



AMERICAN ACADEMY *of* ACTUARIES

Final Report to the Life and Health Actuarial Task Force of the National Association of Insurance Commissioners from the Valuation Task Force of the American Academy of Actuaries

June 4, 1998

Background

In 1997, the Life and Health Actuarial Task Force (“LHATF”) of the National Association of Insurance Commissioners (“NAIC”) requested assistance from the American Academy of Actuaries (the “Academy”)¹. Specifically, LHATF was concerned that new products are becoming increasingly complex, and some do not fit well within the current reserve valuation laws of the several states. Moreover, developing new statutory structures to deal with new products has been time consuming and difficult, and has generated a plethora of variations in state requirements with which both actuaries and regulators must deal. LHATF asked the Academy to start with a clean slate to develop an “ideal” valuation system. Specifically, the Academy was asked to “initiate a thorough study regarding current valuation methodologies applicable to life insurance, annuities, and health insurance, and make recommendations as to changes which should be implemented.”

The Academy accepted LHATF’s request, stating, “this study will begin by addressing the broad objectives of a revised valuation system and will not be constrained by past valuation practices; however, it will take account of considerations of practicality and the current state of actuarial science. The study will consider the impact on other elements of the regulatory framework.” The Valuation Task Force was convened to fulfill LHATF’s request for assistance.

The Valuation Task Force met repeatedly in 1997 to discuss the basic concepts underlying LHATF's request. In December of 1997, the task force presented an interim report to LHATF, setting forth the framework and fundamental objectives of a unified valuation system. *See* Report of the Valuation Task Force (Dec. 5, 1997) at p. 4-5.

¹The Academy is the public policy organization for actuaries practicing in all specialties within the United States. A major purpose of the Academy is to act as the public information organization for the profession. The Academy is non-partisan and assists the public policy process through the presentation of clear and objective actuarial analysis. The Academy regularly prepares testimony for Congress, provides information to federal elected officials, comments on proposed federal regulations, and works closely with state officials on issues related to insurance.

LHATF asked the task force to develop its comments and recommendations in the form of a draft of model law language that the NAIC could use as a starting point for further consideration. The task force continued to meet into 1998, discussing often diverse opinions and varying approaches. The draft that follows is the product of many hours of conversation and work by more than seventy-five actuary volunteers, as well as others. It represents the task force's attempt to take a fresh look at valuation.

The draft that follows offers a possible alternative to address LHATF's concerns, and in many places sets forth alternative approaches to a particular aspect of valuation. The model law format was selected to facilitate LHATF's future discussions. However, the choice of format should not be viewed as suggesting that this draft could be implemented in the near future or that it is fully conceptually developed. The draft has not been endorsed by the Academy as a whole, nor would we suggest that it reflects a consensus of views within the actuarial profession, or even, perhaps, within this task force. In fact, for various practical reasons, it is questionable whether consensus will ever develop, either for this new approach to valuation or other alternatives. Nonetheless, the draft, with its various alternatives, has considerable support among task force members.

Please also bear in mind that the attached draft does not fully address many of the practical constraints. Some of our practical concerns are discussed in greater detail below.

Application to Property and Casualty Insurers

The task force gave some very preliminary consideration to how a unified valuation system might apply to property and casualty insurers. The task force has had some input from casualty actuaries and has appreciated their insights and assistance. However, our initial discussions have established that adapting a unified valuation system to the unique circumstances of property and casualty insurance would be a major undertaking, calling for considerable additional conversation and many more hours of challenging work. Although significant inconsistencies may be created if a comprehensive approach is not used, we have excluded property and casualty insurers from the scope of this draft except in circumstances where those insurers write a significant amount of life or health insurance in a given state. If the NAIC requests that further consideration be given to bringing property and casualty insurers into a unified valuation system, it will be necessary to reconstitute the task force to significantly increase the representation and participation of casualty actuaries.

The Current State of Actuarial Knowledge

The attached draft calls for sophisticated actuarial analysis, including in some cases cash flow testing as well as other techniques that fall within the definition of "dynamic financial condition analysis." There are Actuarial Standards of Practice on when and how to do cash flow testing, and many actuaries are already using other analytical tools that can be incorporated into dynamic financial condition analysis. However, considerable work would need to be done within the actuarial profession, including the Actuarial Standards Board, to develop additional analysis guidelines if the approach suggested in the attached draft were adopted by the NAIC. Substantial research and education would particularly be required to develop and implement the full range of

tools and techniques that would enable an actuary to conduct a full dynamic financial condition analysis.

We should also note that a significant number of actuaries believe that dynamic financial condition analysis needs to be more fully accepted first as a management tool before it is used or useful in regulation. These actuaries would not be comfortable with the mandatory dynamic financial condition analysis report that is suggested in one drafting option. These actuaries would like to see the dynamic financial condition analysis developed as a management tool with the understanding that the analysis might, at some future time, also be used for regulatory purposes.

Federal Income Tax Considerations

Much of the life and health insurance industry functions within a well-established valuation system, providing consistent reserves and a reasonably predictable tax structure. A unified valuation system would require significant changes to some aspects of companies' operations, and would impact the current system of setting reserves for federal income tax purposes, as well as changing over twenty other parts of the Tax Code.

