

Sixty-fourth  
Legislative Assembly  
of North Dakota

ENGROSSED HOUSE BILL NO. 1142

Introduced by

Representative Keiser

Senator Klein

1 A BILL for an Act to create and enact sections 26.1-35-00.1, 26.1-35-00.2, 26.1-35-11,  
2 26.1-35-12, 26.1-35-13, and 26.1-35-14 of the North Dakota Century Code, relating to the  
3 standard valuation law for life insurance policies and annuities; to amend and reenact sections  
4 26.1-35-01, 26.1-35-01.1, 26.1-35-02, 26.1-35-03, 26.1-35-04, 26.1-35-05, 26.1-35-06,  
5 26.1-35-07, 26.1-35-08, 26.1-35-09, and 26.1-35-10 of the North Dakota Century Code, relating  
6 to the standard valuation law for life insurance; and to provide a contingent effective date.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1.** Section 26.1-35-00.1 of the North Dakota Century Code is created and  
9 enacted as follows:

10 **26.1-35-00.1. Definitions.**

11 In this chapter, the following definitions apply on or after the operative date of the valuation  
12 manual:

- 13 1. "Accident and health insurance" means a contract that incorporates morbidity risk and  
14 provides protection against economic loss resulting from accident, sickness, or  
15 medical conditions and as may be specified in the valuation manual.
- 16 2. "Appointed actuary" means a qualified actuary who is appointed in accordance with  
17 the valuation manual to prepare the actuarial opinion required in subsection 2 of  
18 section 26.1-35-01.1.
- 19 3. "Deposit-type contract" means a contract that does not incorporate mortality or  
20 morbidity risks and as may be specified in the valuation manual.
- 21 4. "Insurer" means an entity that has written, issued, or reinsured life insurance  
22 contracts, accident and health insurance contracts, or deposit-type contracts in this  
23 state:  
24 a. And has at least one such policy in force or on claim; or

- 1            b. Is required to hold a certificate of authority to write life insurance, accident and  
2            health insurance, or deposit-type contracts in this state.
- 3            5. "Life insurance" means a contract that incorporates mortality risk, including annuity  
4            and pure endowment contracts, and as may be specified in the valuation manual.
- 5            6. "Policyholder behavior" means any action a policyholder, contract holder, or any other  
6            person with the right to elect options, such as a certificate holder, may take under a  
7            policy or contract subject to this chapter, including lapse, withdrawal, transfer, deposit,  
8            premium payment, loan, annuitization, or benefit elections prescribed by the policy or  
9            contract. The term does not include events of mortality or morbidity that result in  
10           benefits prescribed in their essential aspects by the terms of the policy or contract.
- 11           7. "Principle-based valuation" means a reserve valuation that uses one or more methods  
12           or one or more assumptions determined by the insurer and is required to comply with  
13           section 26.1-35-12 as specified in the valuation manual.
- 14           8. "Qualified actuary" means an individual who is qualified to sign the applicable  
15           statement of actuarial opinion in accordance with the American academy of actuaries  
16           qualification standards for actuaries signing such statements and who meets the  
17           requirements specified in the valuation manual.
- 18           9. "Tail risk" means a risk that occurs either when the frequency of low probability events  
19           is higher than expected under a normal probability distribution or when there are  
20           observed events of very significant size or magnitude.
- 21           10. "Valuation manual" means the manual of valuation instructions adopted by the national  
22           association of insurance commissioners and approved by the commissioner as  
23           specified in this chapter.

24            **SECTION 2.** Section 26.1-35-00.2 of the North Dakota Century Code is created and  
25 enacted as follows:

26            **26.1-35-00.2. Application of valuation manual - Changes to valuation manual -**  
27 **Requirements of valuation manual.**

- 28            1. Except as provided under subsections 4 or 6 of section 26.1-35-00.2, for policies  
29            issued on or after the operative date of the valuation manual, the standard prescribed  
30            in the valuation manual is the minimum standard of valuation required under  
31            subsection 2 of section 26.1-35-01.

