTICE AND HEAR-
18 ING AS SET FORTH IN THE BY-LAWS, ALL RIGHTS, PRIVILEGES AND BENEFITS
19 CONFERRED BY THE COMPACT ON THE DEFAULTING STATE SHALL BE SUSPENDED FROM
20 THE EFFECTIVE DATE OF DEFAULT AS FIXED BY THE COMMISSION. THE GROUNDS
21 FOR DEFAULT INCLUDE, BUT ARE NOT LIMITED TO, FAILURE OF A COMPACTING
22 STATE TO PERFORM ITS OBLIGATIONS OR RESPONSIBILITIES, AND ANY OTHER
23 GROUNDS DESIGNATED IN COMMISSION RULES. THE COMMISSION SHALL IMMEDIATELY
24 NOTIFY THE DEFAULTING STATE IN WRITING OF THE DEFAULTING STATE'S SUSPEN-
25 SION PENDING A CURE OF THE DEFAULT. THE COMMISSION SHALL STIPULATE THE
26 CONDITIONS AND THE TIME PERIOD WITHIN WHICH THE DEFAULTING STATE MUST
27 CURE ITS DEFAULT. IF THE DEFAULTING STATE FAILS TO CURE THE DEFAULT
28 WITHIN THE TIME PERIOD SPECIFIED BY THE COMMISSION, THE DEFAULTING STATE
29 SHALL BE TERMINATED FROM THE COMPACT AND ALL RIGHTS, PRIVILEGES AND
30 BENEFITS CONFERRED BY THE COMPACT SHALL BE TERMINATED FROM THE EFFECTIVE
31 DATE OF TERMINATION.

32 (2) PRODUCT APPROVALS BY THE COMMISSION OR PRODUCT SELF-CERTIFICA-
33 TIONS, OR ANY ADVERTISEMENT IN CONNECTION WITH SUCH PRODUCT, THAT ARE IN
34 FORCE ON THE EFFECTIVE DATE OF TERMINATION SHALL REMAIN IN FORCE IN THE
35 DEFAULTING STATE IN THE SAME MANNER AS IF THE DEFAULTING STATE HAD WITH-
36 DRAWN VOLUNTARILY UNDER THIS SECTION.

37 (3) REINSTATEMENT FOLLOWING TERMINATION OF ANY COMPACTING STATE
38 REQUIRES A REENACTMENT OF THE COMPACT BY THAT STATE.

39 (C)(1) THE COMPACT DISSOLVES EFFECTIVE UPON THE DATE OF THE WITHDRAWAL
40 OR DEFAULT OF THE COMPACTING STATE WHICH REDUCES MEMBERSHIP IN THE
41 COMPACT TO ONE COMPACTING STATE.

42 (2) UPON THE DISSOLUTION OF THE COMPACT, THE COMPACT BECOMES NULL AND
43 VOID AND SHALL BE OF NO FURTHER FORCE OR EFFECT, AND THE BUSINESS AND
44 AFFAIRS OF THE COMMISSION SHALL BE WOUND UP AND ANY SURPLUS FUNDS SHALL
45 BE DISTRIBUTED IN ACCORDANCE WITH THE BY-LAWS.

46 S 8216. SEVERABILITY AND CONSTRUCTION. (A) THE PROVISIONS OF THE
47 COMPACT SHALL BE SEVERABLE; AND IF ANY PHRASE, CLAUSE, SENTENCE OR
48 PROVISION IS DEEMED UNENFORCEABLE, THE REMAINING PROVISIONS OF THE
49 COMPACT SHALL BE ENFORCEABLE.

50 (B) THE PROVISIONS OF THE COMPACT SHALL BE LIBERALLY CONSTRUED TO
51 EFFECTUATE ITS PURPOSES.

52 S 8217. BINDING EFFECT OF COMPACT AND OTHER LAWS. (A) NOTHING IN THIS
53 SECTION PREVENTS THE ENFORCEMENT OF ANY OTHER LAW OF A COMPACTING STATE,
54 EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION.

55 (B) FOR ANY PRODUCT APPROVED OR CERTIFIED TO THE COMMISSION, THE
56 RULES, UNIFORM STANDARDS AND ANY OTHER REQUIREMENTS OF THE COMMISSION

1 SHALL CONSTITUTE THE EXCLUSIVE PROVISIONS APPLICABLE TO THE CONTENT,
2 APPROVAL AND CERTIFICATION OF SUCH PRODUCTS. FOR ADVERTISEMENT THAT IS
3 SUBJECT TO THE COMMISSION'S AUTHORITY, ANY RULE, UNIFORM STANDARD OR
4 OTHER REQUIREMENT OF THE COMMISSION WHICH GOVERNS THE CONTENT OF THE
5 ADVERTISEMENT SHALL CONSTITUTE THE EXCLUSIVE PROVISION THAT A COMMIS-
6 SIONER MAY APPLY TO THE CONTENT OF THE ADVERTISEMENT. NOTWITHSTANDING
7 THE FOREGOING, NO ACTION TAKEN BY THE COMMISSION SHALL ABROGATE OR
8 RESTRICT:

9 (1) THE ACCESS OF ANY PERSON TO STATE COURTS;

10 (2) REMEDIES AVAILABLE UNDER STATE LAW RELATED TO BREACH OF CONTRACT,
11 TORT OR OTHER LAWS NOT SPECIFICALLY DIRECTED TO THE CONTENT OF THE PROD-
12 UCT;

13 (3) STATE LAW RELATING TO THE CONSTRUCTION OF INSURANCE CONTRACTS; OR

14 (4) THE AUTHORITY OF THE ATTORNEY GENERAL OF THE STATE INCLUDING, BUT
15 NOT LIMITED TO, MAINTAINING ANY ACTIONS OR PROCEEDINGS AS AUTHORIZED BY
16 LAW.

17 (C) ALL INSURANCE PRODUCTS FILED WITH INDIVIDUAL STATES SHALL BE
18 SUBJECT TO THE LAWS OF THOSE STATES.

19 (D) ALL LAWFUL ACTIONS OF THE COMMISSION, INCLUDING ALL RULES AND
20 OPERATING PROCEDURES PROMULGATED BY THE COMMISSION, ARE BINDING UPON THE
21 COMPACTING STATES.

22 (E) ALL AGREEMENTS BETWEEN THE COMMISSION AND THE COMPACTING STATES
23 ARE BINDING IN ACCORDANCE WITH THEIR TERMS.

24 (F) UPON THE REQUEST OF A PARTY TO A CONFLICT OVER THE MEANING OR
25 INTERPRETATION OF COMMISSION ACTIONS, AND UPON A MAJORITY VOTE OF THE
26 COMPACTING STATES, THE COMMISSION MAY ISSUE ADVISORY OPINIONS REGARDING
27 THE DISPUTED MEANING OR INTERPRETATION.

28 (G) IN THE EVENT ANY PROVISION OF THIS ARTICLE EXCEEDS THE CONSTITU-
29 TIONAL LIMITS IMPOSED ON THE LEGISLATURE OF ANY COMPACTING STATE, THE
30 OBLIGATIONS, DUTIES, POWERS OR JURISDICTION SOUGHT TO BE CONFERRED BY
31 THAT PROVISION UPON THE COMMISSION SHALL BE INEFFECTIVE AS TO SUCH
32 COMPACTING STATE, AND SUCH OBLIGATIONS, DUTIES, POWERS OR JURISDICTION
33 SHALL REMAIN IN THE COMPACTING STATE AND SHALL BE EXERCISED BY THE AGEN-
34 CY THEREOF TO WHICH SUCH OBLIGATIONS, DUTIES, POWERS OR JURISDICTION ARE
35 DELEGATED BY LAW IN EFFECT AT THE TIME THE COMPACT BECOMES EFFECTIVE.

36 S 3. This act shall take effect on the one hundred eightieth day after
37 it shall have become a law.

38 PART B

39 Section 1. Subsection (a) of section 4217 of the insurance law, para-
40 graphs 1 and 4 as amended by chapter 22 of the laws of 1994, is amended
41 to read as follows:

42 (a) (1) FOR THE PURPOSES OF THIS SECTION THE FOLLOWING DEFINITIONS
43 SHALL APPLY ON OR AFTER THE OPERATIVE DATE OF THE VALUATION MANUAL:

44 (A) THE TERM "ACCIDENT AND HEALTH INSURANCE" MEANS CONTRACTS THAT
45 INCORPORATE MORBIDITY RISK AND PROVIDE PROTECTION AGAINST ECONOMIC LOSS
46 RESULTING FROM ACCIDENT, SICKNESS, OR MEDICAL CONDITIONS AND AS MAY BE
47 SPECIFIED IN THE VALUATION MANUAL.

48 (B) THE TERM "APPOINTED ACTUARY" MEANS A QUALIFIED ACTUARY WHO IS
49 APPOINTED IN ACCORDANCE WITH THE VALUATION MANUAL TO PREPARE THE ACTUAR-
50 IAL OPINION REQUIRED IN PARAGRAPH TWO OF SUBSECTION (E) OF THIS SECTION.

51 (C) THE TERM "COMPANY" MEANS AN ENTITY, WHICH (I) HAS WRITTEN, ISSUED,
52 OR REINSURED LIFE INSURANCE CONTRACTS, ACCIDENT AND HEALTH INSURANCE
53 CONTRACTS, OR DEPOSIT-TYPE CONTRACTS IN THIS STATE AND HAS AT LEAST ONE
54 SUCH POLICY IN FORCE OR ON CLAIM OR (II) HAS WRITTEN, ISSUED, OR REIN-

1 SURED LIFE INSURANCE CONTRACTS, ACCIDENT AND HEALTH INSURANCE CONTRACTS,
2 OR DEPOSIT-TYPE CONTRACTS IN ANY STATE AND IS REQUIRED TO HOLD A CERTIF-
3 ICATE OF AUTHORITY TO WRITE LIFE INSURANCE, ACCIDENT AND HEALTH INSUR-
4 ANCE, OR DEPOSIT-TYPE CONTRACTS IN THIS STATE.

5 (D) THE TERM "DEPOSIT-TYPE CONTRACT" MEANS CONTRACTS THAT DO NOT
6 INCORPORATE MORTALITY OR MORBIDITY RISKS AND AS MAY BE SPECIFIED IN THE
7 VALUATION MANUAL.

8 (E) THE TERM "LIFE INSURANCE" MEANS CONTRACTS THAT INCORPORATE MORTAL-
9 ITY RISK, INCLUDING ANNUITY AND PURE ENDOWMENT CONTRACTS, AND AS MAY BE
10 SPECIFIED IN THE VALUATION MANUAL.

11 (F) THE TERM "NAIC" MEANS THE NATIONAL ASSOCIATION OF INSURANCE
12 COMMISSIONERS.

13 (G) THE TERM "POLICYHOLDER BEHAVIOR" MEANS ANY ACTION A POLICYHOLDER,
14 CONTRACT HOLDER OR ANY OTHER PERSON WITH THE RIGHT TO ELECT OPTIONS,
15 SUCH AS A CERTIFICATE HOLDER, MAY TAKE UNDER A POLICY OR CONTRACT
16 SUBJECT TO THIS ACT INCLUDING, BUT NOT LIMITED TO, LAPSE, WITHDRAWAL,
17 TRANSFER, DEPOSIT, PREMIUM PAYMENT, LOAN, ANNUITIZATION, OR BENEFIT
18 ELECTIONS PRESCRIBED BY THE POLICY OR CONTRACT BUT EXCLUDING EVENTS OF
19 MORTALITY OR MORBIDITY THAT RESULT IN BENEFITS PRESCRIBED IN THEIR
20 ESSENTIAL ASPECTS BY THE TERMS OF THE POLICY OR CONTRACT.

21 (H) THE TERM "PRINCIPLE-BASED VALUATION" MEANS A RESERVE VALUATION
22 THAT USES ONE OR MORE METHODS OR ONE OR MORE ASSUMPTIONS DETERMINED BY
23 THE INSURER AND IS REQUIRED TO COMPLY WITH SUBSECTION (H) OF THIS
24 SECTION AS SPECIFIED IN THE VALUATION MANUAL.

25 (I) THE TERM "QUALIFIED ACTUARY" MEANS AN INDIVIDUAL WHO IS QUALIFIED
26 TO SIGN THE APPLICABLE STATEMENT OF ACTUARIAL OPINION IN ACCORDANCE WITH
27 THE AMERICAN ACADEMY OF ACTUARIES QUALIFICATION STANDARDS FOR ACTUARIES
28 SIGNING SUCH STATEMENTS AND WHO MEETS THE REQUIREMENTS SPECIFIED IN THE
29 VALUATION MANUAL.

30 (J) THE TERM "TAIL RISK" MEANS A RISK THAT OCCURS EITHER WHERE THE
31 FREQUENCY OF LOW PROBABILITY EVENTS IS HIGHER THAN EXPECTED UNDER A
32 NORMAL PROBABILITY DISTRIBUTION OR WHERE THERE ARE OBSERVED EVENTS OF
33 VERY SIGNIFICANT SIZE OR MAGNITUDE.

34 (K) THE TERM "VALUATION MANUAL" MEANS THE MANUAL OF VALUATION
35 INSTRUCTIONS ADOPTED BY THE NAIC AS SPECIFIED IN THIS SECTION OR AS
36 SUBSEQUENTLY AMENDED.

37 (2)(A) FOR POLICIES AND CONTRACTS ISSUED PRIOR TO THE OPERATIVE DATE
38 OF THE VALUATION MANUAL:

39 (I) The superintendent shall annually value, or cause to be valued,
40 the reserve liabilities (hereinafter called reserves) for all outstand-
41 ing insurance policies and contracts of every life insurance company
42 doing business in this state ISSUED ON OR AFTER THE EFFECTIVE DATE OF
43 SECTION FOUR THOUSAND TWO HUNDRED TWENTY-ONE OF THIS ARTICLE AND PRIOR
44 TO THE OPERATIVE DATE OF THE VALUATION MANUAL, except that, in the case
45 of an alien company, such valuation shall be limited to its United
46 States business[, and may certify the amount of any such reserves, spec-
47 ifying the mortality table or tables, rate or rates of interest and
48 methods (net level premium method or other) used in the calculation of
49 such reserves]. In calculating such reserves, the superintendent may use
50 group methods and approximate averages for fractions of a year or other-
51 wise.

52 [(2)] (II) In lieu of the valuation of the reserves herein required of
53 any foreign or alien company, the superintendent may accept any valu-
54 ation made, or caused to be made, by the insurance supervisory official
55 of any state or other jurisdiction when such valuation complies with the
56 minimum standard [herein] provided [and if the official of such state or

jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the superintendent when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction] IN THIS SECTION.