The U.S. Tax Code currently refers to state valuation law, linking insurers' liabilities for benefits under issued contracts and policies with tax deductions in a reasonably unbiased and deliberative manner. If the valuation system were to change, there would need to be synchronization of the regulatory and tax results. Given the contentiousness of tax issues both within the industry and with the federal government, this would be extremely difficult to accomplish.

Central Review Body

The attached draft provides for the NAIC or some other central body (tentatively referred to as the "Central Actuarial Bureau") to receive and review actuarial opinions and memoranda developed under the unified valuation system. The draft merely sets forth the broad parameters of what such a central body might do. Obviously, if the NAIC were to adopt this approach, there would need to be considerable additional discussion about such a body and exactly what its structure, authority and responsibilities might be. There is significant difference of opinion within the actuarial profession about the central review body concept, and we think it particularly important to emphasize that the concept of a central review body of any type has not been endorsed by the Academy.

The draft also includes the alternative of requiring the insurer to hire an independent actuary to peer review the appointed actuary's work. This peer review approach to review is based on the Canadian model and it would also require substantial additional work. A third alternative would be to continue to rely upon the Academy's established processes for standard-setting and professional discipline.

Conclusion

Many important questions remain to be resolved before this or any other unified valuation system can be put into place. We would ask LHATF to consider whether these approaches represent an improvement over the existing system, and what their likely impact would be. We expect that LHATF and the Valuation Task Force will need to devote considerable additional efforts to refining the approaches set forth in the attached draft, to decide whether other approaches should also be developed or whether some time should pass before further work on a unified valuation system should be undertaken.

The Valuation Task Force thanks the NAIC for this opportunity to be of service. We hope that our draft will be useful to LHATF as it considers methods to improve regulation of reserve valuation. If you require additional information or assistance, please contact Task Force Chairperson Robert Wilcox, or staff members Lauren Bloom or Greg Vass, through the Academy office, (202) 223-8196. Thank you.

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MODEL UNIFIED VALUATION LAW

I Title

This Act shall be known as the “Unified Valuation Law.”²

II Scope

Except as otherwise provided under this Code, this Act and the regulations adopted to implement it apply to all life and health insurers (including reinsurers) authorized to do business in this State. This Act and the regulations adopted to implement it do not apply to property & casualty insurers (including reinsurers) authorized to do business in this State, except to the extent that such property & casualty insurers write health or life insurance constituting at least XX% of net written premium of said property & casualty insurers.

Drafting Note: Health insurer is to be defined to include HMDI, HMO, PSO, etc.

III Definitions

As used in the Act, these terms shall have the following meanings:

² *Drafting Note: This draft provides a number of choices for dealing with aspects of valuation; these choices are designated as Draft Options A through E:*

<i>Draft Option A</i>	<i>Basis for Determining Earnings</i>
<i>A1</i>	<i>Based on generally-accepted accounting principles</i>
<i>A2</i>	<i>Based on traditional reserves as far as practical</i>
<i>A3</i>	<i>Based on probability of insurer’s survival</i>
<i>Draft Option B</i>	<i>Review of Actuarial Opinion and Memorandum</i>
<i>B1</i>	<i>Review by the NAIC</i>
<i>B2</i>	<i>Review by a Central Actuarial Bureau</i>
<i>B3</i>	<i>Review by an independent actuary</i>
<i>B4</i>	<i>None of the above.</i>
<i>Draft Option C</i>	<i>Appointment of the actuary</i>
<i>C1</i>	<i>Actuary must be appointed by insurer’s board of directors</i>
<i>C2</i>	<i>Board of directors can delegate authority to appoint</i>
<i>Draft Option D</i>	<i>Basis for Assets Reserved to Support Policyholder Interests</i>
<i>D1</i>	<i>Based on probability of insurer survival</i>
<i>D2</i>	<i>Based on RBC Formula</i>
<i>Draft Option E</i>	<i>Dynamic Financial Condition Analysis</i>
<i>E1</i>	<i>Mandatory report to board of directors</i>
<i>E2</i>	<i>Optional report to board of directors</i>

Each choice is independent of the others, but it is anticipated that the drafters would choose one option for each of the Draft Options A through E.

- A. “Qualified Actuary” means a member in good standing of the American Academy of Actuaries.
- B. “UVL Report” means the report which is required by Section IV of the Act.
- C. “Assets Reserved to Support Policyholder Interests: are assets specified by the insurer which satisfy the test set forth in Section (V)(A)(2)(a) of the Act.
- D. “Dedicated Capital and Surplus” means that portion of an insurer’s assets reserved to support policyholder interests that exceed the company’s liabilities.
- E. “Domestic Insurer” means any insurance company domiciled in this State.
- F. “Foreign Insurer” means any insurance company which is licensed to do business in this State under [cite appropriate statute] but is not domiciled in this State.
- G. “NAIC” means the National Association of Insurance Commissioners.
- H. “UVL Instructions” means UVL instructions adopted by the NAIC, and such UVL instructions as may be amended from time to time in accordance with procedures adopted by the NAIC.

Additional definitions needed for Draft Option D2 only:

- I. “Risk-Based Capital Instructions” means instructions issued from time to time by the NAIC giving a factor-based formula intended to take into account (and adjust for the covariance between) the risks undertaken by insurers, including risks with respect to assets held, the risk of adverse insurance experience with respect to liabilities and other obligations, interest rate risk and all other business risks.
- J. “RBC Level” means an insurer’s Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC, or Mandatory Control Level RBC, each determined in accordance with the Risk-Based Capital Instructions for the year of valuation.
- K. “Total Adjusted Capital” means the amount by which the value of the insurer’s assets exceed the value of its liabilities, as determined in accordance with Section IV(A).

