

HOUSE BILL NO. 5241

November 13, 2019, Introduced by Reps. Rendon, Paquette and Wittenberg and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending section 836b (MCL 500.836b), as amended by 2016 PA 558.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 836b. (1) All of the following apply to the valuation
2 manual:

3 ~~(a) Except as otherwise provided under subdivision (e) or (g),~~
4 ~~for policies issued on or after the operative date of the valuation~~
5 ~~manual and, at a company's option for policies or individual blocks~~
6 ~~of policies acquired by the company through a business acquisition~~

1 ~~or reinsurance transaction after March 31, 2015, regardless of when~~
2 ~~the policies were issued, the standard prescribed in the valuation~~
3 ~~manual is the minimum standard of valuation required under section~~
4 ~~830(2).~~

5 **(a)** ~~(b)~~—The operative date of the valuation manual is January
6 1 of the first calendar year following the first July 1 as of which
7 all of the following have occurred:

8 *(i)* The NAIC has adopted the valuation manual by a vote of at
9 least 42 members, or 3/4 of the members voting, whichever is
10 greater.

11 *(ii)* The standard valuation law, as amended by the NAIC in
12 2009, or legislation including substantially similar terms and
13 provisions, has been enacted by states representing greater than
14 75% of the direct premiums written as reported in the following
15 annual statements submitted for 2008: life, accident, and health
16 annual statements; health annual statements; or fraternal annual
17 statements.

18 *(iii)* The standard valuation law, as amended by the NAIC in
19 2009, or legislation including substantially similar terms and
20 provisions, has been enacted by at least 42 of the following 55
21 jurisdictions: the 50 states of the United States, American Samoa,
22 the American Virgin Islands, the District of Columbia, Guam, and
23 Puerto Rico.

24 **(b)** ~~(c)~~—Unless a change in the valuation manual specifies a
25 later effective date, a change to the valuation manual is effective
26 on January 1 after the date the NAIC adopts the change to the
27 valuation manual by a vote representing both of the following:

28 *(i)* At least 3/4 of the members of the NAIC, but not less than
29 a majority of the total membership.

1 (ii) Members of the NAIC representing jurisdictions that amount
2 to greater than 75% of the direct premiums written as reported in
3 the following annual statements most recently available before the
4 vote in subparagraph (i): life, accident, and health annual
5 statements; health annual statements; or fraternal annual
6 statements.

7 (c) ~~(d)~~—The valuation manual must specify all of the
8 following:

9 (i) Minimum valuation standards for and definitions of the
10 policies or contracts subject to section 830(2). The minimum
11 valuation standards are all of the following:

12 (A) The director's reserve valuation method for life insurance
13 contracts, other than annuity contracts, subject to section 830(2).

14 (B) The director's annuity reserve valuation method for
15 annuity contracts subject to section 830(2).

16 (C) Minimum reserves for all other policies or contracts
17 subject to section 830(2).

18 (ii) The policies or contracts or types of policies or
19 contracts that are subject to the requirements of a principle-based
20 valuation under subsection (2) and the minimum valuation standards
21 consistent with those requirements.

22 (iii) For policies and contracts subject to a principle-based
23 valuation under subsection (2), all of the following apply:

24 (A) Requirements for the format of reports to the director
25 under subsection (3)(c) and that must include information necessary
26 to determine if the valuation is appropriate and in compliance with
27 this section.

28 (B) Assumptions must be prescribed for risks over which the
29 company does not have significant control or influence.

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

4 (iv) For policies that are not subject to a principle-based
5 valuation under subsections (2), (3), and (4), the minimum
6 valuation standard is 1 of the following:

7 (A) The standard is consistent with the minimum standard of
8 valuation before the operative date of the valuation manual.

9 (B) The standard develops reserves that quantify the benefits
10 and guarantees, and the funding, associated with the contracts and
11 their risks at a level of conservatism that reflects conditions
12 that include unfavorable events that have a reasonable probability
13 of occurring.