(III) THE PROVISIONS SET FORTH IN SUBSECTIONS (C), (D) AND (F) OF THIS SECTION AND SECTION FOUR THOUSAND TWO HUNDRED EIGHTEEN OF THIS ARTICLE SHALL APPLY TO ALL POLICIES AND CONTRACTS, AS APPROPRIATE, SUBJECT TO THIS SECTION, ISSUED ON OR AFTER THE EFFECTIVE DATE OF SECTION FOUR THOUSAND TWO HUNDRED TWENTY-ONE OF THIS ARTICLE AND PRIOR TO THE OPERATIVE DATE OF THE VALUATION MANUAL, AND THE PROVISIONS SET FORTH IN SUBSECTIONS (G) AND (H) OF THIS SECTION SHALL NOT APPLY TO ANY SUCH POLICIES AND CONTRACTS.

(IV) THE MINIMUM STANDARD FOR THE VALUATION OF POLICIES AND CONTRACTS ISSUED PRIOR TO THE EFFECTIVE DATE OF SECTION FOUR THOUSAND TWO HUNDRED TWENTY-ONE OF THIS ARTICLE SHALL BE THAT PROVIDED IN SUBSECTION (B) OF THIS SECTION.

(B) FOR POLICIES AND CONTRACTS ISSUED ON OR AFTER THE OPERATIVE DATE OF THE VALUATION MANUAL:

(I) THE SUPERINTENDENT SHALL ANNUALLY VALUE OR CAUSE TO BE VALUED THE RESERVE LIABILITIES (HEREINAFTER CALLED RESERVES) FOR ALL ITS 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 SUPERINTENDENT 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 SECTION.

(II) THE PROVISIONS SET FORTH IN SUBSECTIONS (G) AND (H) OF THIS SECTION SHALL APPLY TO ALL POLICIES AND CONTRACTS ISSUED ON OR AFTER THE OPERATIVE DATE OF THE VALUATION MANUAL.

(3) (A) The superintendent may, in his discretion, vary the standards of mortality applicable to policies of insurance on substandard lives and other extra-hazardous lives issued by any life insurance company doing business in this state.

(B) He may also, in his discretion, vary the standards of interest and mortality applicable to contracts issued by an alien insurer in countries other than the United States, if such alien insurer maintains the trusted surplus prescribed by section one thousand three hundred twelve of this chapter.

(4) (A) Any life insurance company doing business in this state which has adopted as a basis for the valuation of its insurance policies and contracts standards producing greater reserves in the aggregate than the minimum standards herein prescribed may continue to use such higher standards as a basis of valuation.

(B) After January first, nineteen hundred forty, any life insurance company doing business in this state may, subject to the provisions of paragraph eight of subsection (c) of this section, adopt as the basis for the valuation of its insurance policies and contracts standards producing greater reserves in the aggregate than the minimum standards herein prescribed; and any such company which shall have at any time adopted such higher standards of valuation may, with the approval of the superintendent, adopt lower standards of valuation, but in no case lower than the minimum standards herein prescribed, provided, however, that,

1 for the purposes of this paragraph, the holding of additional reserves
2 determined by [a] THE qualified OR APPOINTED actuary to be necessary to
3 render the opinion required by subsection (e) of this section shall not
4 be deemed to be the adoption of a higher standard of valuation.

5 (C) The superintendent may approve any such change if he finds that
6 the proposed standards are for the best interests of the holders of the
7 policies and contracts and annuitants of such company.

8 (D) Nothing contained herein shall be deemed to affect the contractual
9 rights or obligations of the holder of any such policy or contract.

10 S 2. The opening paragraph and subparagraph (A) of paragraph 2 of
11 subsection (c) of section 4217 of the insurance law, the opening para-
12 graph as amended by chapter 365 of the laws of 1986, are amended to read
13 as follows:

14 Except as [otherwise] provided in paragraphs three, four and ten of
15 this subsection, the minimum standard for the valuation of all such
16 policies and contracts shall be the commissioners reserve valuation
17 method defined in paragraph six of this subsection and in section four
18 thousand two hundred eighteen of this article, three percent interest
19 for all life insurance policies issued prior to January first, nineteen
20 hundred sixty-six and for all individual annuity and pure endowment
21 contracts issued prior to January first, nineteen hundred sixty, or
22 three and one-half percent interest for all life insurance policies
23 issued on or after January first, nineteen hundred sixty-six and prior
24 to June thirteenth, nineteen hundred seventy-four and for all individual
25 annuity and pure endowment contracts issued on or after January first,
26 nineteen hundred sixty, and prior to the operative date of paragraph
27 three of this subsection, or four percent interest for all life insur-
28 ance policies issued on or after June thirteenth, nineteen hundred
29 seventy-four and prior to January first, nineteen hundred seventy-nine,
30 or four and one-half percent interest for all life insurance policies,
31 issued on or after January first, nineteen hundred seventy-nine, or five
32 percent interest for all annuities purchased or to be purchased under
33 group annuity contracts, and the following tables:

34 (A) For [all] ordinary policies of life insurance issued on the stand-
35 ard basis, excluding any disability and accidental death benefits in
36 such policies, the Commissioners 1941 Standard Ordinary Mortality Table
37 for such policies issued prior to the operative date of subsection (h)
38 of section four thousand two hundred twenty-one of this article, the
39 Commissioners 1958 Standard Ordinary Mortality Table for such policies
40 issued on or after such operative date and prior to the operative date
41 of subsection (k) of such section; provided that for any category of
42 such policies issued on female risks all modified net premiums and pres-
43 ent values may be calculated according to an age not more than six years
44 younger than the actual age of the insured, and for such policies issued
45 on or after the operative date of such subsection, and, at the option of
46 the company, for such policies not providing for nonforfeiture benefits
47 which are issued on or after nineteen hundred eighty-one and prior to
48 the operative date of such subsection, (i) the Commissioners 1980 Stand-
49 ard Ordinary Mortality Table, or (ii) at the election of the company for
50 any one or more specified plans of life insurance, the Commissioners
51 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality
52 Factors, or (iii) any ordinary mortality table, adopted after nineteen
53 hundred eighty by the National Association of Insurance Commissioners,
54 that is approved by the superintendent for use in determining the mini-
55 mum standard of valuation for such policies, or (iv) any other ordinary
56 mortality table, or any modification of any of the foregoing tables,

1 approved by the superintendent for any specified class or classes of
2 risks.

3 S 3. The opening paragraph and subparagraphs (C) and (D) of paragraph
4 3 of subsection (c) of section 4217 of the insurance law are amended to
5 read as follows:

6 Except as provided in paragraph four hereof, the minimum standard [for
7 the] OF valuation [of all] FOR individual annuity and pure endowment
8 contracts issued on or after the operative date of this paragraph, as
9 defined herein, and for [all] annuities and pure endowments purchased or
10 to be purchased on or after the operative date under group annuity and
11 pure endowment contracts, shall be the commissioners reserve valuation
12 method defined in paragraph six hereof and the following tables and
13 interest rates:

14 (C) For [all] annuities and pure endowments purchased or to be
15 purchased prior to January first, nineteen hundred seventy-seven under
16 group annuity and pure endowment contracts, excluding any disability and
17 accidental death benefits purchased under such contracts,--the 1971
18 Group Annuity Mortality Table, or any modification of this table
19 approved by the superintendent, and six percent interest, or such higher
20 rate or rates of interest for any of such annuities and pure endowments
21 as may be approved from time to time by the superintendent.

22 (D) For [all] annuities and pure endowments purchased or to be
23 purchased on or after January first, nineteen hundred seventy-seven
24 under group annuity and pure endowment contracts, excluding any disabili-
25 ty and accidental death benefits purchased under such contracts--the
26 1971 Group Annuity Mortality Table, or any group annuity mortality
27 table, adopted after nineteen hundred eighty by the National Association
28 of Insurance Commissioners, that is approved by the superintendent for
29 use in determining the minimum standard of valuation for such annuities
30 and pure endowments, or any other group annuity mortality table, or any
31 modification of any of the foregoing tables, approved by the superinten-
32 dent, and seven and one-half percent interest, or such higher rate or
33 rates of interest for any such annuities and pure endowments as may be
34 approved from time to time by the superintendent.

35 S 4. Subparagraph (A) of paragraph 4 of subsection (c) of section 4217
36 of the insurance law is amended to read as follows:

37 (A) The interest rates used in determining the minimum standard for
38 the valuation of:

39 (i) [all] life insurance policies issued in a particular calendar
40 year, on or after January first, nineteen hundred eighty-two,

41 (ii) [all] individual annuity and pure endowment contracts issued in a
42 particular calendar year on or after January first, nineteen hundred
43 eighty-two, and, at the option of the company, [all] annuities purchased
44 in a particular calendar year on or after such date under individual
45 deferred annuity contracts issued prior thereto,

46 (iii) [all] annuities and pure endowments purchased in a particular
47 calendar year on or after January first, nineteen hundred eighty-two
48 under group annuity and pure endowment contracts, and

49 (iv) the net increase, if any, in a particular calendar year after
50 January first, nineteen hundred eighty-two, in amounts held under guar-
51 anteed interest contracts,

52 shall be the calendar year statutory valuation interest rates as defined
53 in this subsection, or such higher rate or rates of interest for any of
54 such policies, contracts or annuities as may be approved from time to
55 time by the superintendent.

1 S 5. The opening paragraph of subparagraph (A) of paragraph 6 of
2 subsection (c) of section 4217 of the insurance law is amended to read
3 as follows:

4 Except as otherwise provided in section four thousand two hundred
5 eighteen of this article, reserves according to the commissioners
6 reserve valuation method for the life insurance and endowment benefits
7 of policies providing for a uniform amount of insurance and requiring
8 the payment of uniform premiums shall be the excess, if any, of the
9 present value, at the date of valuation, of such future guaranteed bene-
10 fits provided for by such policies, over the then present value of any
11 future modified net premiums therefor. The modified net premiums for any
12 such policy shall be such uniform percentage of the respective contract
13 premiums for [such] THE benefits SUCH that the present value, at the
14 date of issue of the policy, of all [such] modified net premiums shall
15 be equal to the sum of the then present value of [such] THE benefits
16 provided for by the policy and the excess of item (i) over item (ii), as
17 follows:

18 S 6. Subsections (d) and (e) of section 4217 of the insurance law, as
19 added by chapter 22 of the laws of 1994, are amended to read as follows:

20 (d) [The] FOR INDIVIDUAL AND GROUP ACCIDENT AND HEALTH INSURANCE POLI-
21 CIES ISSUED PRIOR TO THE OPERATIVE DATE OF THE VALUATION MANUAL, THE
22 company shall maintain reserves [for all individual and group accident
23 and health insurance policies] which [reserves] shall reflect a sound
24 value placed on its liabilities under such policies and shall be not
25 less than the reserves required by regulations which the superintendent
26 shall promulgate. FOR ACCIDENT AND HEALTH INSURANCE POLICIES ISSUED ON
27 OR AFTER THE OPERATIVE DATE OF THE VALUATION MANUAL, THE STANDARD
28 PRESCRIBED IN THE VALUATION MANUAL IS THE MINIMUM STANDARD OF VALUATION
29 REQUIRED UNDER SUBPARAGRAPH (B) OF PARAGRAPH TWO OF SUBSECTION (A) OF
30 THIS SECTION.

31 (e) Actuarial opinion of reserves.

32 (1) ACTUARIAL OPINION PRIOR TO THE OPERATIVE DATE OF THE VALUATION
33 MANUAL.

34 (A) General. Every life insurance company doing business in this state
35 shall annually submit the opinion of a qualified actuary as to whether
36 the reserves and related actuarial items held in support of the policies
37 and contracts specified by the superintendent by regulation are computed
38 appropriately, are based on assumptions which satisfy contractual
39 provisions, are consistent with prior reported amounts and comply with
40 applicable laws of this state. The superintendent by regulation shall
41 define the specifics of this opinion and add any other items deemed to
42 be necessary to its scope.

43 [(2) (A)] (B) (I) Actuarial analysis of reserves and assets supporting
44 such reserves. Every life insurance company, except as exempted by or
45 pursuant to regulation, shall also annually include in the opinion
46 required by SUBPARAGRAPH (A) OF paragraph one of this subsection, an
47 opinion of the same qualified actuary as to whether the reserves and
48 related actuarial items held in support of the policies and contracts
49 specified by the superintendent by regulation, when considered in light
50 of the assets held by the company with respect to the reserves and
51 related actuarial items, including but not limited to the investment
52 earnings on the assets and the considerations anticipated to be received
53 and retained under the policies and contracts, make adequate provision
54 for the company's obligations under the policies and contracts, includ-
55 ing but not limited to the benefits under and expenses associated with
56 the policies and contracts.

1 [(B)] (II) The superintendent may provide by regulation for a transi-
2 tion period for establishing any additional reserves which the qualified
3 actuary may deem necessary in order to render the opinion required by
4 this paragraph.

5 [(3)] (C) Requirement for actuarial memorandum. [(A)] (I) Except as
6 exempted by or pursuant to regulation, a memorandum, in form and
7 substance acceptable to the superintendent as specified by regulation,
8 shall be prepared to support each actuarial opinion submitted pursuant
9 to ITEM (I) OF subparagraph [(A)] (B) of THIS paragraph [two of this
10 subsection]. Each company required to prepare such memorandum shall
11 submit such memorandum to the superintendent as part of its submission
12 of the opinion of the qualified actuary pursuant to such ITEM (I) OF
13 subparagraph [(A)] (B), except as otherwise provided in ITEM (II) OF
14 THIS subparagraph [(B) of this paragraph] and except that if a foreign
15 or alien company has submitted a memorandum in support of an opinion of
16 a qualified actuary for the prior year to the commissioner of a state
17 accredited by the National Association of Insurance Commissioners and if
18 that memorandum was in form and substance acceptable to the commissioner
19 and was in support of an opinion of a qualified actuary that was
20 required by laws or regulations of that state to meet standards adopted
21 from time to time by the Actuarial Standards Board and such additional
22 standards as the superintendent has prescribed, the foreign or alien
23 company need submit the memorandum required by this subparagraph only at
24 the request of the superintendent or as the superintendent may by regu-
25 lation require.

26 [(B)] (II) In lieu of preparing a memorandum as required by ITEM (I)
27 OF THIS subparagraph [(A) of this paragraph], a company may increase its
28 reserves in the manner provided by the superintendent by regulation. If
29 a company that has not so increased its reserves fails to file a
30 supporting memorandum as required by ITEM (I) OF THIS subparagraph [(A)
31 of this paragraph] or fails to provide a supporting memorandum at the
32 request of the superintendent within a period specified by regulation or
33 the superintendent determines that the supporting memorandum provided by
34 the company fails to meet the standards prescribed by the regulations
35 [or is otherwise unacceptable to the superintendent], the superintendent
36 may engage a qualified actuary at the expense of the company to review
37 the opinion and the basis for the opinion and prepare such supporting
38 memorandum as is required by the superintendent.