Drafting Note: The factors used in the risk-based capital formula, as well as the ratios of the various RBC levels to one another, must be redetermined to be consistent with the method of valuing assets and liabilities. The formula is intended to produce, for an insurer with an average risk profile the level of adequacy specified in Section V(A)(2)(c)(3).

IV UVL Report

A. *Draft Option A1*

The commissioner shall annually cause to be valued by each domestic insurer the liabilities and assets of said insurer in accordance with generally-accepted accounting principles (“GAAP”).

Drafting Note: In order to be acceptable, Draft Option A1 assumes that GAAP for insurers will be appropriately redefined.

Draft Options A2 and A3

The commissioner shall annually cause to be valued by each domestic insurer the liabilities and assets of said insurer in accordance with codified statutory accounting principles as provided subsection F of this section.

B. *Draft Option A1*

Each domestic insurer shall, on or prior to each [date] (“the filing date”), prepare and submit to the commissioner a Unified Valuation Report valuing its liabilities and assets as of December 31st of the calendar year just ended (“the valuation date”), in accordance with GAAP.

1. Each UVL Report shall include, at a minimum, an audited balance sheet, income statement, and cash flow statement, and a valuation of reserve liabilities, all prepared in accordance with GAAP. In addition, the UVL Report shall include the actuarial opinion required by Section V of the Act.
2. Each UVL Report shall also include a list of Assets Reserved to Support Policyholder Interests and the amount of Dedicated Capital and Surplus as of the valuation date.
3. The UVL Report shall be prepared in a form and containing such additional information as is required by the UVL Instructions, including confirmation that the UVL Report has been submitted to the insurer’s board of directors.

Draft Options A2 and A3

Each domestic insurer shall, on or prior to each [date] (“the filing date”), prepare and submit to the commissioner a Unified Valuation Report valuing its liabilities and assets as of December 31st of the calendar year just ended (“the valuation date”), in accordance with codified statutory accounting principles.

1. Each UVL Report shall include, at a minimum, an audited balance sheet, income statement, and cash flow statement, and a valuation of reserve liabilities, all prepared in accordance with codified statutory accounting principles. In addition, the UVL Report shall be accompanied by the actuarial opinion required by Section V of the Act.
2. Each UVL Report shall also include a list of Assets Reserved to Support Policyholder Interests and the amount of Dedicated Capital and Surplus as of the valuation date.
3. The UVL Report shall be prepared in a form and containing such additional information as is required by the UVL Instructions, including confirmation that the UVL Report has been submitted to the insurer’s board of directors.

C. Each domestic insurer shall also file its UVL Report with the insurance commissioner in any state in which the insurer is authorized to do business, if the insurance commissioner has notified the insurer of its request in writing, in which case the insurer shall file its UVL Report not later than the later of:

1. Fifteen (15) days from the receipt of notice to file its UVL Report with that state; or
2. The filing date.

D. ***Draft Option B1***

The insurer shall also file its UVL Report with the NAIC in accordance with the UVL Instructions and with an actuarial memorandum supporting the actuarial opinion. An actuary employed or hired by the NAIC shall review the actuarial opinion and supporting memorandum required by Section V(A) of the Act for completeness. The NAIC actuary shall report in writing to the commissioner of the state of domicile whether the NAIC actuary believes such material is complete. After issuing the report, the NAIC actuary shall return the actuarial opinion, memorandum, and other documentation to the appointed actuary. Within 30 days after the NAIC report has been submitted to the domiciliary state, it shall be available to any insurance department of a state in which the insurer is licensed.

Draft Option B2

The insurer shall also file its UVL Report with the Central Actuarial Bureau (“CAB”) in accordance with the UVL Instructions and with an actuarial

memorandum supporting the actuarial opinion. An actuary employed or hired by the CAB shall review the actuarial opinion and memorandum required by Section V(A) of the Act for completeness and compliance with professional standards. The CAB actuary shall report in writing to the commissioner of the state of domicile whether the CAB actuary believes such material is complete and in compliance with the *Actuarial Standards of Practice* that are adopted from time to time by the Actuarial Standards Board of the American Academy of Actuaries. After issuing the report, the CAB actuary shall return the actuarial opinion, memorandum, and other documentation to the appointed actuary. Within 30 days after the CAB report has been submitted to the domiciliary state, it shall be available to any state insurance in which the insurer is licensed.

Draft Option B3

The insurer shall also file with its UVL Report a report from an independent actuary hired by the insurer. The independent actuary shall review the actuarial opinion and memorandum required by Section V(A) of the Act for completeness and compliance with professional standards. The independent actuary's report shall be in writing, addressed to the commissioner of the state of domicile, and shall state whether the independent actuary believes such material is complete and in compliance with the *Actuarial Standards of Practice* that are adopted from time to time by the Actuarial Standards Board of the American Academy of Actuaries. The independent actuary's report shall be available to any state insurance in which the insurer is licensed.

Draft Option B4

None of the above.

Drafting Note: Draft Options B1 through B3 are unnecessary if the legislative drafters agree that it is acceptable and sufficient to continue to rely upon the American Academy of Actuaries' established processes for standard-setting and professional discipline.