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

20 (vi) The data and form of the data required under subsection
21 (5), to whom the data must be submitted, and may specify other
22 requirements including data analyses and reporting of analyses.

23 (d) ~~(e)~~—If there is not a specific valuation requirement or if
24 the director determines that a specific valuation requirement in
25 the valuation manual does not comply with this section, the company
26 shall, with respect to the requirement, comply with minimum
27 valuation standards prescribed by the director by rule.

28 (e) ~~(f)~~—The director may engage a qualified actuary, at the
29 expense of the company, to perform an actuarial examination of the

1 company and opine on the appropriateness of any reserve assumption
2 or method used by the company, or to review and opine on a
3 company's compliance with any requirement of this section. The
4 director may rely on the opinion, regarding this section, of a
5 qualified actuary engaged by the commissioner of another state,
6 district, or territory of the United States. As used in this
7 subdivision, "engage" includes employment and contracting.

8 (f) ~~(g)~~—The director may require a company to change any
9 assumption or method that the director considers necessary to
10 comply with the requirements of the valuation manual or this
11 section, and the company shall adjust the reserves as required by
12 the director.

13 (2) A company shall establish reserves using a principle-based
14 valuation that meets all of the following conditions for policies
15 or contracts as specified in the valuation manual:

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

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

29 (c) Incorporate assumptions that are derived in 1 of the

1 following manners:

2 (i) The assumption is prescribed in the valuation manual.

3 (ii) For assumptions that are not prescribed in the valuation
4 manual, the assumptions must do the following, as applicable:

5 (A) Use the company's available experience, to the extent it
6 is relevant and statistically credible.

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

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

13 (3) A company that uses principle-based valuation for 1 or
14 more policies or contracts subject to this section as specified in
15 the valuation manual shall do all of the following:

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

19 (b) Provide to the director and the board of directors an
20 annual certification of the effectiveness of the internal controls
21 with respect to the principle-based valuation. The internal
22 controls must be designed to assure that all material risks
23 inherent in the liabilities and associated assets subject to the
24 valuation are included in the valuation, and that valuations are
25 made in accordance with the valuation manual. The certification
26 must be based on the controls in place at the end of the preceding
27 calendar year.

28 (c) Develop, and file with the director on request, a
29 principle-based valuation report that complies with standards

1 prescribed in the valuation manual.

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

4 (5) A company shall submit mortality, morbidity, policyholder
5 behavior, or expense experience and other data as prescribed in the
6 valuation manual.

7 (6) Except as otherwise provided in this section, confidential
8 information is confidential and privileged, is not subject to
9 disclosure under the freedom of information act, 1976 PA 442, MCL
10 15.231 to 15.246, is not subject to subpoena, and is not subject to
11 discovery or admissible in evidence in a private civil action.
12 However, the director may use the confidential information in the
13 furtherance of any regulatory or legal action brought as a part of
14 the director's official duties.

15 (7) The director or any person who received confidential
16 information while acting under the authority of the director shall
17 not testify in a private civil action concerning confidential
18 information.

19 (8) The director may do all of the following:

20 (a) Except as otherwise provided in this subdivision, share
21 confidential information with other state, federal, and
22 international regulatory agencies and with the NAIC and its
23 affiliates and subsidiaries. The director may also share
24 confidential information described in subsection ~~(18)(e)(i)~~
25 **(14)(c)(i)** and (iv) only with the actuarial board for counseling and
26 discipline or its successor on request for the purpose of
27 professional disciplinary proceedings and with state, federal, and
28 international law enforcement officials. The director shall not
29 share confidential information unless the recipient agrees in

1 writing to maintain the confidentiality and privileged status of
2 the confidential information and has verified in writing the legal
3 authority to maintain confidentiality.