39 [(4)] (D) Requirement for all opinions. Every opinion shall be
40 governed by the following provisions:

41 [(A)] (I) The opinion shall be submitted with the annual statement
42 reflecting the valuation of such reserve liabilities for each year
43 ending on or after December thirty-first, nineteen hundred ninety-four.

44 [(B)] (II) The opinion shall apply to all business in force including
45 individual and group health insurance plans, in form and substance
46 acceptable to the superintendent as specified by regulation.

47 [(C)] (III) The opinion shall be based on standards adopted from time
48 to time by the Actuarial Standards Board and on such additional stand-
49 ards as the superintendent may by regulation prescribe.

50 [(D)] (IV) In the case of an opinion required to be submitted by a
51 foreign or alien company, the superintendent may accept the opinion
52 submitted by that company to the commissioner of a state accredited by
53 the National Association of Insurance Commissioners if the superinten-
54 dent determines that the opinion reasonably meets the requirements
55 applicable to a company domiciled in this state.

1 [(E)] (V) For the purposes of this subsection, "qualified actuary"
2 means a member in good standing of the American Academy of Actuaries who
3 meets the requirements prescribed by the superintendent by regulation.

4 [(F)] (VI) Except in cases of fraud, willful misconduct or gross
5 negligence, the qualified actuary shall not be liable for damages to any
6 person (other than the insurance company or the superintendent) for any
7 act, error, omission, decision or conduct with respect to the actuary's
8 opinion and memorandum. The provisions of this subparagraph shall not
9 operate to remove, condition or limit any rights, remedies or actions at
10 law or equity which the insurance company or the superintendent may have
11 or take against or with respect to the qualified actuary.

12 [(G)] (VII) Disciplinary action by the superintendent against the
13 company or the qualified actuary shall be defined in regulations by the
14 superintendent.

15 [(H)] (VIII) Non-public information (meaning information not otherwise
16 available from public documents or records) contained in any memorandum
17 in support of the opinion, or in any other material provided by the
18 company to the superintendent in connection therewith, shall at the
19 written request of the company be kept confidential by the superinten-
20 dent and shall not be made public, other than for the purpose of enabl-
21 ing any person to defend against an action seeking damages from such
22 person by reason of any action required by this section or by regu-
23 lations promulgated hereunder; provided, however, that such non-public
24 information may otherwise be released by the superintendent [(i)] (I)
25 with the written consent of the company or [(ii)] (II) for the purpose
26 of professional disciplinary proceedings conducted by the superintendent
27 or by any professional body, provided that steps deemed appropriate by
28 the superintendent are taken to preserve the confidentiality of such
29 non-public information. Notwithstanding the foregoing, the superinten-
30 dent shall release the non-public information to persons making demand
31 therefor in a criminal proceeding pursuant to lawful subpoena, warrant
32 or court order or in response to a subpoena from a grand jury served
33 upon the superintendent. Any such request by the company for confiden-
34 tiality shall designate with reasonable specificity the portion of such
35 memorandum or other material with respect to which confidentiality is
36 requested pursuant to this subparagraph. Once such memorandum or other
37 material, or any portion thereof containing matters with respect to
38 which confidentiality has been requested, is cited by the company in its
39 marketing or is cited before any governmental agency (other than a state
40 insurance department) or is released by the company to the news media,
41 all portions of such memorandum or other material shall be no longer
42 confidential.

43 (2) ACTUARIAL OPINION OF RESERVES AFTER THE OPERATIVE DATE OF THE
44 VALUATION MANUAL.

45 (A) GENERAL. EVERY COMPANY WITH OUTSTANDING LIFE INSURANCE CONTRACTS,
46 ACCIDENT AND HEALTH INSURANCE CONTRACTS OR DEPOSIT-TYPE CONTRACTS IN
47 THIS STATE AND SUBJECT TO REGULATION BY THE SUPERINTENDENT SHALL ANNUAL-
48 LY SUBMIT THE OPINION OF THE APPOINTED ACTUARY AS TO WHETHER THE
49 RESERVES AND RELATED ACTUARIAL ITEMS HELD IN SUPPORT OF THE POLICIES AND
50 CONTRACTS ARE COMPUTED APPROPRIATELY, ARE BASED ON ASSUMPTIONS THAT
51 SATISFY CONTRACTUAL PROVISIONS, ARE CONSISTENT WITH PRIOR REPORTED
52 AMOUNTS AND COMPLY WITH APPLICABLE LAWS OF THIS STATE. THE VALUATION
53 MANUAL WILL PRESCRIBE THE SPECIFICS OF THIS OPINION INCLUDING ANY ITEMS
54 DEEMED TO BE NECESSARY TO ITS SCOPE.

55 (B) ACTUARIAL ANALYSIS OF RESERVES AND ASSETS SUPPORTING RESERVES.
56 EVERY COMPANY WITH OUTSTANDING LIFE INSURANCE CONTRACTS, ACCIDENT AND

1 HEALTH INSURANCE CONTRACTS OR DEPOSIT-TYPE CONTRACTS IN THIS STATE AND
2 SUBJECT TO REGULATION BY THE SUPERINTENDENT, EXCEPT AS EXEMPTED IN THE
3 VALUATION MANUAL, SHALL ALSO ANNUALLY INCLUDE IN THE OPINION REQUIRED BY
4 SUBPARAGRAPH (A) OF THIS PARAGRAPH, AN OPINION OF THE SAME APPOINTED
5 ACTUARY AS TO WHETHER THE RESERVES AND RELATED ACTUARIAL ITEMS HELD IN
6 SUPPORT OF THE POLICIES AND CONTRACTS SPECIFIED IN THE VALUATION MANUAL,
7 WHEN CONSIDERED IN LIGHT OF THE ASSETS HELD BY THE COMPANY WITH RESPECT
8 TO THE RESERVES AND RELATED ACTUARIAL ITEMS, INCLUDING BUT NOT LIMITED
9 TO THE INVESTMENT EARNINGS ON THE ASSETS AND THE CONSIDERATIONS ANTIC-
10 IPATED TO BE RECEIVED AND RETAINED UNDER THE POLICIES AND CONTRACTS,
11 MAKE ADEQUATE PROVISION FOR THE COMPANY'S OBLIGATIONS UNDER THE POLICIES
12 AND CONTRACTS, INCLUDING BUT NOT LIMITED TO THE BENEFITS UNDER AND
13 EXPENSES ASSOCIATED WITH THE POLICIES AND CONTRACTS.

14 (C) REQUIREMENTS FOR OPINION SUBJECT TO SUBPARAGRAPH (B) OF THIS PARA-
15 GRAPH. EACH OPINION REQUIRED BY SUBPARAGRAPH (B) OF THIS PARAGRAPH SHALL
16 BE GOVERNED BY THE FOLLOWING PROVISIONS:

17 (I) A MEMORANDUM, IN FORM AND SUBSTANCE AS SPECIFIED IN THE VALUATION
18 MANUAL, SHALL BE PREPARED TO SUPPORT EACH ACTUARIAL OPINION.

19 (II) IF THE INSURANCE COMPANY FAILS TO PROVIDE A SUPPORTING MEMORANDUM
20 AT THE REQUEST OF THE SUPERINTENDENT WITHIN A PERIOD SPECIFIED IN THE
21 VALUATION MANUAL OR THE SUPERINTENDENT DETERMINES THAT THE SUPPORTING
22 MEMORANDUM PROVIDED BY THE INSURANCE COMPANY FAILS TO MEET THE STANDARDS
23 PRESCRIBED BY THE VALUATION MANUAL, THE SUPERINTENDENT MAY ENGAGE A
24 QUALIFIED ACTUARY AT THE EXPENSE OF THE COMPANY TO REVIEW THE OPINION
25 AND THE BASIS FOR THE OPINION AND PREPARE THE SUPPORTING MEMORANDUM
26 REQUIRED BY THE SUPERINTENDENT.

27 (D) REQUIREMENTS FOR ALL OPINIONS SUBJECT TO THIS PARAGRAPH. EVERY
28 OPINION SHALL BE GOVERNED BY THE FOLLOWING PROVISIONS:

29 (I) THE OPINION SHALL BE IN FORM AND SUBSTANCE AS SPECIFIED IN THE
30 VALUATION MANUAL.

31 (II) THE OPINION SHALL BE SUBMITTED WITH THE ANNUAL STATEMENT REFLECT-
32 ING THE VALUATION OF SUCH RESERVE LIABILITIES FOR EACH YEAR ENDING ON OR
33 AFTER THE OPERATIVE DATE OF THE VALUATION MANUAL.

34 (III) THE OPINION SHALL APPLY TO ALL POLICIES AND CONTRACTS SUBJECT TO
35 SUBPARAGRAPH (B) OF THIS PARAGRAPH, PLUS OTHER ACTUARIAL LIABILITIES AS
36 MAY BE SPECIFIED IN THE VALUATION MANUAL.

37 (IV) THE OPINION SHALL BE BASED ON STANDARDS ADOPTED FROM TIME TO TIME
38 BY THE ACTUARIAL STANDARDS BOARD OR ITS SUCCESSOR, AND ON SUCH ADDI-
39 TIONAL STANDARDS AS MAY BE PRESCRIBED IN THE VALUATION MANUAL.

40 (V) IN THE CASE OF AN OPINION REQUIRED TO BE SUBMITTED BY A FOREIGN OR
41 ALIEN COMPANY, THE SUPERINTENDENT MAY ACCEPT THE OPINION FILED BY THAT
42 COMPANY WITH THE INSURANCE SUPERVISORY OFFICIAL OF ANOTHER STATE IF THE
43 SUPERINTENDENT DETERMINES THAT THE OPINION REASONABLY MEETS THE REQUIRE-
44 MENTS APPLICABLE TO A COMPANY DOMICILED IN THIS STATE.

45 (VI) EXCEPT IN CASES OF FRAUD OR WILLFUL MISCONDUCT, THE APPOINTED
46 ACTUARY SHALL NOT BE LIABLE FOR DAMAGES TO ANY PERSON (OTHER THAN THE
47 INSURANCE COMPANY AND THE SUPERINTENDENT) FOR ANY ACT, ERROR, OMISSION,
48 DECISION OR CONDUCT WITH RESPECT TO THE APPOINTED ACTUARY'S OPINION.

49 (VII) DISCIPLINARY ACTION BY THE SUPERINTENDENT AGAINST THE COMPANY OR
50 THE APPOINTED ACTUARY SHALL BE DEFINED IN REGULATIONS BY THE SUPERINTEN-
51 DENT.

52 S 7. Paragraph 5 of subsection (f) of section 4217 of the insurance
53 law, as added by chapter 22 of the laws of 1994, is amended to read as
54 follows:

55 (5) For purposes of this subsection, the aggregate minimum standard
56 required by this section for the valuation of any insurance policies or

contracts shall be deemed to include such additional reserves as the qualified actuary deems necessary, taking into account any transition rules provided by regulation pursuant to ITEM (II) OF subparagraph (B) of paragraph [two] ONE of subsection (e) of this section, in order to render the opinion required by subsection (e) of this section and such additional reserves as may be necessary to comply with regulations promulgated by the superintendent pursuant to this section.

S 8. Section 4217 of the insurance law is amended by adding five new subsections (g), (h), (i), (j) and (k) to read as follows:

(G) VALUATION MANUAL FOR POLICIES ISSUED ON OR AFTER THE OPERATIVE DATE OF THE VALUATION MANUAL.

(1) 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 SUBPARAGRAPH (B) OF PARAGRAPH TWO OF SUBSECTION (A) OF THIS SECTION, EXCEPT AS PROVIDED UNDER PARAGRAPH FIVE OF THIS SUBSECTION.

(2) THE OPERATIVE DATE OF THE VALUATION MANUAL IS JANUARY FIRST OF THE FIRST CALENDAR YEAR FOLLOWING THE FIRST JULY FIRST AS OF WHICH ALL OF THE FOLLOWING HAVE OCCURRED:

(A) THE VALUATION MANUAL HAS BEEN ADOPTED BY THE NAIC BY AN AFFIRMATIVE VOTE OF AT LEAST FORTY-TWO MEMBERS, OR THREE-FOURTHS OF THE MEMBERS VOTING, WHICHEVER IS GREATER.

(B) THE STANDARD VALUATION LAW, AS AMENDED BY THE NAIC IN TWO THOUSAND NINE, OR LEGISLATION INCLUDING SUBSTANTIALLY SIMILAR TERMS AND PROVISIONS, HAS BEEN ENACTED BY STATES REPRESENTING GREATER THAN SEVENTY-FIVE PERCENT OF THE DIRECT PREMIUMS WRITTEN AS REPORTED IN THE FOLLOWING ANNUAL STATEMENTS SUBMITTED FOR TWO THOUSAND EIGHT: LIFE, ACCIDENT AND HEALTH ANNUAL STATEMENTS; HEALTH ANNUAL STATEMENTS; OR FRATERNAL ANNUAL STATEMENTS.

(C) THE STANDARD VALUATION LAW, AS AMENDED BY THE NAIC IN TWO THOUSAND NINE, OR LEGISLATION INCLUDING SUBSTANTIALLY SIMILAR TERMS AND PROVISIONS, HAS BEEN ENACTED BY AT LEAST FORTY-TWO OF THE FOLLOWING FIFTY-FIVE JURISDICTIONS: THE FIFTY STATES OF THE UNITED STATES, AMERICAN SAMOA, THE AMERICAN VIRGIN ISLANDS, THE DISTRICT OF COLUMBIA, GUAM, AND PUERTO RICO.

(3) UNLESS A CHANGE IN THE VALUATION MANUAL SPECIFIES A LATER EFFECTIVE DATE, CHANGES TO THE VALUATION MANUAL SHALL BE EFFECTIVE ON JANUARY FIRST FOLLOWING THE DATE WHEN 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, AND

(B) MEMBERS OF THE NAIC REPRESENTING JURISDICTIONS TOTALING GREATER THAN SEVENTY-FIVE PERCENT OF THE DIRECT PREMIUMS WRITTEN AS REPORTED IN THE FOLLOWING ANNUAL STATEMENTS MOST RECENTLY AVAILABLE PRIOR TO THE VOTE IN SUBPARAGRAPH (A) OF THIS PARAGRAPH: LIFE, ACCIDENT AND HEALTH ANNUAL STATEMENTS, HEALTH ANNUAL STATEMENTS, OR FRATERNAL ANNUAL STATEMENTS.