- E. If a domestic insurer files a UVL Report which in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the UVL Report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. A UVL Report as so adjusted is referred to in the Act as an "Adjusted UVL Report."

F. Valuation of Liabilities and Assets

Draft Option A2

Drafting Note: This section will be based on Sections 5 and 5(A) of the Standard Valuation Law and the Minimum Reserve Standards for Individual and Group Health Contracts Model Regulation.

Draft Option A3

1. Valuation of Liabilities

The value of liabilities shall be the accounting value of a set of assets identified by the appointed actuary as providing for all material obligations of the insurer as they fall due at an adequacy level of at least XX%.

2. Valuation of Assets

Assets will be valued as provided under codified statutory accounting principles.

V Actuarial Analysis and Opinion; Action Events

A. Actuarial Analysis of Assets Reserved to Support Policyholder Interests

1. An “appointed actuary” is a qualified actuary who is appointed by the ***Draft Option C1*** [board of directors] ***Draft Option C2*** [board of directors or its designee] to prepare the analysis and opinion required by this Section. Every domestic company shall give the commissioner timely written notice of the name, title (and, in the case of a consulting actuary, the name of the firm) and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary. The insurer shall also state in such notice that the person meets the requirements set forth in the Act. Once notice is furnished, no further notice is required with respect to this person, provided that the company shall give the commissioner timely written notice in the event the actuary ceases either to be appointed as an appointed actuary or to meet the requirements set forth in the Act. If any person appointed as an appointed actuary replaces a previously appointed actuary, the notice shall so state and give the reasons for replacement.

2. ***Draft Option D1***

An appointed actuary shall be appointed or retained by the insurer to analyze the insurer's assets and liabilities under its policies and contracts and to prepare an opinion as to whether the insurer's Assets Reserved to Support Policyholder Interests are adequate to meet the insurer's obligations. If the appointed actuary is unable to reach an opinion that the insurer's Assets Reserved to Support Policyholder Interests are adequate to meet the insurer's obligations, the appointed actuary shall report the probability of the insurer's survival when recognizing the availability of resources to meet the insurer's obligations as they fall due. The commissioner shall define by regulation the specifics of this opinion and add any other items deemed to be necessary to its scope.

Drafting Note: The regulatory definition of "sufficient at an XX% probability of survival" should recognize that, in some instances, testing to a precise percentage probability of survival may not be practical or appropriate. The regulation should permit the appointed actuary to exercise professional judgment in determining sufficiency at an appropriate level of accuracy. This note applies to all points in the draft where references to sufficiency "at an XX% probability of survival" occur.

- a. The appointed actuary may determine that the insurer's Assets Reserved to Support Policyholder Interests are adequate to meet the insurer's obligations if the insurer's Assets Reserved to Support Policyholder Interests equal:
 - 1) The amount necessary to provide at least XX% probability of the insurer's survival when recognizing all liabilities under its insurance contracts and policies in force on the filing date as well as all other liabilities of the insurer and the availability of the assets to meet the insurer's obligations as they fall due as determined by the appointed actuary;
 - 2) Adjusted to reflect any other items on the insurer's balance sheet that are deemed by the appointed actuary to be relevant.
- b. In performing the analysis and preparing the opinion, the appointed actuary shall comply with the *Actuarial Standards of Practice* that are adopted from time to time by the Actuarial Standards Board of the American Academy of Actuaries.

- c. The insurer shall annually submit the actuary's opinion to the insurance commissioner with its UVL Report, and the actuary's opinion shall be made publicly available by the commissioner. A memorandum in form and substance acceptable to the commissioner as specified by regulation shall be prepared to support each actuarial opinion.
- d. The commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis of the opinion as part of the commissioner's regular, periodic examination and oversight of the insurer. However, the actuary's opinion shall not be subject to accounting audit by the insurance commissioner.
- e. Except in cases of fraud or willful misconduct, the appointed actuary shall not be liable for damages to any person other than the insurer and the commissioner for any act, error, omission, decision or conduct with respect to the actuary's opinion.

Draft Option D2

An appointed actuary shall be appointed by the insurer to analyze the insurer's assets and liabilities under its policies and contracts and to prepare an opinion as to whether the insurer's Assets Reserved in Support of Policyholders' Interests are adequate to meet the insurer's obligations under the criterion specified in paragraph (a) below. If the appointed actuary is unable to reach an opinion that the insurer's Assets Reserved in Support of Policyholders' Interests are adequate under this criterion, the appointed actuary shall report the amount of additional cash that the insurer could add to the Assets Reserved in Support of Policyholders' Interests in order to satisfy the criterion and whether the insurer has sufficient assets to make such addition. The commissioner shall define by regulation the specifics of this opinion and add any other items deemed to be necessary to its scope.

- a. The appointed actuary may determine that the insurer's Assets Reserved in Support of Policyholders' Interests is adequate to meet the insurer's obligations if the value of such assets, determined in accordance with Section IV(A), equals or exceeds the sum of the value of the insurer's liabilities, determined in accordance with Section IV(A), and the insurer's risk-based capital, determined in accordance with the formula set forth in the Risk-Based Capital Instructions applicable on the valuation date.
- b. In performing the analysis and preparing the opinion, the appointed actuary shall comply with the *Actuarial Standards of Practice* that are adopted from time to time by the Actuarial Standards Board of the American Academy of Actuaries.