4 (b) Subject to this subdivision, receive documents, materials,
5 data, or information from regulatory or law enforcement officials
6 of other foreign or domestic jurisdictions, the actuarial board for
7 counseling and discipline or its successor, and the NAIC and its
8 affiliates and subsidiaries. The director shall maintain as
9 confidential or privileged any documents, materials, or information
10 received with notice or the understanding that it is confidential
11 or privileged under the laws of the jurisdiction that is the source
12 of the document, material, or information.

13 (9) The director may enter into written agreements governing
14 sharing and use of information provided under this section.

15 (10) The disclosure or sharing of confidential information to
16 the director under this section is not a waiver of an applicable
17 privilege or claim of confidentiality.

18 (11) A privilege established under the law of any state or
19 jurisdiction that is substantially similar to the privilege
20 established under this section applies in any proceeding in, and in
21 any court of, this state.

22 (12) As used in subsections (6) to (10), "regulatory agency",
23 "law enforcement agency", and "NAIC" include, but are not limited
24 to, their employees, agents, consultants, and contractors.

25 (13) Notwithstanding anything in this section to the contrary,
26 any confidential information described in subsection ~~(18)(e)(i)~~

27 **(14)(c)(i)** and (iv) is subject to all of the following:

28 (a) The confidential information is subject to subpoena for
29 the purpose of defending an action seeking damages from the

1 appointed actuary submitting the related memorandum in support of
2 an opinion submitted under section 830a or principle-based
3 valuation report developed under subsection (3)(c) by reason of an
4 action required by section 830a or subsection (3)(c) or by rules
5 promulgated under this section.

6 (b) The director may release the confidential information with
7 the written consent of the company.

8 (c) If any portion of a memorandum in support of an opinion
9 submitted under section 830a or a principle-based valuation report
10 developed under subsection (3)(c) is cited by the company in its
11 marketing, is cited before a governmental agency other than a state
12 insurance department, or is released by the company to the news
13 media, the memorandum or report is not confidential.

14 ~~(14) Except as provided in subsection (15), a domestic company~~
15 ~~is exempt from the requirements under subsections (1) to (5) if the~~
16 ~~domestic company meets both of the following requirements:~~

17 ~~(a) The domestic company has less than \$500,000,000.00 of~~
18 ~~ordinary life premiums and, if the domestic company is a member of~~
19 ~~a group of life insurers, the group has combined ordinary life~~
20 ~~premiums of less than \$1,000,000,000.00.~~

21 ~~(b) The domestic company reported total adjusted capital of at~~
22 ~~least 450% of the authorized control level risk based capital in~~
23 ~~the most recent risk-based capital report and the appointed actuary~~
24 ~~has provided an unqualified opinion on the reserves.~~

25 ~~(15) A domestic company that meets the requirements under~~
26 ~~subsection (14)(a) and (b) may elect to be bound by the~~
27 ~~requirements of subsections (1) to (5) for a calendar year. The~~
28 ~~election must be in writing and filed with the director by February~~
29 ~~1 of the year following the calendar year in which the company~~

1 ~~makes the election.~~

2 ~~(16) For purposes of subsection (14), ordinary life premiums~~
 3 ~~are measured as direct plus reinsurance assumed from an~~
 4 ~~unaffiliated company from the prior calendar year annual statement.~~

5 ~~(17) Except for a domestic company that makes an election~~
 6 ~~under subsection (15), for a domestic company that is exempt from~~
 7 ~~the requirements of subsections (1) to (5) under subsection (14),~~
 8 ~~sections 830a, 832, 834, 835, 835a, 836, and 836a are applicable,~~
 9 ~~and a reference to this section in sections 830a, 834, and 836a is~~
 10 ~~not applicable.~~

11 **(14)** ~~(18)~~ As used in this section:

12 (a) "Accident and health insurance" means contracts that
 13 incorporate morbidity risk and provide protection against economic
 14 loss resulting from accident, sickness, or medical conditions and
 15 as may be specified in the valuation manual.