(4) THE VALUATION MANUAL MUST SPECIFY ALL OF THE FOLLOWING:

(A) MINIMUM VALUATION STANDARDS FOR AND DEFINITIONS OF THE POLICIES OR CONTRACTS SUBJECT TO SUBPARAGRAPH (B) OF PARAGRAPH TWO OF SUBSECTION (A) OF THIS SECTION. SUCH MINIMUM VALUATION STANDARDS SHALL BE:

(I) THE COMMISSIONERS RESERVE VALUATION METHOD FOR LIFE INSURANCE CONTRACTS, OTHER THAN ANNUITY CONTRACTS, SUBJECT TO SUBPARAGRAPH (B) OF PARAGRAPH TWO OF SUBSECTION (A) OF THIS SECTION;

1 (II) THE COMMISSIONERS ANNUITY RESERVE VALUATION METHOD FOR ANNUITY
2 CONTRACTS SUBJECT TO SUBPARAGRAPH (B) OF PARAGRAPH TWO OF SUBSECTION (A)
3 OF THIS SECTION; AND

4 (III) MINIMUM RESERVES FOR ALL OTHER POLICIES OR CONTRACTS SUBJECT TO
5 SUBPARAGRAPH (B) OF PARAGRAPH TWO OF SUBSECTION (A) OF THIS SECTION.

6 (B) WHICH POLICIES OR CONTRACTS OR TYPES OF POLICIES OR CONTRACTS ARE
7 SUBJECT TO THE REQUIREMENTS OF A PRINCIPLE-BASED VALUATION IN PARAGRAPH
8 ONE OF SUBSECTION (H) OF THIS SECTION AND THE MINIMUM VALUATION STAND-
9 ARDS CONSISTENT WITH THOSE REQUIREMENTS;

10 (C) FOR POLICIES AND CONTRACTS SUBJECT TO A PRINCIPLE-BASED VALUATION
11 UNDER SUBSECTION (H) OF THIS SECTION:

12 (I) REQUIREMENTS FOR THE FORMAT OF REPORTS TO THE SUPERINTENDENT UNDER
13 SUBPARAGRAPH (C) OF PARAGRAPH TWO OF SUBSECTION (H) OF THIS SECTION AND
14 WHICH SHALL INCLUDE INFORMATION NECESSARY TO DETERMINE IF THE VALUATION
15 IS APPROPRIATE AND IN COMPLIANCE WITH THIS SECTION;

16 (II) ASSUMPTIONS SHALL BE PRESCRIBED FOR RISKS OVER WHICH THE COMPANY
17 DOES NOT HAVE SIGNIFICANT CONTROL OR INFLUENCE.

18 (III) PROCEDURES FOR CORPORATE GOVERNANCE AND OVERSIGHT OF THE ACTUAR-
19 IAL FUNCTION, AND A PROCESS FOR APPROPRIATE WAIVER OR MODIFICATION OF
20 SUCH PROCEDURES.

21 (D) FOR POLICIES NOT SUBJECT TO A PRINCIPLE-BASED VALUATION UNDER
22 SUBSECTION (H) OF THIS SECTION THE MINIMUM VALUATION STANDARD SHALL
23 EITHER:

24 (I) BE CONSISTENT WITH THE MINIMUM STANDARD OF VALUATION PRIOR TO THE
25 OPERATIVE DATE OF THE VALUATION MANUAL; OR

26 (II) DEVELOP RESERVES THAT QUANTIFY THE BENEFITS AND GUARANTEES, AND
27 THE FUNDING, ASSOCIATED WITH THE CONTRACTS AND THEIR RISKS AT A LEVEL OF
28 CONSERVATISM THAT REFLECTS CONDITIONS THAT INCLUDE UNFAVORABLE EVENTS
29 THAT HAVE A REASONABLE PROBABILITY OF OCCURRING.

30 (E) OTHER REQUIREMENTS, INCLUDING, BUT NOT LIMITED TO, THOSE RELATING
31 TO RESERVE METHODS, MODELS FOR MEASURING RISK, GENERATION OF ECONOMIC
32 SCENARIOS, ASSUMPTIONS, MARGINS, USE OF COMPANY EXPERIENCE, RISK MEAS-
33 UREMENT, DISCLOSURE, CERTIFICATIONS, REPORTS, ACTUARIAL OPINIONS AND
34 MEMORANDUMS, TRANSITION RULES AND INTERNAL CONTROLS; AND

35 (F) THE DATA AND FORM OF THE DATA REQUIRED UNDER SUBSECTION (I) OF
36 THIS SECTION, WITH WHOM THE DATA MUST BE SUBMITTED, AND MAY SPECIFY
37 OTHER REQUIREMENTS INCLUDING DATA ANALYSES AND REPORTING OF ANALYSES.

38 (5) IN THE ABSENCE OF A SPECIFIC VALUATION, THE COMPANY SHALL, WITH
39 RESPECT TO SUCH REQUIREMENTS, COMPLY WITH MINIMUM VALUATION STANDARDS
40 PRESCRIBED BY THE SUPERINTENDENT BY REGULATION.

41 (6) THE SUPERINTENDENT MAY ENGAGE A QUALIFIED ACTUARY, AT THE EXPENSE
42 OF THE COMPANY, TO PERFORM AN ACTUARIAL EXAMINATION OF THE COMPANY AND
43 OPINE ON THE APPROPRIATENESS OF ANY RESERVE ASSUMPTION OR METHOD USED BY
44 THE COMPANY, OR TO REVIEW AND OPINE ON A COMPANY'S COMPLIANCE WITH ANY
45 REQUIREMENT SET FORTH IN THIS SECTION. THE SUPERINTENDENT MAY RELY UPON
46 THE OPINION, REGARDING PROVISIONS CONTAINED WITHIN THIS SECTION, OF A
47 QUALIFIED ACTUARY ENGAGED BY THE COMMISSIONER OF ANOTHER STATE, DISTRICT
48 OR TERRITORY OF THE UNITED STATES. AS USED IN THIS PARAGRAPH, THE TERM
49 "ENGAGE" INCLUDES EMPLOYMENT AND CONTRACTING.

50 (H) REQUIREMENTS OF A PRINCIPLE-BASED VALUATION.

51 (1) A COMPANY MUST ESTABLISH RESERVES USING A PRINCIPLE-BASED VALU-
52 ATION THAT MEETS THE FOLLOWING CONDITIONS FOR POLICIES OR CONTRACTS AS
53 SPECIFIED IN THE VALUATION MANUAL:

54 (A) QUANTIFY THE BENEFITS AND GUARANTEES, AND THE FUNDING, ASSOCIATED
55 WITH THE CONTRACTS AND THEIR RISKS AT A LEVEL OF CONSERVATISM THAT
56 REFLECTS CONDITIONS THAT INCLUDE UNFAVORABLE EVENTS THAT HAVE A REASON-

1 ABLE PROBABILITY OF OCCURRING DURING THE LIFETIME OF THE CONTRACTS. FOR
2 POLICIES OR CONTRACTS WITH SIGNIFICANT TAIL RISK, REFLECT CONDITIONS
3 APPROPRIATELY ADVERSE TO QUANTIFY THE TAIL RISK.

4 (B) INCORPORATE ASSUMPTIONS, RISK ANALYSIS METHODS AND FINANCIAL
5 MODELS AND MANAGEMENT TECHNIQUES THAT ARE CONSISTENT WITH, BUT NOT
6 NECESSARILY IDENTICAL TO, THOSE UTILIZED WITHIN THE COMPANY'S OVERALL
7 RISK ASSESSMENT PROCESS, WHILE RECOGNIZING POTENTIAL DIFFERENCES IN
8 FINANCIAL REPORTING STRUCTURES AND ANY PRESCRIBED ASSUMPTIONS OR METH-
9 ODS.

10 (C) INCORPORATE ASSUMPTIONS THAT ARE DERIVED IN ONE OF THE FOLLOWING
11 MANNERS:

12 (I) THE ASSUMPTION IS PRESCRIBED IN THE VALUATION MANUAL.

13 (II) FOR ASSUMPTIONS THAT ARE NOT PRESCRIBED, THE ASSUMPTIONS SHALL:

14 (I) BE ESTABLISHED UTILIZING THE COMPANY'S AVAILABLE EXPERIENCE, TO
15 THE EXTENT IT IS RELEVANT AND STATISTICALLY CREDIBLE; OR

16 (II) TO THE EXTENT THAT COMPANY EXPERIENCE IS NOT AVAILABLE, RELEVANT,
17 OR STATISTICALLY CREDIBLE, BE ESTABLISHED UTILIZING OTHER RELEVANT,
18 STATISTICALLY CREDIBLE EXPERIENCE.

19 (D) PROVIDE MARGINS FOR UNCERTAINTY INCLUDING ADVERSE DEVIATION AND
20 ESTIMATION ERROR, SUCH THAT THE GREATER THE UNCERTAINTY THE LARGER THE
21 MARGIN AND RESULTING RESERVE.

22 (2) A COMPANY USING A PRINCIPLE-BASED VALUATION FOR ONE OR MORE POLI-
23 CIES OR CONTRACTS SUBJECT TO THIS SECTION AS SPECIFIED IN THE VALUATION
24 MANUAL SHALL:

25 (A) ESTABLISH PROCEDURES FOR CORPORATE GOVERNANCE AND OVERSIGHT OF THE
26 ACTUARIAL VALUATION FUNCTION CONSISTENT WITH THOSE DESCRIBED IN THE
27 VALUATION MANUAL.

28 (B) PROVIDE TO THE SUPERINTENDENT AND THE BOARD OF DIRECTORS AN ANNUAL
29 CERTIFICATION OF THE EFFECTIVENESS OF THE INTERNAL CONTROLS WITH RESPECT
30 TO THE PRINCIPLE-BASED VALUATION. SUCH CONTROLS SHALL BE DESIGNED TO
31 ASSURE THAT ALL MATERIAL RISKS INHERENT IN THE LIABILITIES AND ASSOCI-
32 ATED ASSETS SUBJECT TO SUCH VALUATION ARE INCLUDED IN THE VALUATION, AND
33 THAT VALUATIONS ARE MADE IN ACCORDANCE WITH THE VALUATION MANUAL. THE
34 CERTIFICATION SHALL BE BASED ON THE CONTROLS IN PLACE AS OF THE END OF
35 THE PRECEDING CALENDAR YEAR.

36 (C) DEVELOP, AND FILE WITH THE SUPERINTENDENT UPON REQUEST, A PRINCI-
37 PLE-BASED VALUATION REPORT THAT COMPLIES WITH STANDARDS PRESCRIBED IN
38 THE VALUATION MANUAL.

39 (3) A PRINCIPLE-BASED VALUATION MAY INCLUDE A PRESCRIBED FORMULAIC
40 RESERVE COMPONENT.

41 (I) EXPERIENCE REPORTING FOR POLICIES IN FORCE ON OR AFTER THE OPERA-
42 TIVE DATE OF THE VALUATION MANUAL.

43 A COMPANY SHALL SUBMIT MORTALITY, MORBIDITY, POLICYHOLDER BEHAVIOR, OR
44 EXPENSE EXPERIENCE AND OTHER DATA AS PRESCRIBED IN THE VALUATION MANUAL.

45 (J) CONFIDENTIALITY.

46 (1) FOR PURPOSES OF THIS SUBSECTION, "CONFIDENTIAL INFORMATION" SHALL
47 MEAN:

48 (A) A MEMORANDUM IN SUPPORT OF AN OPINION SUBMITTED UNDER SUBSECTION
49 (E) OF THIS SECTION AND ANY OTHER DOCUMENTS, MATERIALS AND OTHER INFOR-
50 MATION, INCLUDING, BUT NOT LIMITED TO, ALL WORKING PAPERS, AND COPIES
51 THEREOF, CREATED, PRODUCED OR OBTAINED BY OR DISCLOSED TO THE SUPER-
52 INTENDENT OR ANY OTHER PERSON IN CONNECTION WITH SUCH MEMORANDUM;

53 (B) ALL DOCUMENTS, MATERIALS AND OTHER INFORMATION, INCLUDING, BUT NOT
54 LIMITED TO, ALL WORKING PAPERS, AND COPIES THEREOF, CREATED, PRODUCED OR
55 OBTAINED BY OR DISCLOSED TO THE SUPERINTENDENT OR ANY OTHER PERSON IN
56 THE COURSE OF AN EXAMINATION MADE UNDER PARAGRAPH SIX OF SUBSECTION (G)

1 OF THIS SECTION; PROVIDED, HOWEVER, THAT IF AN EXAMINATION REPORT OR
2 OTHER MATERIAL PREPARED IN CONNECTION WITH AN EXAMINATION MADE UNDER
3 SECTION THREE HUNDRED NINE OF THIS CHAPTER IS NOT HELD AS PRIVATE AND
4 CONFIDENTIAL INFORMATION UNDER SECTION THREE HUNDRED NINE OF THIS CHAP-
5 TER, AN EXAMINATION REPORT OR OTHER MATERIAL PREPARED IN CONNECTION WITH
6 AN EXAMINATION MADE UNDER PARAGRAPH SIX OF SUBSECTION (G) OF THIS
7 SECTION SHALL NOT BE "CONFIDENTIAL INFORMATION" TO THE SAME EXTENT AS IF
8 SUCH EXAMINATION REPORT OR OTHER MATERIAL HAD BEEN PREPARED UNDER
9 SECTION THREE HUNDRED NINE OF THIS CHAPTER;

10 (C) ANY REPORTS, DOCUMENTS, MATERIALS AND OTHER INFORMATION DEVELOPED
11 BY A COMPANY IN SUPPORT OF, OR IN CONNECTION WITH, AN ANNUAL CERTIF-
12 ICATION BY THE COMPANY UNDER SUBPARAGRAPH (B) OF PARAGRAPH TWO OF
13 SUBSECTION (H) OF THIS SECTION EVALUATING THE EFFECTIVENESS OF THE
14 COMPANY'S INTERNAL CONTROLS WITH RESPECT TO A PRINCIPLE-BASED VALUATION
15 AND ANY OTHER DOCUMENTS, MATERIALS AND OTHER INFORMATION, INCLUDING, BUT
16 NOT LIMITED TO, ALL WORKING PAPERS, AND COPIES THEREOF, CREATED,
17 PRODUCED OR OBTAINED BY OR DISCLOSED TO THE SUPERINTENDENT OR ANY OTHER
18 PERSON IN CONNECTION WITH SUCH REPORTS, DOCUMENTS, MATERIALS AND OTHER
19 INFORMATION;

20 (D) ANY PRINCIPLE-BASED VALUATION REPORT DEVELOPED UNDER SUBPARAGRAPH
21 (C) OF PARAGRAPH TWO OF SUBSECTION (H) OF THIS SECTION AND ANY OTHER
22 DOCUMENTS, MATERIALS AND OTHER INFORMATION, INCLUDING, BUT NOT LIMITED
23 TO, ALL WORKING PAPERS, AND COPIES THEREOF, CREATED, PRODUCED OR
24 OBTAINED BY OR DISCLOSED TO THE SUPERINTENDENT OR ANY OTHER PERSON IN
25 CONNECTION WITH SUCH REPORT; AND

26 (E) ANY DOCUMENTS, MATERIALS, DATA AND OTHER INFORMATION SUBMITTED BY
27 A COMPANY UNDER SUBSECTION (I) OF THIS SECTION (COLLECTIVELY, "EXPERI-
28 ENCE DATA") AND ANY OTHER DOCUMENTS, MATERIALS, DATA AND OTHER INFORMA-
29 TION, INCLUDING, BUT NOT LIMITED TO, ALL WORKING PAPERS, AND COPIES
30 THEREOF, CREATED OR PRODUCED IN CONNECTION WITH SUCH EXPERIENCE DATA, IN
31 EACH CASE THAT INCLUDE ANY POTENTIALLY COMPANY-IDENTIFYING OR PERSONALLY
32 IDENTIFIABLE INFORMATION, THAT IS PROVIDED TO OR OBTAINED BY THE SUPER-
33 INTENDENT (TOGETHER WITH ANY "EXPERIENCE DATA", THE "EXPERIENCE MATERI-
34 ALS") AND ANY OTHER DOCUMENTS, MATERIALS, DATA AND OTHER INFORMATION,
35 INCLUDING, BUT NOT LIMITED TO, ALL WORKING PAPERS, AND COPIES THEREOF,
36 CREATED, PRODUCED OR OBTAINED BY OR DISCLOSED TO THE SUPERINTENDENT OR
37 ANY OTHER PERSON IN CONNECTION WITH SUCH EXPERIENCE MATERIALS.