- c. The insurer shall carry out the actions specified in (1), (2) and (3) below annually under the conditions specified in (4) and (5).
- 1) Submit the actuary's opinion to the insurance commissioner with its UVL Report, together with a memorandum in form and substance acceptable to the commissioner as specified by regulation prepared to support each actuarial opinion.
 - 2) Prepare and submit to the commissioner a report comparing its Risk-Based Capital as of the end of the calendar year just ended to its Total Adjusted capital as of the same date, in form and containing the information specified by the commissioner.
 - 3) Obtain and present to its board of directors a "Risk Profile Report" from its appointed actuary indicating whether the Assets Reserved in Support of the Policyholders' Interests on the valuation date may be expected to provide for the insurer's obligations at an adequacy level of XX% under procedures described in standards of practice adopted by the Actuarial Standards Board at the date of the opinion. If the Assets Reserved in Support of the Policyholders' Interests fail to provide this level of adequacy for two years in succession, the insurer shall inform the commissioner that the insurer's risk profile is inconsistent with the calculation specified in the risk-based capital instructions and shall specify the amount of additional cash determined by the actuary to be necessary to achieve a XX% adequacy level. Notwithstanding such action by the insurer, the insurer's risk-based capital shall be determined as specified in the Risk-Based Capital Instructions.
 - 4) Upon the occurrence of an event as defined in subsections B, C, D or E of this Section, the commissioner may require the insurer to submit the appointed actuary's Risk Profile Report most recently presented to the insurer's board of directors in accordance with subparagraph 3) above.
 - 5) The appointed actuary's opinion shall be made publicly available by the commissioner. The memorandum required in (1) above and the Risk Profile Report submitted under (4) above shall be held in confidence by the commissioner and returned to the insurer when no longer required.

- d. The commissioner may engage a qualified actuary at the expense of the company to review the appointed actuary's opinion and the basis of the opinion as part of the commissioner's regular, periodic examination and oversight of the insurer. However, the actuary's opinion shall not be subject to accounting audit by the insurance commissioner.
- e. Except in cases of fraud or willful misconduct, the appointed actuary shall not be liable for damages to any person other than the insurer and the commissioner for any act, error, omission, decision or conduct with respect to the appointed actuary's opinion or the Risk Profile Report.

B. Company Action Level Event

1. A "Company Action Level Event" means any of the following events:

a. ***Draft Option D1***

The filing of a UVL Report by an insurer which indicates that the appointed actuary is unable to reach an opinion that the insurer's Assets Reserved to Support Policyholder Interests are adequate to meet the insurer's obligations;

Draft Option D2

The filing of a UVL Report by an insurer which indicates that:

- 1) The insurer's Total Adjusted Capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC; or
 - 2) If a life and/or health insurer, the insurer has Total Adjusted Capital greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and a factor specified in the Risk-Based Capital Instructions and has a negative trend;
- b. The notification by the commissioner to the insurer of an Adjusted UVL Report that indicates an event in Paragraph 1 of this subsection, provided the insurer does not challenge the Adjusted UVL Report under Section VII; or
 - c. If, pursuant to Section VII, an insurer challenges an Adjusted UVL Report that indicates the event in Paragraph 1 of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

2. In the event of a Company Action Level Event, the insurer shall prepare and submit to the commissioner a UVL Plan which shall:
 - a. Identify the conditions which contribute(d) to the Company Action Level Event;
 - b. Contain proposals of corrective actions which the insurer intends to take and which would be expected to result in the elimination of the Company Action Level Event;
 - c. Provide projections of the insurer's financial results in the current year and at least the four (4) succeeding years, both in the absence of corrective actions and giving effect to the proposed corrective actions, including projections of operating income, net income, and Dedicated Capital and Surplus;
 - d. Identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and
 - e. Identify the risks associated with the insurer's business, and the steps being taken, including the use of reinsurance, to mitigate those risks.
3. The UVL Plan shall be submitted:
 - a. Within forty-five (45) days of the Company Action Level Event; or
 - b. If the insurer challenges an Adjusted UVL Report pursuant to Section VII, within forty-five (45) days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.
4. Within sixty (60) days after the submission by an insurer of a UVL Plan to the commissioner, the commissioner shall notify the insurer whether the UVL Plan shall be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the UVL Plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions which will render the UVL Plan satisfactory in the judgment of the commissioner. Upon notification from the commissioner, the insurer shall prepare a Revised UVL Plan, which may incorporate by reference any revisions proposed by the commissioner, and shall submit the Revised UVL Plan to the commissioner:

- a. Within forty-five (45) days after the notification from the commissioner; or
 - b. If the insurer challenges an action taken by the commissioner under Section VII, within forty-five (45) days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.
5. In the event of a notification by the commissioner to an insurer that the insurer's UVL Plan or Revised UVL Plan is unsatisfactory, the commissioner may at the commissioner's discretion, and subject to the insurer's right to a hearing under Section VII, specify in the notification that the notification constitutes a Regulatory Action Level Event.
6. Every domestic insurer that files a UVL Plan or a Revised UVL Plan with the commissioner shall file a copy of the UVL Plan or Revised UVL Plan with the insurance commissioner in any state in which the insurer is authorized to do business if:
- a. Such state has a Unified Valuation Law similar to the Act; and
 - b. The insurance commissioner of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the UVL Plan or Revised UVL Plan in that state not later than the later of:
 - 1) Fifteen (15) days after the receipt of notice to file a copy of its UVL Plan or Revised UVL Plan with the State; or
 - 2) The date on which the UVL Plan is filed under Section V(C)(3) or the Revised UVL Plan is filed under Section V(C)(4).