16 (b) "Company" means an entity that has written, issued, or
 17 reinsured life insurance contracts, accident and health insurance
 18 contracts, or deposit-type contracts in this state and has at least
 19 1 policy in force or on claim or that has written, issued, or
 20 reinsured life insurance contracts, accident and health insurance
 21 contracts, or deposit-type contracts in any state and is required
 22 to hold a certificate of authority to write life insurance,
 23 accident and health insurance, or deposit-type contracts in this
 24 state.

25 (c) "Confidential information" means all of the following:

26 (i) A memorandum in support of an opinion submitted under
 27 section 830a and any other documents, materials, and other
 28 information, including, but not limited to, all working papers, and
 29 copies of working papers, created, produced, or obtained by or

1 disclosed to the director or any other person in connection with
2 the memorandum.

3 (ii) All documents, materials, and other information,
4 including, but not limited to, all working papers, and copies of
5 working papers, created, produced, or obtained by or disclosed to
6 the director or any other person in the course of an examination
7 made under subsection ~~(1)(f)~~ **(1)(e)** if an examination report or
8 other material prepared in connection with an examination made
9 under section 222 is not held as private and confidential
10 information under section 222, an examination report or other
11 material prepared in connection with an examination made under
12 subsection ~~(1)(f)~~ **(1)(e)** is not "confidential information" to the
13 same extent as if the examination report or other material had been
14 prepared under section 222.

15 (iii) Any reports, documents, materials, and other information
16 developed by a company in support of, or in connection with, an
17 annual certification by the company under subsection (3)(b)
18 evaluating the effectiveness of the company's internal controls
19 with respect to a principle-based valuation and any other
20 documents, materials, and other information, including, but not
21 limited to, all working papers, and copies of working papers,
22 created, produced, or obtained by or disclosed to the director or
23 any other person in connection with such reports, documents,
24 materials, and other information.

25 (iv) Any principle-based valuation report developed under
26 subsection (3)(c) and any other documents, materials, and other
27 information, including, but not limited to, all working papers, and
28 copies of working papers, created, produced, or obtained by or
29 disclosed to the director or any other person in connection with

1 the report.

2 (v) Any documents, materials, data, and other information
3 submitted by a company under subsection (5), collectively,
4 experience data, and any other documents, materials, data, and
5 other information, including, but not limited to, all working
6 papers, and copies of working papers, created or produced in
7 connection with the experience data, in each case that include any
8 potentially company-identifying or personally identifiable
9 information, that is provided to or obtained by the director,
10 together with any experience data, the experience materials and any
11 other documents, materials, data, and other information, including,
12 but not limited to, all working papers, and copies of working
13 papers, created, produced, or obtained by or disclosed to the
14 director or any other person in connection with the experience
15 materials.

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

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

22 (f) "NAIC" means the National Association of Insurance
23 Commissioners.

24 (g) "Policyholder behavior" means any action a policyholder,
25 contract holder, or any other person with the right to elect
26 options, such as a certificate holder, may take under a policy or
27 contract subject to this section, including, but not limited to,
28 lapse, withdrawal, transfer, deposit, premium payment, loan,
29 annuitization, or benefit elections prescribed by the policy or

1 contract but excluding events of mortality or morbidity that result
2 in benefits prescribed in their essential aspects by the terms of
3 the policy or contract.

4 (h) "Principle-based valuation" means a reserve valuation that
5 uses 1 or more methods or 1 or more assumptions determined by the
6 insurer and is required to comply with this section as specified in
7 the valuation manual.

8 (i) "Qualified actuary" means an individual who is qualified
9 to sign the applicable statement of actuarial opinion in accordance
10 with the American Academy of Actuaries qualification standards for
11 actuaries signing such statements and who meets the requirements
12 specified in the valuation manual.

13 (j) "Tail risk" means a risk that occurs either where the
14 frequency of low probability events is higher than expected under a
15 normal probability distribution or where there are observed events
16 of very significant size or magnitude.

17 (k) "Valuation manual" means the manual of valuation
18 instructions adopted by the NAIC as specified in this section.