38 (2) PRIVILEGE FOR, AND CONFIDENTIALITY OF, CONFIDENTIAL INFORMATION.

39 (A) EXCEPT AS PROVIDED IN THIS SUBSECTION, A COMPANY'S CONFIDENTIAL
40 INFORMATION IS CONFIDENTIAL BY LAW AND PRIVILEGED, AND SHALL NOT BE
41 SUBJECT TO ARTICLE SIX OF THE PUBLIC OFFICERS LAW, SHALL NOT BE SUBJECT
42 TO SUBPOENA AND SHALL NOT BE SUBJECT TO DISCOVERY OR ADMISSIBLE IN
43 EVIDENCE IN ANY PRIVATE CIVIL ACTION; PROVIDED, HOWEVER, THAT THE SUPER-
44 INTENDENT IS AUTHORIZED TO USE THE CONFIDENTIAL INFORMATION IN THE
45 FURTHERANCE OF ANY REGULATORY OR LEGAL ACTION BROUGHT AGAINST THE COMPA-
46 NY AS A PART OF THE SUPERINTENDENT'S OFFICIAL DUTIES.

47 (B) NEITHER THE SUPERINTENDENT NOR ANY PERSON WHO RECEIVED CONFIDEN-
48 TIAL INFORMATION WHILE ACTING UNDER THE AUTHORITY OF THE SUPERINTENDENT
49 SHALL BE PERMITTED OR REQUIRED TO TESTIFY IN ANY PRIVATE CIVIL ACTION
50 CONCERNING ANY CONFIDENTIAL INFORMATION.

51 (C) IN ORDER TO ASSIST IN THE PERFORMANCE OF THE SUPERINTENDENT'S
52 DUTIES, THE SUPERINTENDENT MAY SHARE CONFIDENTIAL INFORMATION (I) WITH
53 OTHER STATE, FEDERAL AND INTERNATIONAL REGULATORY AGENCIES AND WITH THE
54 NAIC AND ITS AFFILIATES AND SUBSIDIARIES AND (II) IN THE CASE OF CONFIDENTIAL
55 INFORMATION SPECIFIED IN SUBPARAGRAPHS (A) AND (D) OF PARAGRAPH
56 ONE OF THIS SUBSECTION 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; IN THE CASE OF ITEMS (I) AND (II) OF THIS SUBPARAGRAPH, PROVIDED THAT SUCH RECIPIENT AGREES, AND HAS THE LEGAL AUTHORITY TO AGREE, TO MAINTAIN THE CONFIDENTIALITY AND PRIVILEGED STATUS OF SUCH DOCUMENTS, MATERIALS, DATA AND OTHER INFORMATION IN THE SAME MANNER AND TO THE SAME EXTENT AS REQUIRED FOR THE SUPERINTENDENT.

(D) THE SUPERINTENDENT 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.

(E) THE SUPERINTENDENT MAY ENTER INTO AGREEMENTS GOVERNING SHARING AND USE OF INFORMATION CONSISTENT WITH THIS PARAGRAPH.

(F) NO WAIVER OF ANY APPLICABLE PRIVILEGE OR CLAIM OF CONFIDENTIALITY IN THE CONFIDENTIAL INFORMATION SHALL OCCUR AS A RESULT OF DISCLOSURE TO THE SUPERINTENDENT UNDER THIS SECTION OR AS A RESULT OF SHARING AS AUTHORIZED IN SUBPARAGRAPH (C) OF THIS PARAGRAPH.

(G) A PRIVILEGE ESTABLISHED UNDER THE LAW OF ANY STATE OR JURISDICTION THAT IS SUBSTANTIALLY SIMILAR TO THE PRIVILEGE ESTABLISHED UNDER THIS PARAGRAPH SHALL BE AVAILABLE AND ENFORCED IN ANY PROCEEDING IN, AND IN ANY COURT OF, THIS STATE.

(H) IN THIS SUBSECTION, THE TERMS "REGULATORY AGENCY," "LAW ENFORCEMENT AGENCY" AND THE "NAIC" INCLUDE, BUT ARE NOT LIMITED TO, THEIR EMPLOYEES, AGENTS, CONSULTANTS AND CONTRACTORS.

(3) NOTWITHSTANDING PARAGRAPH TWO OF THIS SUBSECTION, ANY CONFIDENTIAL INFORMATION SPECIFIED IN SUBPARAGRAPHS (A) AND (D) OF PARAGRAPH ONE OF THIS SUBSECTION:

(A) MAY BE SUBJECT TO SUBPOENA FOR THE PURPOSE OF DEFENDING AN ACTION SEEKING DAMAGES FROM THE QUALIFIED OR APPOINTED ACTUARY SUBMITTING THE RELATED MEMORANDUM IN SUPPORT OF AN OPINION SUBMITTED UNDER SUBSECTION (E) OF THIS SECTION OR FROM THE APPOINTED ACTUARY SUBMITTING THE PRINCIPLE-BASED VALUATION REPORT DEVELOPED UNDER SUBPARAGRAPH (C) OF PARAGRAPH TWO OF SUBSECTION (H) OF THIS SECTION BY REASON OF AN ACTION REQUIRED BY THIS SECTION OR BY REGULATIONS PROMULGATED HEREUNDER;

(B) MAY OTHERWISE BE RELEASED BY THE SUPERINTENDENT WITH THE WRITTEN CONSENT OF THE COMPANY; AND

(C) ONCE ANY PORTION OF A MEMORANDUM IN SUPPORT OF AN OPINION SUBMITTED UNDER SUBSECTION (E) OF THIS SECTION OR A PRINCIPLE-BASED VALUATION REPORT DEVELOPED UNDER SUBPARAGRAPH (C) OF PARAGRAPH TWO OF SUBSECTION (H) OF THIS SECTION 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 SUCH MEMORANDUM OR REPORT SHALL NO LONGER BE CONFIDENTIAL.

(K) SINGLE STATE EXEMPTION.

(1) THE SUPERINTENDENT MAY EXEMPT SPECIFIC PRODUCT FORMS OR PRODUCT LINES OF A DOMESTIC COMPANY THAT IS LICENSED AND DOING BUSINESS ONLY IN NEW YORK FROM THE REQUIREMENTS OF SUBSECTION (G) OF THIS SECTION PROVIDED:

1 (A) THE SUPERINTENDENT HAS ISSUED AN EXEMPTION IN WRITING TO THE
2 COMPANY AND HAS NOT SUBSEQUENTLY REVOKED THE EXEMPTION IN WRITING; AND

3 (B) THE COMPANY COMPUTES RESERVES USING ASSUMPTIONS AND METHODS USED
4 PRIOR TO THE OPERATIVE DATE OF THE VALUATION MANUAL IN ADDITION TO ANY
5 REQUIREMENTS ESTABLISHED BY THE SUPERINTENDENT AND PROMULGATED BY REGU-
6 LATION.

7 (2) FOR ANY COMPANY GRANTED AN EXEMPTION UNDER THIS SUBSECTION,
8 SUBSECTIONS (C), (D), (E) AND (F) OF THIS SECTION AND SECTION FOUR THOU-
9 SAND TWO HUNDRED EIGHTEEN OF THIS ARTICLE SHALL BE APPLICABLE. WITH
10 RESPECT TO ANY COMPANY APPLYING FOR THIS EXEMPTION, ANY REFERENCE TO
11 SUBSECTION (G) FOUND IN SUBSECTIONS (C), (D), (E) AND (F) OF THIS
12 SECTION AND SECTION FOUR THOUSAND TWO HUNDRED EIGHTEEN OF THIS ARTICLE
13 SHALL NOT BE APPLICABLE.

14 S 9. Paragraph 1 of subsection (a) of section 4218 of the insurance
15 law is amended to read as follows:

16 (1) When the actual premium or consideration charged for life insur-
17 ance under any life insurance policy, issued by any [life insurance]
18 company doing business in this state, is less than the modified net
19 premium calculated on the basis of the commissioners reserve valuation
20 method as defined in paragraph six of subsection (c) of section four
21 thousand two hundred seventeen of this article and using the rate of
22 interest and mortality tables contained in the minimum valuation stand-
23 ards in paragraphs two and four of such subsection, or in the case of
24 future renewals under a renewable term insurance policy issued prior to
25 the operative date of subsection (k) of section four thousand two
26 hundred twenty-one of this article, the Modern CSO Mortality Table
27 published in the Transactions of the Society of Actuaries, Vol. XXVII
28 (1975), the minimum reserve required for such policy shall be the great-
29 er of either the reserve calculated according to the mortality table,
30 rate of interest, and method actually used for such policy, or the
31 reserve calculated by the commissioners reserve valuation method as
32 defined in paragraph six of subsection (c) of section four thousand two
33 hundred seventeen of this article and using the mortality table and rate
34 of interest prescribed in this section for calculating the commissioners
35 reserve valuation method modified net premium and replacing such modi-
36 fied net premium by the actual premium charged for the policy in each
37 contract year for which such modified net premium exceeds the actual
38 premium.

39 S 10. Paragraph 1, item (vi) of subparagraph (B) of paragraph 9 and
40 paragraph 10 of subsection (k) of section 4221 of the insurance law,
41 paragraph 10 as amended by chapter 302 of the laws of 1987, are amended
42 to read as follows:

43 (1) This subsection shall apply to all policies issued on or after the
44 operative date as defined in this subsection. THE TERM "OPERATIVE DATE
45 OF THE VALUATION MANUAL", AS USED IN THIS SUBSECTION, MEANS JANUARY
46 FIRST OF THE FIRST CALENDAR YEAR THAT THE VALUATION MANUAL AS DEFINED IN
47 SECTION FOUR THOUSAND TWO HUNDRED SEVENTEEN OF THIS ARTICLE IS EFFEC-
48 TIVE.

49 (vi) [Any] (I) FOR POLICIES ISSUED PRIOR TO THE OPERATIVE DATE OF THE
50 VALUATION MANUAL, ANY COMMISSIONERS STANDARD ordinary mortality tables,
51 adopted after nineteen hundred eighty by the National Association of
52 Insurance Commissioners (or any modifications thereof for any specified
53 class or classes of risks), that are approved by the superintendent for
54 use in determining the minimum nonforfeiture standard may be substituted
55 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.

(II) 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 (OR ANY MODIFICATIONS THEREOF FOR ANY SPECIFIED CLASS OR CLASSES OF RISKS) WITH OR WITHOUT TEN-YEAR SELECT MORTALITY FACTORS OR FOR THE COMMISSIONERS 1980 EXTENDED TERM INSURANCE TABLE. IF THE SUPERINTENDENT APPROVES BY REGULATION ANY COMMISSIONERS STANDARD ORDINARY MORTALITY TABLE ADOPTED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS (OR ANY MODIFICATIONS THEREOF FOR ANY SPECIFIED CLASS OR CLASSES OF RISKS) 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.

(10) The NONFORFEITURE INTEREST RATE IS DEFINED BELOW:

(A) FOR POLICIES ISSUED PRIOR TO THE OPERATIVE DATE OF THE VALUATION MANUAL, THE nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred and twenty-five percent of the calendar year statutory valuation interest rate for such policy as defined in section four thousand two hundred seventeen of this article rounded to the nearer one quarter of one percent, PROVIDED, HOWEVER, THAT THE NONFORFEITURE INTEREST RATE SHALL NOT BE LESS THAN FOUR PERCENT. THE NONFORFEITURE INTEREST RATE SHALL BE computed, with respect to a single premium life insurance policy of the kind referred to in item (vi) of subparagraph (B) of paragraph four of subsection (c) of such section, on a year of issue basis by using a reference interest rate defined for such policy in subparagraph (F) of such paragraph for the year immediately preceding the year of issue on the assumption that the company has submitted an opinion and memorandum, in form and substance satisfactory to the superintendent, of a qualified actuary with respect to such single premium life insurance policies in accordance with item (vi) of subparagraph (B) of such paragraph.

(B) FOR POLICIES ISSUED ON AND 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.

S 11. Item (iv) of subparagraph (A) of paragraph 3 of subsection (n-1) of section 4221 of the insurance law, as added by chapter 365 of the laws of 1986, is amended to read as follows:

(iv) A policy meeting the requirements of this subparagraph if issued before the operative date of subsection (k) of this section may not impose mortality charges in excess of those based on the commissioners 1958 standard ordinary mortality table in the case of a standard medically underwritten insured or the commissioners 1958 extended term insurance table in the case of any other standard insured, and if issued on or after such operative date may not impose mortality charges in excess of those based on the commissioners 1980 standard ordinary mortality table in the case of a standard medically underwritten insured or the commissioners 1980 extended term insurance table in the case of any other standard insured. At the option of the company, maximum charges based on the commissioners 1980 standard ordinary mortality table may be computed using ten-year select mortality factors. Maximum charges may also be based on any other table (or modification thereof for the specified class of risk) PROVIDED BY THE VALUATION MANUAL OR approved by the

superintendent pursuant to item (vi) of subparagraph (B) of paragraph nine of subsection (k) of this section. For insurance issued on a substandard basis, such charges may be based on appropriate modifications of such tables.