C. Regulatory Action Level Event

1. "Regulatory Action Level Event" means, with respect to any insurer, any of the following events:
- a. ***Draft Option D1***
The filing of a UVL Report by an insurer which does not indicate that the insurer's Assets Reserved to Support Policyholder Interests are adequate to meet the insurer's obligations with a XX% probability of survival;

Draft Option D2

The filing of a UVL Report by an insurer which indicates that the insurer's Total Adjusted Capital is greater than or equal to its Authorized Control Level RBC but less than its Regulatory Action Level RBC;

- b. The notification by the commissioner to the insurer of an Adjusted UVL Report that indicates an event in Paragraph 1 of this subsection, provided the insurer does not challenge the Adjusted UVL Report under Section VII;
- c. If, pursuant to Section VII, the insurer challenges an Adjusted UVL Report that indicates the event in Paragraph 1 of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge;
- d. The failure of the insurer to file a UVL Report by the filing date, unless the insurer has provided an explanation for such failure which is satisfactory to the commissioner and has cured the failure within ten (10) days after the filing date;
- e. The failure of the insurer to submit a UVL Plan to the commissioner within the time period set forth in Section V(C);
- f. Notification by the commissioner to the insurer that:
 - 1) The UVL Plan or Revised UVL Plan submitted by the insurer is, in the judgment of the commissioner, unsatisfactory; and
 - 2) Such notification constitutes a Regulatory Action Level Event with respect to the insurer, provided the insurer has not challenged the determination pursuant to Section VII;
- g. If, pursuant to Section VII, the insurer challenges a determination by the commissioner under Paragraph (f) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected such challenge;
- h. Notification by the commissioner to the insurer that the insurer has failed to adhere to its UVL Plan or Revised UVL Plan, but only if such failure has a substantial adverse effect on the ability of the insurer to eliminate the Company Action Level Event in accordance with its UVL Plan or Revised UVL Plan and the commissioner has so stated in the notification, provided the insurer has not challenged the determination under Section VII; or

- i. If, pursuant to Section VII, the insurer challenges a determination by the commissioner under Paragraph (h) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected such challenge.
 2. In the event of a Regulatory Action Level Event, the commissioner shall:
 - a. Require the insurer to prepare and submit a UVL Plan or, if applicable, a Revised UVL Plan;
 - b. Perform such examination or analysis as the commissioner deems necessary of the assets, liabilities and operations of the insurer including a review of its UVL Plan or Revised UVL Plan; and
 - c. Subsequent to the examination or analysis, issue an order specifying such corrective actions as the commissioner shall determine are required (a “Corrective Order”).
 3. In determining corrective actions, the commissioner may take into account such factors as are deemed relevant with respect to the insurer based upon the commissioner’s examination or analysis of the assets, liabilities and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the UVL Instructions. The UVL Plan or Revised UVL Plan shall be submitted:
 - a. Within forty-five (45) days after the occurrence of the Regulatory Action Level Event;
 - b. If the insurer challenges an Adjusted UVL Report pursuant to Section VII and the challenge is not frivolous in the judgment of the commissioner, within forty-five days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer’s challenge; or
 - c. If the insurer challenges a Revised UVL Plan pursuant to Section VII and the challenge is not frivolous in the judgment of the commissioner, within forty-five days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer’s challenge.
 4. The commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the commissioner to review the insurer’s UVL Plan or Revised UVL Plan, examine or analyze the assets, liabilities and operations of the insurer and formulate the

Corrective Order with respect to the insurer. The fees, costs and expenses relating to consultants shall be borne by the affected insurer or such other party as directed by the commissioner.

D. Authorized Control Level Event

1. “Authorized Control Level Event” means any of the following events:

a. ***Draft Option D1***

The filing of a UVL Report by an insurer which does not indicate that the insurer’s Assets Reserved to Support Policyholder Interests are adequate to meet the insurer’s obligations with a XX% probability of survival;

Draft Option D2

The filing of a UVL Report by an insurer which indicates that the insurer’s Total Adjusted Capital is greater than or equal to its Mandatory Control Level RBC but less than its Authorized Control Level RBC;

b. The notification by the commissioner to the insurer of an Adjusted UVL Report that indicates an event in Paragraph 1 of this subsection, provided the insurer does not challenge the Adjusted UVL Report under Section VII;

c. If, pursuant to Section VII, the insurer challenges an Adjusted UVL Report that indicates the event in Paragraph 1 of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer’s challenge;

d. The failure of the insurer to respond, in a manner satisfactory to the commissioner, to a Corrective Order (provided the insurer has not challenged the Corrective Order under Section VII); or

e. If the insurer has challenged a Corrective Order under Section VII and the commissioner has, after a hearing, rejected the challenge or modified the Corrective Order, the failure of the insurer to respond, in a manner satisfactory to the commissioner, to the Corrective Order subsequent to rejection or modification by the commissioner.

