STATE OF NEW YORK

8978--A

IN SENATE

June 8, 2018

Introduced by Sen. SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to the implementation of a valuation manual; and to direct the department of financial services to study the impact of the implementation of such valuation manual; and providing for the repeal of such provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 4217 of the insurance law is amended by adding a new subsection (g) to read as follows:

(g)(1) This subsection shall apply only to individual and group life insurance policies and annuity contracts issued on or after the operative date of the valuation manual as prescribed by the superintendent by regulation, provided that the operative date shall be no sooner than January first, two thousand nineteen.

(2) For the purposes of this subsection, "NAIC" shall mean the National Association of Insurance Commissioners.

(3) For purposes of this subsection, "principle-based valuation" shall mean a reserve valuation that uses methods and assumptions required by paragraph eleven of this subsection as specified in the valuation manual.

(4) For purposes of this subsection, "qualified actuary" shall mean a member in good standing of the American Academy of Actuaries who meets the requirements prescribed by the superintendent by regulation.

(5) For purposes of this subsection, "valuation manual" shall mean the valuation manual adopted by the NAIC on December second, two thousand twelve, as subsequently amended, and as approved by the superintendent upon a finding that such manual is for the best interests of the holders of policies and contracts and annuitants of this state and which meets the requirements as set forth in this subsection.

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

(6) Notwithstanding subsection (c) of this section and section four thousand two hundred eighteen of this article, the minimum standard for the valuation of all such policies and contracts shall be the standard prescribed in the valuation manual.

(7) The valuation manual shall not become operative in this state unless and until the superintendent has approved of such manual and has adopted all necessary regulations to effectuate this subsection.

(8) (A) No amendment to the valuation manual shall take effect in this state unless the superintendent finds that such amendment is for the best interests of the holders of policies and contracts and annuitants of this state.

(B) The superintendent may deviate, through regulations, from the reserve standards, valuation methods, assumptions, and related requirements in the valuation manual, including for individual companies, provided, however, that such deviation shall not result in reserve valuations that are lower than the minimum standards prescribed in the valuation manual and may be based on a percentage of the reserves being held for the policies and contracts subject to this subsection prior to the operative date of such manual.

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

(A) Minimum valuation standards for and definitions of the policies and contracts subject to this subsection as determined by the superintendent. Such minimum valuation standards shall be:

(i) The commissioners reserve valuation method for life insurance policies subject to this subsection; and

(ii) The commissioners annuity reserve valuation method for annuity contracts subject to this subsection.

(B) Requirements for the format of reports to the superintendent under item (iii) of subparagraph (B) of paragraph eleven of this subsection and which shall include information necessary to determine if the valuation is appropriate and in compliance with this subsection;

(C) Assumptions for risks over which a company does not have significant control or influence;

(D) Procedures for corporate governance and oversight of the actuarial function, and a process for appropriate waiver or modification of such procedures;

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

(F) The data and form of the data required under paragraph twelve of this subsection, with whom the data shall be submitted, and other requirements including data analyses and reporting of analyses.

(10) The superintendent may engage a qualified actuary, at the expense of a company, to perform an actuarial examination of such company and opine on the appropriateness of any reserve assumption or method used by such company, or to review and opine on such company's compliance with any requirement set forth in this subsection.

(11) (A) A company that issues policies and contracts subject to this subsection shall establish reserves using a principle-based valuation that meets the following conditions for such policies and contracts as specified in the valuation manual:

(i) Quantify the benefits and guarantees, and the funding, associated with the policies or contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring during the lifetime of the policies and contracts. For policies and contracts with significant tail risk, reflect conditions appropriately adverse to quantify the tail risk.

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

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

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

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

a. be established utilizing the company's available experience, to the extent it is relevant and statistically credible; or

b. to the extent that company experience is not available, relevant, or statistically credible, be established utilizing other relevant, statistically credible experience.

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

(B) A company that issues policies and contracts subject to this subsection shall:

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

(ii) Provide to the superintendent, annually on or before a date as determined by the superintendent, and the board of directors of the company an annual certification of the effectiveness of the internal controls with respect to the principle-based valuation. Such controls shall be designed to assure that all material risks inherent in the liabilities and associated assets subject to such valuation are included in the valuation, and that valuations are made in accordance with the valuation manual. The certification shall be based on the controls in place as of the end of the preceding calendar year.

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

(C) A principle-based valuation shall include a prescribed formulaic reserve component.

(12) A company that issues policies and contracts subject to this subsection shall submit mortality, morbidity, policyholder behavior, or expense experience and other data as prescribed in the valuation manual to the superintendent annually on or before a date as determined by the superintendent.

(13) (A) The superintendent may exempt specific product forms or product lines of a domestic company that is licensed and doing business only in this state from the requirements of this subsection provided:

(i) The superintendent has issued an exemption in writing to the company and has not subsequently revoked the exemption in writing; and

(ii) The company computes reserves using assumptions and methods used prior to the operative date of the valuation manual in addition to any requirements established by the superintendent and promulgated by regulation.

(B) For any company granted an exemption under this paragraph, subsections (c), (d), (e) and (f) of this section and section four thousand two hundred eighteen of this article shall be applicable. With respect to any company applying for this exemption, any reference to subsection (g) found in subsections (c), (d), (e) and (f) of this section and section four thousand two hundred eighteen of this article shall not be applicable.

§ 2. 1. For purposes of this section, valuation manual shall have the same meaning as such term is defined by section 4217 of the insurance law.

2. The department of financial services shall study the impact on the New York state life insurance industry and consumers of the implementation of the valuation manual for determining the amount of required reserves for individual and group life insurance policies and annuity contracts. Such study shall include but not be limited to:

(a) The percentage change between the reserves required under New York state law prior to the implementation of the valuation manual and the reserves required pursuant to such manual for individual and group life insurance policies and annuity contracts;

(b) The percentage change between premiums prior to the implementation of the valuation manual and premiums after the implementation of such manual in the individual and group life insurance markets and annuity market;

(c) Identification of the redundancies eliminated from the reserves for each product subject to the valuation manual;

(d) The impact on the use of captive insurance companies by the life insurance industry to reinsure existing policies and contracts;

(e) The changes to the department of financial services oversight of insurance companies that have occurred as a result of implementing the valuation manual;

(f) The impact on risk based capital requirements;

(g) The impact on consumers including cost savings, cost increases, any loss of accrued interest on policies and contracts, any loss of existing consumer protections and the impact of replacement products; and

(h) An analysis of any regulations promulgated by the department of financial services that allow deviations from the reserve standards, valuation methods, assumptions, and related requirements in the valuation manual, including (1) a summary of such deviations, (2) whether such deviations are based upon a percentage of the reserves held for the policies and contracts subject to subsection (g) of section 4217 of the insurance law prior to the operative date of the valuation manual, and (3) the impact of such deviations on reserves for impacted insurance and annuity products including a comparison of the differences between reserves for impacted insurance and annuity products required prior to the implementation of the valuation manual and reserves required for impacted insurance and annuity products as a result of such deviations from the valuation manual.

3. The superintendent of the department of financial services shall submit a report to the governor, temporary president of the senate and speaker of the assembly of the department's findings in the second, fifth and seventh years after the operative date of the valuation manual.

§ 3. This act shall take effect immediately; and shall be deemed repealed 10 years after it shall have become a law.