S 12. This act shall take effect immediately.

PART C

Section 1. Section 7120 of the insurance law, as amended by chapter 48 of the laws of 2009, is amended to read as follows:

S 7120. Redomestication of [foreign] insurance companies. (a) Definitions. In this section:

(1) "Redomestication" means the transfer to this state of the corporate domicile of an authorized foreign company OR THE TRANSFER FROM THIS STATE OF THE CORPORATE DOMICILE OF A DOMESTIC COMPANY, as provided for in this section.

(2) "Transferring company" means any authorized [foreign] company seeking redomestication.

(b) A transferring company TRANSFERRING TO THIS STATE shall:

(1) file with the superintendent a certificate in such form as prescribed by the superintendent signed by the insurance supervisory official of the state where such transferring company is domiciled approving the proposed redomestication and confirming that upon redomestication the transferring company shall no longer be subject as a domestic company to the requirements of its current state of domicile;

(2) comply with the applicable requirements of this chapter regarding the organization and licensing of a domestic company of the same type;

(3) demonstrate to the satisfaction of the superintendent that upon redomestication, the transferring company will be in compliance with the requirements of this chapter and any regulations promulgated thereunder applicable to a domestic company of the same type;

(4) submit to the superintendent all documents and filings necessary to comply with paragraphs two and three of this subsection; and

(5) submit new policy forms to the superintendent for use after redomestication, if so ordered by the superintendent, or use existing policy forms with appropriate endorsements if allowed by, and under such conditions as approved by, the superintendent.

(c) A TRANSFERRING COMPANY TRANSFERRING FROM THIS STATE:

(1) UPON THE APPROVAL OF THE SUPERINTENDENT, TRANSFER ITS DOMICILE TO ANY OTHER STATE IN WHICH IT IS ADMITTED TO TRANSACT THE BUSINESS OF INSURANCE, AND UPON SUCH A TRANSFER IT SHALL CEASE TO BE A DOMESTIC COMPANY, AND SHALL BE AUTHORIZED IN THIS STATE, IF QUALIFIED, AS A FOREIGN INSURER. THE SUPERINTENDENT SHALL APPROVE THE TRANSFER UNLESS HE OR SHE DETERMINES THE TRANSFER IS NOT IN THE INTEREST OF THE POLICYHOLDERS OF THIS STATE; AND

(2) MAY CONTINUE ISSUING POLICY FORMS APPROVED BEFORE REDOMESTICATION PURSUANT TO SECTION THREE THOUSAND TWO HUNDRED ONE OF THIS CHAPTER WITH SUCH ENDORSEMENT, IF ANY, AS THE SUPERINTENDENT DETERMINES IS NEEDED TO REFLECT THE REDOMESTICATION.

(D) After the transferring company has complied with the provisions of this section, the superintendent may, in accordance with section one thousand one hundred two of this chapter issue a new license to the transferring company to reflect the change in its state of corporate domicile. The duration of its license shall be governed by section one thousand one hundred three of this chapter. Upon issuance of such new license the redomestication shall become effective and the transferring

1 company shall be a domestic company OR A FOREIGN COMPANY, AS
2 APPROPRIATE.

3 [(d)] (E) Simultaneous with the redomestication taking effect:

4 (1) all materials and documents that were submitted to the superinten-
5 dent by the transferring company pursuant to the requirements of this
6 section shall be filed in the office of the superintendent SUBJECT TO
7 SUBSECTION (H) OF THIS SECTION; and

8 (2) FOR A TRANSFERRING COMPANY TRANSFERRING TO THIS STATE, the super-
9 intendent shall, in accordance with section one thousand two hundred one
10 or other applicable provisions of this chapter issue to the company a
11 certified copy of its new declaration and charter and a certificate of
12 incorporation. The new charter of the company may provide for the
13 continuation of the corporate existence of the transferring company and
14 in such case the original date of incorporation of the transferring
15 company shall be the date of incorporation of the new domestic company.

16 [(e)] (F) All outstanding insurance policies and contracts shall
17 remain in full force and effect with no change and need not be endorsed
18 as to the new name of the company, if any, or its new location unless
19 ordered by the superintendent.

20 [(f)] (G) All agents' appointments and licenses, rates, and other
21 items that the superintendent allows, existing at the time of redomesti-
22 cation, shall continue in full force and effect in accordance with
23 applicable provisions of this chapter.

24 (H) THE SUPERINTENDENT SHALL KEEP THE CONTENTS OF ANY REPORT OR INFOR-
25 MATION THE SUPERINTENDENT REQUIRES PURSUANT TO THIS SECTION, AND THAT IS
26 NOT OTHERWISE REQUIRED TO BE SET FORTH IN A PUBLICLY AVAILABLE REPORT OR
27 FILING, CONFIDENTIAL IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION (C)
28 OF SECTION ONE THOUSAND FIVE HUNDRED FOUR OF THIS CHAPTER.

29 S 2. This act shall take effect immediately.

30 PART D

31 Section 1. The section heading and subsections (a), (b) and (c) of
32 section 2123 of the insurance law, subsection (a) as amended by section
33 37-a of part D of chapter 56 of the laws of 2013, subsections (b) and
34 (c) as amended by chapter 540 of the laws of 1996, are amended to read
35 as follows:

36 Misrepresentations[,] AND misleading statements [and incomplete
37 comparisons].

38 (a) (1) No agent or representative of any insurer or health mainte-
39 nance organization authorized to transact life, accident or health
40 insurance or health maintenance organization business in this state,
41 insurance broker, person who has received a grant from and has been
42 certified by the health benefit exchange established pursuant to section
43 1311 of the Affordable Care Act, 42 U.S.C. S 18031, to act as a naviga-
44 tor, including any person employed by a certified navigator, or other
45 person, firm, association or corporation, shall issue or circulate or
46 cause or permit to be issued or circulated, any illustration, circular,
47 statement or memorandum misrepresenting the terms, benefits or advan-
48 tages of any policy or contract of life, accident or health insurance,
49 any annuity contract or any health maintenance organization contract,
50 delivered or issued for delivery or to be delivered or issued for deliv-
51 ery, in this state, or shall make any misleading estimate as to the
52 dividends or share of surplus or additional amounts to be received in
53 the future on such policy or contract, or shall make any false or
54 misleading statement as to the dividends or share of surplus or addi-

tional amounts previously paid by any such insurer or health maintenance organization on similar policies or contracts, or shall make any misleading representation, or any misrepresentation, as to the financial condition of any such insurer or health maintenance organization, or as to the legal reserve system upon which such insurer or health maintenance organization operates.

(2) No such person, firm, association or corporation shall make to any person or persons any incomplete [comparison] OR MISLEADING REPRESENTATION of any such policies or contracts of any insurer, insurers, or health maintenance organization, for the purpose of inducing, or tending to induce, such person or persons to lapse, forfeit or surrender any insurance policy or health maintenance organization contract.

(3) Any replacement of individual life insurance policies or individual annuity contracts of an insurer by an agent, representative of the same or different insurer or broker shall conform to standards promulgated by regulation by the superintendent. Such regulation shall BE CONSISTENT, TO THE GREATEST EXTENT PRACTICABLE AND IN THE PUBLIC INTEREST, WITH THE REPLACEMENTS REGULATION ADOPTED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, AS AMENDED FROM TIME TO TIME, AND SHALL ALSO:

(A) specify what constitutes the replacement of a life insurance policy or annuity contract and the proper disclosure and notification procedures to replace a policy or contract;

(B) require notification of the proposed replacement to the insurer whose policies or contracts are intended to be replaced; AND

(C) [require the timely exchange of illustrative and cost information required by section three thousand two hundred nine of this chapter and necessary for completion of a comparison of the proposed and replaced coverage; and

(D)] provide for a sixty-day period following issuance of the replacement policies or contracts during which the policy or contract owner may return the policies or contracts and reinstate the replaced policies or contracts.

(b) [Any comparison of the policies or contracts of any such insurer, insurers or health maintenance organization shall be deemed to be an incomplete comparison if it does not conform to all the requirements for comparisons established by regulation.

(c)] In the determination, judicial or otherwise, of the incompleteness or misleading character of any such [comparison] REPRESENTATION, it shall not be presumed that the insured knew or knows of any of the provisions, terms or benefits contained in any insurance policy or health maintenance organization contract.

S 2. The section heading and subsections (a), (b) and (c) of section 4226 of the insurance law, paragraph 6 of subsection (a) as added by chapter 616 of the laws of 1997, are amended to read as follows:

Misrepresentations[,] AND misleading statements [and incomplete comparisons] by insurers. (a) No insurer authorized to do in this state the business of life, or accident and health insurance, or to make annuity contracts shall:

(1) issue or circulate, or cause or permit to be issued or circulated on its behalf, any illustration, circular, statement or memorandum misrepresenting the terms, benefits or advantages of any of its policies or contracts;

(2) make any estimate of the dividends or share of surplus or additional amounts to be received on such policies or contracts;

1 (3) make any false or misleading statement of the dividends or share
2 of surplus or additional amounts paid by any such insurer on similar
3 policies or contracts;

4 (4) make any misleading representation, or any misrepresentation of
5 the financial condition of any such insurer or of the legal reserve
6 system upon which it operates; [or]

7 (5) make or deliver to any person or persons any incomplete [compar-
8 ison of] OR MISLEADING REPRESENTATION REGARDING any such policies or
9 contracts for the purpose of inducing, or tending to induce, such person
10 or persons to lapse, forfeit or surrender any insurance policy or
11 contract[.]; OR

12 (6) replace the individual life insurance policies or individual annu-
13 ity contracts of an insurer by the same or different insurer without
14 conforming to the standards promulgated by regulation by the superinten-
15 dent. Such regulation shall BE CONSISTENT, TO THE GREATEST EXTENT PRAC-
16 TICABLE AND IN THE PUBLIC INTEREST, WITH THE REPLACEMENTS REGULATION
17 ADOPTED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, AS
18 AMENDED FROM TIME TO TIME, AND SHALL ALSO:

19 (A) specify what constitutes the replacement of a life insurance poli-
20 cy or annuity contract and the proper disclosure and notification proce-
21 dures to replace a policy or contract;

22 (B) require notification of the proposed replacement to the insurer
23 whose policies or contracts are intended to be replaced; AND

24 (C) [require the timely exchange of illustrative and cost information
25 required by section three thousand two hundred nine of this chapter and
26 necessary for completion of a comparison of the proposed and replaced
27 coverage; and

28 (D)] provide for a sixty-day period following issuance of the replace-
29 ment policies or contracts during which the policy or contract owner may
30 return the policies or contracts and reinstate the replaced policies or
31 contracts.

32 (b) [Any comparison of the policies or contracts of any such insurer
33 or insurers shall be deemed to be an incomplete comparison if it does
34 not conform to all the requirements for comparisons established by the
35 superintendent by regulation.

36 (c)] In any determination, judicial or otherwise, of the incomplete-
37 ness or misleading character of any such [comparison or of] represen-
38 tation, it shall not be presumed that the insured knew or knows of any
39 of the provisions or benefits contained in any insurance policy or
40 contract.

41 S 3. This act shall take effect on the one hundred eightieth day after
42 it shall have become a law.

43 PART E

44 Section 1. Subsection (a) of section 110 of the insurance law, as
45 amended by chapter 238 of the laws of 2013, is amended to read as
46 follows:

47 (a) In order to assist in the performance of the superintendent's
48 duties under this chapter, the superintendent:

49 (1) may share documents, materials or other information, including
50 confidential and privileged documents, materials or information with
51 other state, federal, and international regulatory agencies, with the
52 National Association of Insurance Commissioners, its affiliates or
53 subsidiaries, and with state, federal, and international law enforcement
54 authorities, including members of any supervisory college described in

1 section three hundred two of this chapter, provided that the recipient
2 has the authority and agrees to maintain the confidentiality and privi-
3 leged status of the document, material or other information; provided,
4 however, that this paragraph shall not be construed as limiting access
5 to records pursuant to article six of the public officers law;

6 (2) may receive documents, materials or information, including other-
7 wise confidential and privileged documents, materials or information,
8 from the National Association of Insurance Commissioners, its affiliates
9 or subsidiaries and from regulatory and law enforcement officials of
10 other foreign or domestic jurisdictions, including members of any super-
11 visory college described in section three hundred two of this chapter,
12 and shall maintain as confidential or privileged any document, material
13 or information received with notice or the understanding that it is
14 confidential or privileged under the laws of the jurisdiction that is
15 the source of the document, material or information; and

16 (3) [may] (A) SHALL enter into WRITTEN agreements governing sharing
17 and use of documents, materials or information consistent with this
18 subsection[.]; AND

19 (B) RELATING TO THE REPORTS REQUIRED PURSUANT TO SECTIONS ONE THOUSAND
20 FIVE HUNDRED THREE, ONE THOUSAND SIX HUNDRED FOUR AND ONE THOUSAND SEVEN
21 HUNDRED SEVENTEEN OF THIS CHAPTER AND IN FURTHERANCE OF THIS SUBSECTION:

22 (I) SPECIFY PROCEDURES AND PROTOCOLS REGARDING THE CONFIDENTIALITY AND
23 SECURITY OF INFORMATION SHARED WITH THE NATIONAL ASSOCIATION OF INSUR-
24 ANCE COMMISSIONERS OR A THIRD-PARTY CONSULTANT DESIGNATED BY THAT ORGAN-
25 IZATION, THE SUPERINTENDENT OR ANOTHER STATE, FEDERAL OR INTERNATIONAL
26 REGULATOR AGENCY, INCLUDING PROCEDURES OR PROTOCOLS FOR SHARING BY THE
27 ASSOCIATION OR SUCH THIRD-PARTY CONSULTANT WITH OTHER STATE REGULATORS
28 FROM STATES IN WHICH THE INSURANCE GROUP HAS DOMICILED INSURERS, AND
29 ENTER INTO A WRITTEN AGREEMENT WHICH SHALL PROVIDE THAT THE RECIPIENT
30 MAINTAIN THE CONFIDENTIALITY AND PRIVILEGED STATUS OF THE ORSA-RELATED
31 DOCUMENTS, MATERIALS OR OTHER INFORMATION AND HAS VERIFIED IN WRITING
32 THE LEGAL AUTHORITY TO MAINTAIN CONFIDENTIALITY; (II) SPECIFY THAT
33 OWNERSHIP OF INFORMATION SHARED WITH THE NATIONAL ASSOCIATION OF INSUR-
34 ANCE COMMISSIONERS OR SUCH THIRD-PARTY CONSULTANT REMAINS WITH THE
35 SUPERINTENDENT AND THE ASSOCIATION'S OR SUCH THIRD-PARTY CONSULTANT'S
36 USE OF THE INFORMATION IS SUBJECT TO THE DIRECTION OF THE SUPERINTEN-
37 DENT; (III) PROHIBIT THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS
38 OR SUCH THIRD-PARTY CONSULTANT FROM STORING THE INFORMATION SHARED
39 PURSUANT TO THIS SUBSECTION IN A PERMANENT DATABASE AFTER THE UNDERLYING
40 ANALYSIS IS COMPLETED; (IV) REQUIRE PROMPT NOTICE TO BE GIVEN TO AN
41 INSURER WHOSE CONFIDENTIAL INFORMATION IN THE POSSESSION OF THE NATIONAL
42 ASSOCIATION OF INSURANCE COMMISSIONERS OR SUCH THIRD-PARTY CONSULTANT IS
43 SUBJECT TO A REQUEST OR SUBPOENA TO THE ASSOCIATION OR SUCH THIRD-PARTY
44 CONSULTANT FOR DISCLOSURE OR PRODUCTION; AND (V) REQUIRE THE NATIONAL
45 ASSOCIATION OF INSURANCE COMMISSIONERS OR SUCH THIRD-PARTY CONSULTANT TO
46 CONSENT TO INTERVENTION BY AN INSURER IN ANY JUDICIAL OR ADMINISTRATIVE
47 ACTION IN WHICH SUCH ASSOCIATION OR SUCH THIRD-PARTY CONSULTANT MAY BE
48 REQUIRED TO DISCLOSE CONFIDENTIAL INFORMATION ABOUT THE INSURER SHARED
49 WITH THE ASSOCIATION OR SUCH THIRD-PARTY CONSULTANT.