2. In the event of an Authorized Control Level Event with respect to an insurer, the commissioner shall:

- a. Take such actions as are required under Section V(C) regarding an insurer with respect to which a Regulatory Action Level Event has occurred; or
- b. If the commissioner deems it to be in the best interests of the policyholders and creditors of the insurer and of the public, take such actions as are necessary to cause the insurer to be placed under regulatory control under [insert reference to relevant insurance company rehabilitation and liquidation act]. In the event the commissioner takes such actions, the Authorized Control Level Event shall be deemed sufficient grounds for the commissioner to take action under [insert same reference], and the commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in [insert same reference]. In the event the commissioner takes action under this paragraph pursuant to an Adjusted UVL Report, the insurer shall be entitled to such protections as are afforded to insurers under the provisions of [insert appropriate reference] pertaining to summary proceedings.

E. Mandatory Control Level Event

1. “Mandatory Control Level Event” means any of the following events:
 - a. ***Draft Option D1***
The filing of a UVL Report by an insurer which indicates that the insurer’s Assets Reserved to Support Policyholder Interests are not adequate to meet the insurer’s obligations with a XX% probability of survival;

Draft Option D2
The filing of a UVL Report by an insurer which indicates that the insurer’s Total Adjusted Capital is less than its Mandatory Control Level RBC;
 - b. The notification by the commissioner to the insurer of an Adjusted UVL Report that indicates an event in Paragraph 1 of this subsection, provided the insurer does not challenge the Adjusted UVL Report under Section VII; or
 - c. If, pursuant to Section VII, an insurer challenges an Adjusted UVL Report that indicates the event in Paragraph 1 of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer’s challenge.

2. In the event of a Mandatory Control Level Event, the commissioner shall take such actions as are necessary to cause the insurer to be placed under regulatory control under [insert reference to relevant insurance company rehabilitation and liquidation act]. In that event, the Mandatory Control Level Event shall be deemed sufficient grounds for the commissioner to take action under [insert same reference], and the commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in [insert same reference]. In the event the commissioner takes action under this paragraph pursuant to an Adjusted UVL Report, the insurer shall be entitled to such protections as are afforded to insurers under the provisions of [insert appropriate reference] pertaining to summary proceedings. Notwithstanding any of the foregoing, the commissioner may forego action for up to ninety (90) days after the Mandatory Control Level Event if the commissioner finds there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the ninety (90) day period.

VI Dynamic Financial Condition Analysis

- A. A “dynamic financial condition analysis report” is a report, prepared in accordance with the *Actuarial Standards of Practice* that are adopted from time to time by the Actuarial Standards Board of the American Academy of Actuaries, prepared by the insurer’s actuary setting forth an actuarial analysis of the insurer’s ability to carry out its plans of operation (as presented to the board of directors) over a specified period of at least five years, taking due account of actuarial and financial risks for both policies in force and those planned to be written, actual and planned investments and any other insurance and non-insurance obligations undertaken or planned to be undertaken by the insurer.

Drafting Note: It might be appropriate to move this paragraph into Section II, “Definitions.”

- B. Each insurer doing business in this State shall certify annually to the commissioner ***Draft Option E1*** [that] ***Draft Option E2*** [whether] its board of directors has received a dynamic financial condition analysis report prepared by the insurer’s appointed actuary based on one or more plans of operation specified by the board, including in particular the plan expected to be the basis of operations in the next year. Notwithstanding the requirement of this section, the operations of the insurer shall not be constrained to follow the plan so specified, nor shall the board be required to obtain a revised dynamic financial condition analysis report if the plan is revised or not followed.
- C. If the insurer experiences one of the events described in Sections V(B) through (E) of this Act, the commissioner may require that the insurer submit or disclose the dynamic financial condition report ***Draft Option E2*** [, if any] on the insurance company and each of its affiliates, as well as any prior prepared reports. These

report(s) shall be held in strictest confidence and returned to the insurer as soon as the insurer's corrective actions have restored the company to no longer be subject to regulatory actions prescribed in Section V.

- D.** Except in cases of fraud or willful misconduct, the dynamic financial condition analysis report shall not be required to be provided to anyone except the board of directors of the insurer and the commissioner in the circumstances described in subsection C of this section; and the board, individual members of the board or management and the appointed actuary shall not be liable for damages to any person, except the commissioner acting in accordance with Section V, for any act, error, omission, decision, or conduct with respect to the dynamic financial condition analysis or the report setting forth the analysis.
- E.** Notwithstanding the requirements of this section, the operations of the insurer shall not be constrained to follow the specified plan. If the plan is revised or not followed, the board of directors *Draft Option E1* [shall] *Draft Option E2* [may] obtain a revised dynamic financial condition analysis that reflects the financial effect of the revisions to or decision not to follow the plan.

VII Hearings

Upon any of the following, the insurer shall have the right to a confidential departmental hearing, on a record, at which the insurer may challenge any determination or action by the commissioner:

- A.** Notification to an insurer by the commissioner of an Adjusted UVL Report; or
- B.** Notification to an insurer by the commissioner that:

 - 1. The insurer's UVL Plan or Revised UVL Plan is unsatisfactory; and
 - 2. Such notification constitutes a Regulatory Action Level Event with respect to such insurer; or
- C.** Notification to any insurer by the commissioner that the insurer has failed to adhere to its UVL Plan or Revised UVL Plan and that such failure has a substantial adverse effect on the ability of the insurer to eliminate the Company Action Level Event with respect to the insurer in accordance with its UVL Plan or revised UVL Plan; or
- D.** Notification to an insurer by the commissioner of a Corrective Order with respect to the insurer.