50 S 2. Subsection (a) of section 1501 of the insurance law is amended by
51 adding three new paragraphs 8, 9, and 10 to read as follows:

52 (8) "OWN RISK AND SOLVENCY ASSESSMENT" OR "ORSA" SHALL MEAN A CONFI-
53 DENTIAL INTERNAL ASSESSMENT, APPROPRIATE TO THE NATURE, SCALE AND
54 COMPLEXITY OF AN INSURER OR INSURANCE GROUP, CONDUCTED BY THAT INSURER
55 OR INSURANCE GROUP OF THE MATERIAL AND RELEVANT RISKS ASSOCIATED WITH

1 THE INSURER OR INSURANCE GROUP'S CURRENT BUSINESS PLAN, AND THE SUFFI-
2 CIENCY OF CAPITAL RESOURCES TO SUPPORT THOSE RISKS.

3 (9) "ORSA GUIDANCE MANUAL" SHALL MEAN THE CURRENT VERSION OF THE OWN
4 RISK AND SOLVENCY ASSESSMENT GUIDANCE MANUAL DEVELOPED AND ADOPTED BY
5 THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS (NAIC) AND AS
6 AMENDED FROM TIME TO TIME. A CHANGE IN THE ORSA GUIDANCE MANUAL SHALL BE
7 EFFECTIVE ON THE FIRST OF JANUARY FOLLOWING THE CALENDAR YEAR IN WHICH
8 THE CHANGES HAVE BEEN ADOPTED BY THE NAIC.

9 (10) "ORSA SUMMARY REPORT" SHALL MEAN A CONFIDENTIAL HIGH-LEVEL SUMMA-
10 RY OF AN INSURER OR INSURANCE GROUP'S ORSA.

11 S 3. Section 1503 of the insurance law is amended by adding two new
12 subsections (c) and (d) to read as follows:

13 (C)(1) AN INSURER, OR THE INSURANCE GROUP OF WHICH THE INSURER IS A
14 MEMBER, SHALL REGULARLY CONDUCT AN ORSA CONSISTENT WITH A PROCESS COMPA-
15 RABLE TO THE ORSA GUIDANCE MANUAL. THE ORSA SHALL BE CONDUCTED NO LESS
16 THAN ANNUALLY BUT ALSO AT ANY TIME WHEN THERE ARE SIGNIFICANT CHANGES TO
17 THE RISK PROFILE OF THE INSURER OR THE INSURANCE GROUP OF WHICH THE
18 INSURER IS A MEMBER.

19 (2) UPON THE REQUEST OF THE SUPERINTENDENT, AND NO MORE THAN ONCE EACH
20 YEAR, AN AUTHORIZED DOMESTIC INSURER SHALL SUBMIT TO THE SUPERINTENDENT
21 AN ORSA SUMMARY REPORT OR ANY COMBINATION OF REPORTS THAT TOGETHER
22 CONTAIN THE INFORMATION DESCRIBED IN THE ORSA GUIDANCE MANUAL, APPLICA-
23 BLE TO THE INSURER AND/OR THE INSURANCE GROUP OF WHICH IT IS A MEMBER.
24 NOTWITHSTANDING ANY REQUEST FROM THE SUPERINTENDENT, IF THE INSURER IS A
25 MEMBER OF AN INSURANCE GROUP, THE INSURER SHALL SUBMIT THE REPORT(S)
26 REQUIRED BY THIS SUBSECTION IF THE SUPERINTENDENT IS THE LEAD STATE
27 COMMISSIONER OF THE INSURANCE GROUP, AS DETERMINED BY THE PROCEDURES
28 WITHIN THE FINANCIAL ANALYSIS HANDBOOK ADOPTED BY THE NATIONAL ASSOCI-
29 ATION OF INSURANCE COMMISSIONERS.

30 (3) THE REPORT(S) SHALL INCLUDE A SIGNATURE OF THE INSURER OR INSUR-
31 ANCE GROUP'S CHIEF RISK OFFICER OR OTHER EXECUTIVE HAVING RESPONSIBILITY
32 FOR THE OVERSIGHT OF THE INSURER'S ENTERPRISE RISK MANAGEMENT PROCESS
33 ATTESTING TO THE BEST OF HIS/HER BELIEF AND KNOWLEDGE THAT THE INSURER
34 APPLIES THE ENTERPRISE RISK MANAGEMENT PROCESS DESCRIBED IN THE ORSA
35 SUMMARY REPORT AND THAT A COPY OF THE REPORT HAS BEEN PROVIDED TO THE
36 INSURER'S BOARD OF DIRECTORS OR THE APPROPRIATE COMMITTEE THEREOF.

37 (4) AN INSURER MAY COMPLY WITH PARAGRAPH ONE OF THIS SUBSECTION BY
38 PROVIDING THE MOST RECENT AND SUBSTANTIALLY SIMILAR REPORT(S) PROVIDED
39 BY THE INSURER OR ANOTHER MEMBER OF AN INSURANCE GROUP OF WHICH THE
40 INSURER IS A MEMBER TO THE COMMISSIONER OF ANOTHER STATE OR TO A SUPER-
41 VISOR OR REGULATOR OF A FOREIGN JURISDICTION, IF THAT REPORT PROVIDES
42 INFORMATION THAT IS COMPARABLE TO THE INFORMATION DESCRIBED IN THE ORSA
43 GUIDANCE MANUAL. ANY SUCH REPORT IN A LANGUAGE OTHER THAN ENGLISH MUST
44 BE ACCOMPANIED BY A TRANSLATION OF THAT REPORT INTO THE ENGLISH
45 LANGUAGE.

46 (D) THE SUPERINTENDENT MAY PROMULGATE ANY REGULATION NECESSARY TO
47 ACCOMPLISH THE REQUIREMENTS OF SUBSECTIONS (B) AND (C) OF THIS SECTION,
48 INCLUDING ANY EXEMPTIONS DETERMINED AS APPROPRIATE BY THE SUPERINTEN-
49 DENT.

50 S 4. Subsection (c) of section 1504 of the insurance law, as amended
51 by chapter 238 of the laws of 2013, is amended to read as follows:

52 (c) [The] (1) EXCEPT AS PROVIDED IN PARAGRAPH TWO OF THIS SUBSECTION,
53 THE superintendent shall keep the contents of each report made pursuant
54 to this article and any information obtained in connection therewith
55 confidential and shall not make the same public without the prior writ-
56 ten consent of the controlled insurer to which it pertains unless the

1 superintendent after notice and an opportunity to be heard, shall deter-
2 mine that the interests of policyholders, shareholders or the public
3 will be served by the publication thereof. In any action or proceeding
4 by the superintendent against the person examined or any other person
5 within the same holding company system a report of such examination
6 published by the superintendent shall be admissible as evidence of the
7 facts stated therein.

8 (2)(A) DOCUMENTS, MATERIALS OR OTHER INFORMATION RELATING TO AN ENTER-
9 PRISE RISK MANAGEMENT REPORT OR ORSA SUMMARY REPORT REQUIRED PURSUANT TO
10 THIS ARTICLE AND IN THE POSSESSION OR CONTROL OF THE SUPERINTENDENT THAT
11 ARE OBTAINED BY, CREATED BY OR DISCLOSED TO THE SUPERINTENDENT OR ANY
12 OTHER PERSON UNDER THIS ARTICLE, IS RECOGNIZED BY THIS STATE AS BEING
13 PROPRIETARY AND TO CONTAIN TRADE SECRETS. ALL SUCH DOCUMENTS, MATERIALS
14 OR OTHER INFORMATION SHALL BE CONFIDENTIAL BY LAW AND PRIVILEGED, SHALL
15 NOT BE SUBJECT TO SECTION EIGHTY-SEVEN OF THE PUBLIC OFFICERS LAW, SHALL
16 NOT BE SUBJECT TO SUBPOENA, AND SHALL NOT BE SUBJECT TO DISCOVERY OR
17 ADMISSIBLE IN EVIDENCE IN ANY PRIVATE CIVIL ACTION. HOWEVER, THE SUPER-
18 INTENDENT IS AUTHORIZED TO USE THE DOCUMENTS, MATERIALS OR OTHER INFOR-
19 MATION IN THE FURTHERANCE OF ANY REGULATORY OR LEGAL ACTION BROUGHT AS A
20 PART OF THE SUPERINTENDENT'S OFFICIAL DUTIES. THE SUPERINTENDENT SHALL
21 NOT OTHERWISE MAKE THE DOCUMENTS, MATERIALS OR OTHER INFORMATION PUBLIC
22 WITHOUT THE PRIOR WRITTEN CONSENT OF THE INSURER.

23 (B) NEITHER THE SUPERINTENDENT, NOR ANY PERSON WHO RECEIVED DOCUMENTS,
24 MATERIALS OR OTHER ORSA-RELATED INFORMATION, THROUGH EXAMINATION OR
25 OTHERWISE, WHILE ACTING UNDER THE AUTHORITY OF THE SUPERINTENDENT OR
26 WITH WHOM SUCH DOCUMENTS, MATERIALS OR OTHER INFORMATION ARE SHARED
27 PURSUANT TO THIS ARTICLE SHALL BE PERMITTED OR REQUIRED TO TESTIFY IN
28 ANY PRIVATE CIVIL ACTION CONCERNING ANY CONFIDENTIAL DOCUMENTS, MATERI-
29 ALS, OR INFORMATION SUBJECT TO SUBPARAGRAPH (A) OF THIS PARAGRAPH.

30 S 5. Subsection (b) of section 1604 of the insurance law, as added by
31 chapter 238 of the laws of 2013, is amended to read as follows:

32 (b)(1) An authorized domestic insurer, other than a domestic insurer
33 required to register as a controlled insurer pursuant to section one
34 thousand five hundred three of this chapter, shall adopt a formal enter-
35 prise risk management function and shall file an enterprise risk report
36 with the superintendent by April thirtieth of each year. The report
37 shall, to the best of the insurer's knowledge and belief, identify the
38 material risks within any subsidiary that could pose enterprise risk to
39 the insurer.

40 (2) (A) AN AUTHORIZED DOMESTIC INSURER, OTHER THAN A DOMESTIC INSURER
41 REQUIRED TO REGISTER AS A CONTROLLED INSURER PURSUANT TO SECTION ONE
42 THOUSAND FIVE HUNDRED THREE OF THIS CHAPTER, SHALL REGULARLY CONDUCT AN
43 ORSA CONSISTENT WITH A PROCESS COMPARABLE TO THE ORSA GUIDANCE MANUAL.
44 THE ORSA SHALL BE CONDUCTED NO LESS THAN ANNUALLY BUT ALSO AT ANY TIME
45 WHEN THERE ARE SIGNIFICANT CHANGES TO THE RISK PROFILE OF THE INSURER OR
46 THE INSURANCE GROUP OF WHICH THE INSURER IS A MEMBER.

47 (B) UPON THE REQUEST OF THE SUPERINTENDENT, AND NO MORE THAN ONCE EACH
48 YEAR, AN AUTHORIZED DOMESTIC INSURER, OTHER THAN A DOMESTIC INSURER
49 REQUIRED TO REGISTER AS A CONTROLLED INSURER PURSUANT TO SECTION ONE
50 THOUSAND FIVE HUNDRED THREE OF THIS CHAPTER, SHALL SUBMIT TO THE SUPER-
51 INTENDENT AN ORSA SUMMARY REPORT OR ANY COMBINATION OF REPORTS THAT
52 TOGETHER CONTAIN THE INFORMATION DESCRIBED IN THE ORSA GUIDANCE MANUAL,
53 APPLICABLE TO THE INSURER AND/OR THE INSURANCE GROUP OF WHICH IT IS A
54 MEMBER. NOTWITHSTANDING ANY REQUEST FROM THE SUPERINTENDENT, IF THE
55 INSURER IS A MEMBER OF AN INSURANCE GROUP, THE INSURER SHALL SUBMIT THE
56 REPORT(S) REQUIRED BY THIS SUBSECTION IF THE SUPERINTENDENT IS THE LEAD

1 STATE COMMISSIONER OF THE INSURANCE GROUP, AS DETERMINED BY THE PROCE-
2 DURES WITHIN THE FINANCIAL ANALYSIS HANDBOOK ADOPTED BY THE NATIONAL
3 ASSOCIATION OF INSURANCE COMMISSIONERS.

4 (C) THE REPORT(S) SHALL INCLUDE A SIGNATURE OF THE INSURER OR INSUR-
5 ANCE GROUP'S CHIEF RISK OFFICER OR OTHER EXECUTIVE HAVING RESPONSIBILITY
6 FOR THE OVERSIGHT OF THE INSURER'S ENTERPRISE RISK MANAGEMENT PROCESS
7 ATTESTING TO THE BEST OF HIS/HER BELIEF AND KNOWLEDGE THAT THE INSURER
8 APPLIES THE ENTERPRISE RISK MANAGEMENT PROCESS DESCRIBED IN THE ORSA
9 SUMMARY REPORT AND THAT A COPY OF THE REPORT HAS BEEN PROVIDED TO THE
10 INSURER'S BOARD OF DIRECTORS OR THE APPROPRIATE COMMITTEE THEREOF.

11 (D) AN INSURER MAY COMPLY WITH SUBPARAGRAPH (B) OF THIS PARAGRAPH BY
12 PROVIDING THE MOST RECENT AND SUBSTANTIALLY SIMILAR REPORT(S) PROVIDED
13 BY THE INSURER OR ANOTHER MEMBER OF AN INSURANCE GROUP OF WHICH THE
14 INSURER IS A MEMBER TO THE COMMISSIONER OF ANOTHER STATE OR TO A SUPER-
15 VISOR OR REGULATOR OF A FOREIGN JURISDICTION, IF THAT REPORT PROVIDES
16 INFORMATION THAT IS COMPARABLE TO THE INFORMATION DESCRIBED IN THE ORSA
17 GUIDANCE MANUAL. ANY SUCH REPORT IN A LANGUAGE OTHER THAN ENGLISH MUST
18 BE ACCOMPANIED BY A TRANSLATION OF THAT REPORT INTO THE ENGLISH
19 LANGUAGE.

20 (3)(A) DOCUMENTS, MATERIALS OR OTHER INFORMATION RELATING TO AN ENTER-
21 PRISE RISK MANAGEMENT REPORT OR ORSA SUMMARY REPORT REQUIRED PURSUANT TO
22 THIS ARTICLE AND IN THE POSSESSION OR CONTROL OF THE SUPERINTENDENT THAT
23 ARE OBTAINED BY, CREATED BY OR DISCLOSED TO THE SUPERINTENDENT OR ANY
24 OTHER PERSON UNDER THIS ARTICLE, IS RECOGNIZED BY THIS STATE AS BEING
25 PROPRIETARY AND TO CONTAIN TRADE SECRETS. ALL SUCH DOCUMENTS, MATERIALS
26 OR OTHER INFORMATION SHALL BE CONFIDENTIAL BY LAW AND PRIVILEGED, SHALL
27 NOT BE SUBJECT TO SECTION EIGHTY-SEVEN OF THE PUBLIC OFFICERS LAW, SHALL
28 NOT BE SUBJECT TO SUBPOENA, AND SHALL NOT BE SUBJECT TO DISCOVERY OR
29 ADMISSIBLE IN EVIDENCE IN ANY PRIVATE CIVIL ACTION. HOWEVER, THE SUPER-
30 INTENDENT IS AUTHORIZED TO USE THE DOCUMENTS, MATERIALS OR OTHER INFOR-
31 MATION IN THE FURTHERANCE OF ANY REGULATORY OR LEGAL ACTION BROUGHT AS A
32 PART OF THE SUPERINTENDENT'S OFFICIAL DUTIES. THE SUPERINTENDENT SHALL
33 NOT OTHERWISE MAKE THE DOCUMENTS, MATERIALS OR OTHER INFORMATION PUBLIC
34 WITHOUT THE PRIOR WRITTEN CONSENT OF THE INSURER.

35 (B) NEITHER THE SUPERINTENDENT, NOR ANY PERSON WHO RECEIVED DOCUMENTS,
36 MATERIALS OR OTHER ORSA-RELATED INFORMATION, THROUGH EXAMINATION OR
37 OTHERWISE, WHILE ACTING UNDER THE AUTHORITY OF THE SUPERINTENDENT OR
38 WITH WHOM SUCH DOCUMENTS, MATERIALS OR OTHER INFORMATION ARE SHARED
39 PURSUANT TO THIS ARTICLE SHALL BE PERMITTED OR REQUIRED TO TESTIFY IN
40 ANY PRIVATE CIVIL ACTION CONCERNING ANY CONFIDENTIAL DOCUMENTS, MATERI-
41 ALS, OR INFORMATION SUBJECT TO SUBPARAGRAPH (A) OF THIS PARAGRAPH.

42 (4) THE SUPERINTENDENT MAY PROMULGATE ANY REGULATION NECESSARY TO
43 ACCOMPLISH THE REQUIREMENTS OF THIS SUBSECTION, INCLUDING ANY EXEMPTIONS
44 DETERMINED AS APPROPRIATE BY THE SUPERINTENDENT.

45 (5)(A) For the purposes of this article, "enterprise risk" means any
46 activity, circumstance, event, or series of events involving one or more
47 subsidiaries of an insurer that, if not remedied promptly, is likely to
48 have a material adverse effect upon the financial condition or liquidity
49 of the insurer, including anything that would cause the insurer's risk-
50 based capital to fall into company action level as set forth in section
51 one thousand three hundred twenty-four of this chapter, or that would
52 cause further transaction of business to be hazardous to the insurer's
53 policyholders or creditors or the public.

54 (B) FOR THE PURPOSES OF THIS ARTICLE, THE TERMS "OWN RISK AND SOLVENCY
55 ASSESSMENT" OR "ORSA," "ORSA GUIDANCE MANUAL" AND "ORSA SUMMARY REPORT"

1 SHALL HAVE THE SAME MEANING AS PROVIDED IN SECTION FIFTEEN HUNDRED ONE
2 OF THIS CHAPTER.

3 S 6. Section 1702 of the insurance law is amended by adding a new
4 subsection (g) to read as follows:

5 (G) "OWN RISK AND SOLVENCY ASSESSMENT" OR "ORSA," "ORSA GUIDANCE MANU-
6 AL" AND "ORSA SUMMARY REPORT" SHALL HAVE THE SAME MEANING AS PROVIDED IN
7 SECTION ONE THOUSAND FIVE HUNDRED ONE OF THIS CHAPTER.

8 S 7. Section 1709 of the insurance law, as amended by chapter 381 of
9 the laws of 1986, is amended to read as follows:

10 S 1709. Confidentiality of information reports. [The] (A) EXCEPT AS
11 PROVIDED IN SUBSECTION (B) OF THIS SECTION, THE contents of each infor-
12 mation report filed hereunder and information pertaining thereto shall
13 be kept confidential, shall not be subject to subpoena and shall not be
14 made public unless, after notice and opportunity to be heard, the super-
15 intendent determines that the interests of policyholders, subscribers,
16 stockholders or the public will be served by the publication thereof.
17 The provisions of this section shall not be applicable to any informa-
18 tion report filed hereunder and any information pertaining thereto, if
19 the parent corporation is a corporation subject to article forty-three
20 of this chapter.

21 (B)(1) DOCUMENTS, MATERIALS OR OTHER INFORMATION RELATING TO AN ENTER-
22 PRISE RISK MANAGEMENT REPORT OR ORSA SUMMARY REPORT REQUIRED PURSUANT TO
23 THIS ARTICLE AND IN THE POSSESSION OR CONTROL OF THE SUPERINTENDENT THAT
24 ARE OBTAINED BY, CREATED BY OR DISCLOSED TO THE SUPERINTENDENT OR ANY
25 OTHER PERSON UNDER THIS ARTICLE, IS RECOGNIZED BY THIS STATE AS BEING
26 PROPRIETARY AND TO CONTAIN TRADE SECRETS. ALL SUCH DOCUMENTS, MATERIALS
27 OR OTHER INFORMATION SHALL BE CONFIDENTIAL BY LAW AND PRIVILEGED, SHALL
28 NOT BE SUBJECT TO SECTION EIGHTY-SEVEN OF THE PUBLIC OFFICERS LAW, SHALL
29 NOT BE SUBJECT TO SUBPOENA, AND SHALL NOT BE SUBJECT TO DISCOVERY OR
30 ADMISSIBLE IN EVIDENCE IN ANY PRIVATE CIVIL ACTION. HOWEVER, THE SUPER-
31 INTENDENT IS AUTHORIZED TO USE THE DOCUMENTS, MATERIALS OR OTHER INFOR-
32 MATION IN THE FURTHERANCE OF ANY REGULATORY OR LEGAL ACTION BROUGHT AS A
33 PART OF THE SUPERINTENDENT'S OFFICIAL DUTIES. THE SUPERINTENDENT SHALL
34 NOT OTHERWISE MAKE THE DOCUMENTS, MATERIALS OR OTHER INFORMATION PUBLIC
35 WITHOUT THE PRIOR WRITTEN CONSENT OF THE INSURER.

36 (2) NEITHER THE SUPERINTENDENT, NOR ANY PERSON WHO RECEIVED DOCUMENTS,
37 MATERIALS OR OTHER ORSA-RELATED INFORMATION, THROUGH EXAMINATION OR
38 OTHERWISE, WHILE ACTING UNDER THE AUTHORITY OF THE SUPERINTENDENT OR
39 WITH WHOM SUCH DOCUMENTS, MATERIALS OR OTHER INFORMATION ARE SHARED
40 PURSUANT TO THIS ARTICLE SHALL BE PERMITTED OR REQUIRED TO TESTIFY IN
41 ANY PRIVATE CIVIL ACTION CONCERNING ANY CONFIDENTIAL DOCUMENTS, MATERI-
42 ALS, OR INFORMATION SUBJECT TO PARAGRAPH ONE OF THIS SECTION.

43 S 8. Section 1717 of the insurance law is amended by adding two new
44 subsections (c) and (d) to read as follows:

45 (C)(1) AN AUTHORIZED DOMESTIC INSURER, OTHER THAN A DOMESTIC INSURER
46 REQUIRED TO REGISTER AS A CONTROLLED INSURER PURSUANT TO SECTION ONE
47 THOUSAND FIVE HUNDRED THREE OF THIS CHAPTER, SHALL REGULARLY CONDUCT AN
48 ORSA CONSISTENT WITH A PROCESS COMPARABLE TO THE ORSA GUIDANCE MANUAL.
49 THE ORSA SHALL BE CONDUCTED NO LESS THAN ANNUALLY BUT ALSO AT ANY TIME
50 WHEN THERE ARE SIGNIFICANT CHANGES TO THE RISK PROFILE OF THE INSURER OR
51 THE INSURANCE GROUP OF WHICH THE INSURER IS A MEMBER.

52 (2) UPON THE REQUEST OF THE SUPERINTENDENT, AND NO MORE THAN ONCE EACH
53 YEAR, AN AUTHORIZED DOMESTIC INSURER, OTHER THAN A DOMESTIC INSURER
54 REQUIRED TO REGISTER AS A CONTROLLED INSURER PURSUANT TO SECTION ONE
55 THOUSAND FIVE HUNDRED THREE OF THIS CHAPTER, SHALL SUBMIT TO THE SUPER-
56 INTENDENT AN ORSA SUMMARY REPORT OR ANY COMBINATION OF REPORTS THAT

1 TOGETHER CONTAIN THE INFORMATION DESCRIBED IN THE ORSA GUIDANCE MANUAL,
2 APPLICABLE TO THE INSURER AND/OR THE INSURANCE GROUP OF WHICH IT IS A
3 MEMBER. NOTWITHSTANDING ANY REQUEST FROM THE SUPERINTENDENT, IF THE
4 INSURER IS A MEMBER OF AN INSURANCE GROUP, THE INSURER SHALL SUBMIT THE
5 REPORT(S) REQUIRED BY THIS SUBSECTION IF THE SUPERINTENDENT IS THE LEAD
6 STATE COMMISSIONER OF THE INSURANCE GROUP, AS DETERMINED BY THE PROCE-
7 DURES WITHIN THE FINANCIAL ANALYSIS HANDBOOK ADOPTED BY THE NATIONAL
8 ASSOCIATION OF INSURANCE COMMISSIONERS.

9 (3) THE REPORT(S) SHALL INCLUDE A SIGNATURE OF THE INSURER OR INSUR-
10 ANCE GROUP'S CHIEF RISK OFFICER OR OTHER EXECUTIVE HAVING RESPONSIBILITY
11 FOR THE OVERSIGHT OF THE INSURER'S ENTERPRISE RISK MANAGEMENT PROCESS
12 ATTESTING TO THE BEST OF HIS/HER BELIEF AND KNOWLEDGE THAT THE INSURER
13 APPLIES THE ENTERPRISE RISK MANAGEMENT PROCESS DESCRIBED IN THE ORSA
14 SUMMARY REPORT AND THAT A COPY OF THE REPORT HAS BEEN PROVIDED TO THE
15 INSURER'S BOARD OF DIRECTORS OR THE APPROPRIATE COMMITTEE THEREOF.

16 (4) AN INSURER MAY COMPLY WITH PARAGRAPH TWO OF THIS SUBSECTION BY
17 PROVIDING THE MOST RECENT AND SUBSTANTIALLY SIMILAR REPORT(S) PROVIDED
18 BY THE INSURER OR ANOTHER MEMBER OF AN INSURANCE GROUP OF WHICH THE
19 INSURER IS A MEMBER TO THE COMMISSIONER OF ANOTHER STATE OR TO A SUPER-
20 VISOR OR REGULATOR OF A FOREIGN JURISDICTION, IF THAT REPORT PROVIDES
21 INFORMATION THAT IS COMPARABLE TO THE INFORMATION DESCRIBED IN THE ORSA
22 GUIDANCE MANUAL. ANY SUCH REPORT IN A LANGUAGE OTHER THAN ENGLISH MUST
23 BE ACCOMPANIED BY A TRANSLATION OF THAT REPORT INTO THE ENGLISH
24 LANGUAGE.

25 (D) THE SUPERINTENDENT MAY PROMULGATE ANY REGULATION NECESSARY TO
26 ACCOMPLISH THE REQUIREMENTS OF SUBSECTIONS (B) AND (C) OF THIS SECTION,
27 INCLUDING ANY EXEMPTIONS DETERMINED AS APPROPRIATE BY THE SUPERINTEN-
28 DENT.

29 S 9. This act shall take effect immediately.

30 S 4. Severability clause. If any clause, sentence, paragraph, subdivi-
31 sion, section or part of this act shall be adjudged by a court of compe-
32 tent jurisdiction to be invalid, such judgment shall not affect, impair
33 or invalidate the remainder thereof, but shall be confined in its opera-
34 tion to the clause, sentence, paragraph, subdivision, section or part
35 thereof directly involved in the controversy in which such judgment
36 shall have been rendered. It is hereby declared to be the intent of the
37 legislature that this act would have been enacted even if such invalid
38 provisions had not been included herein.

39 S 5. This act shall take effect immediately provided, however, that
40 the applicable effective date of Parts A through E of this act shall be
41 as specifically set forth in the last section of such Parts.