The insurer shall notify the commissioner of its request for a hearing within five (5) business days after the notification of the commissioner under this subsection. Upon

receipt of the insurer's request for a hearing, the commissioner shall set a date for the hearing, which date shall be no less than ten (10) nor more than thirty (30) days after the date of the insurer's request.

VIII Confidentiality; Prohibition on Announcements or Use in Rate Making

- A.** All UVL Reports (to the extent the information therein is not required to be publicly available) and UVL Plans (including the results or report of any examination or analysis of an insurer performed pursuant hereto and any Corrective Order issued by the commissioner pursuant to analysis) with respect to any domestic insurer or foreign insurer which are filed with the commissioner constitute information that might be damaging to the insurer if made available to its competitors, and therefore shall be kept confidential by the commissioner. This information shall not be made public or be subject to subpoena other than by the commissioner, and then only for the purpose of enforcement actions taken by the commissioner pursuant to this Act or any other provision of the insurance laws of this State.
- B.** Except as otherwise required under the provisions of the Act, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion, representation, or statement with regard to the UVL Report or UVL Plan of any insurer, or of any component derived in the calculation by any insurer, agent, broker, or other person engaged in any manner in the insurance business is prohibited. If any materially false statement with respect to the comparison regarding an insurer's UVL Report or UVL Plan or an inappropriate comparison of any other insurer's UVL Report or UVL Plan to the insurer's UVL Report or UVL Plan is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.
- C.** Adjusted UVL Reports, UVL Plans and Revised UVL Plans are intended solely for use by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers and shall not be considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or any affiliate is authorized to write.
- D.** Any memorandum in support of the actuarial opinion, and any other material provided by the company to the commissioner in connection therewith, shall be

kept confidential by the commissioner and shall not be made public or be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason in any action required by this section or by regulations promulgated pursuant to this section; except that the memorandum or other materials may be released by the commissioner with the written consent of the company or upon request from the Actuarial Board for Counseling and Discipline of the American Academy of Actuaries stating that the memorandum or other material is required for the purpose of a professional disciplinary inquiry. The commissioner shall require that any such request from the Actuarial Board for Counseling and Discipline set forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material. Once any portion of a confidential memorandum prepared for purposes of this section is cited by an insurer in its marketing or before any governmental agency other than a state insurance regulatory authority or is released by the insurer to any news media, the confidentiality of all portions of any such memorandum shall be deemed to be waived.

IX Supplemental Provisions; Regulations; Exemption

- A.** The provisions of this Act are supplemental to any other provisions of the laws of this State, and shall not preclude or limit any other powers or duties of the commissioner under such laws including, but not limited to, [cite rehabilitation and liquidation law and law pertaining to insurers in hazardous financial conditions.
- B.** The commissioner may adopt reasonable regulations necessary for the implementation of this Act.

X Foreign Insurers

- A.** Any foreign insurer shall, upon the written request of the commissioner, submit to the commissioner a UVL Report as of the end of the calendar year just ended the later of:
 - 1. The date a UVL Report would be required to be filed by a domestic insurer under this Act; or
 - 2. Fifteen (15) days after the request is received by the foreign insurer.

Any foreign insurer shall, at the written request of the commissioner, promptly submit to the commissioner a copy of any UVL Plan that is filed with the insurance commissioner of any other state.
- B.** In the event of a Company Action Level Event or Regulatory Action Level Event with respect to any foreign insurer as determined under the UVL statute applicable in the state of domicile of the insurer (or, if no UVL statute is in force in that state,

under the provisions of this Act), if the insurance commissioner of the state of domicile of the foreign insurer fails to require the foreign insurer to file a UVL Plan in the manner specified under that state's UVL statute or, if no UVL statute is in force in that state, the commissioner may require the foreign insurer to file a UVL Plan with the commissioner. In such event, the failure of a foreign insurer to file a UVL Plan with the commissioner shall be grounds to order the insurer to cease and desist from writing new insurance business in this State.

- C. In the event of a Mandatory Control Level Event with respect to any foreign insurer, if no domiciliary receiver has been appointed with respect to the foreign insurer under the rehabilitation and liquidation statute applicable to the state of domicile of the foreign insurer, the commissioner may make application to the [cite appropriate state court] permitted under the [cite rehabilitation and liquidation statute] with respect to the liquidation of property of foreign insurers found in this State, and the occurrence of the Mandatory Control Level Event shall be considered adequate grounds for the application.

XI Immunity

There shall be no liability on the part of, and no cause of action shall arise against, the commissioner or the insurance department or its employees or agents for any action taken by them in the performance of their powers and duties under this Act.

XII Severability Clause

If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect the provisions or applications of this Act which can be given effect without the invalid provision or provisions, and to that end the provisions of this Act are severable.

XIII Notices

All notices by the commissioner to an insurer which may result in regulatory action under this Act shall be effective upon dispatch if transmitted by registered or certified mail, or in the case of any other transmission shall be effective upon the insurer's receipt of such notice.

XIV Effective Date

All acts and parts of acts inconsistent with the provisions of this Act are hereby repealed as of the effective date of this Act. This Act shall take effect [date].