- 1       2. Unless the commissioner or a change in the valuation manual specifies a later  
2       effective date, changes to the valuation manual become effective on January first  
3       following the date the commissioner adopts the changes. The commissioner may  
4       adopt changes to the valuation manual if the valuation manual has been adopted by  
5       the national association of insurance commissioners by an affirmative vote  
6       representing:
- 7       a. At least three-fourths of the members of the national association of insurance  
8       commissioners voting, but not less than a majority of the total membership; and  
9       b. Members of the national association of insurance commissioners representing  
10      jurisdictions totaling greater than seventy-five percent of the direct premiums  
11      written as reported in the following annual statements most recently available  
12      before the vote in paragraph a: life, accident and health annual statements;  
13      health annual statements; or fraternal annual statements.
- 14      3. The valuation manual must specify all of the following:
- 15      a. Minimum valuation standards for and definitions of the policies or contracts  
16      subject to subsection 2 of section 26.1-35-01. The minimum valuation standards  
17      must be:
- 18          (1) The commissioners reserve valuation method for life insurance contracts,  
19          other than annuity contracts, subject to subsection 2 of section 26.1-35-01;  
20          (2) The commissioners annuity reserve valuation method for annuity contracts  
21          subject to subsection 2 of section 26.1-35-01; and  
22          (3) Minimum reserves for all other policies or contracts subject to subsection 2  
23          of section 25.1-35-01.
- 24      b. Which policies or contracts or types of policies or contracts that are subject to the  
25      requirements of a principle-based valuation in subsection 1 of section 26.1-35-12  
26      and the minimum valuation standards consistent with those requirements.
- 27      c. For policies and contracts subject to a principle-based valuation under section  
28      26.1-35-12.
- 29          (1) Requirements for the format of reports to the commissioner under  
30          subdivision c of subsection 2 of section 26.1-35-12 and which must include

- 1                    information necessary to determine if the valuation is appropriate and in  
2                    compliance with this chapter;
- 3                    (2) Assumptions must be prescribed for risks over which the insurer does not  
4                    have significant control or influence; and
- 5                    (3) Procedures for corporate governance and oversight of the actuarial function,  
6                    and a process for appropriate waiver or modification of such procedures.
- 7                    d. For policies not subject to a principle-based valuation under section 26.1-35-12,  
8                    the minimum valuation standard must:
- 9                    (1) Be consistent with the minimum standard of valuation before the operative  
10                    date of the valuation manual; or
- 11                    (2) Develop reserves that quantify the benefits and guarantees, and the  
12                    funding, associated with the contracts and their risks at a level of  
13                    conservatism that reflects conditions that include unfavorable events that  
14                    have a reasonable probability of occurring.
- 15                    e. Other requirements, including those relating to reserve methods, models for  
16                    measuring risk, generation of economic scenarios, assumptions, margins, use of  
17                    insurer experience, risk measurement, disclosure, certifications, reports, actuarial  
18                    opinions and memorandums, transition rules, and internal controls.
- 19                    f. The data and form of the data required under section 26.1-35-13, with whom the  
20                    data must be submitted, and may specify other requirements including data  
21                    analyses and reporting of analyses.
- 22                    4. In the absence of a specific valuation requirement or if a specific valuation requirement  
23                    in the valuation manual is not, in the opinion of the commissioner, in compliance with  
24                    this chapter, with respect to such requirements, the insurer shall comply with minimum  
25                    valuation standards prescribed by the commissioner by rule.
- 26                    5. The commissioner may employ or contract with a qualified actuary, at the expense of  
27                    the insurer, to perform an actuarial examination of the insurer and opine on the  
28                    appropriateness of any reserve assumption or method used by the insurer, or to  
29                    review and opine on an insurer's compliance with any requirement set forth in this  
30                    chapter. The commissioner may rely upon the opinion regarding provisions contained

1           within this chapter, of a qualified actuary engaged by the commissioner of another  
2           state, district, or territory of the United States.

3           6. The commissioner may require an insurer to change any assumption or method that,  
4           in the opinion of the commissioner, is necessary in order to comply with the  
5           requirements of the valuation manual or this chapter; and the insurer shall adjust the  
6           reserves as required by the commissioner. The commissioner may take other  
7           disciplinary action as permitted under this title.

8           **SECTION 3. AMENDMENT.** Section 26.1-35-01 of the North Dakota Century Code is  
9           amended and reenacted as follows:

10           **26.1-35-01. Commissioner to annually value liabilities for life policies and**  
11           **annuities**Reserve valuation.

12           1. The following apply to policies and contracts issued before the operative date of the  
13           valuation manual:

14           a. The commissioner shall annually value, or cause to be valued, the reserve  
15           liabilities, in this chapter referred to as reserves, for all outstanding life insurance  
16           policies and annuity and pure endowment contracts of every ~~life insurance-~~  
17           ~~company~~life insurer doing business in this state, ~~and may certify the amount of~~  
18           ~~the reserves, specifying the mortality table or tables, rate or rates of interest, and~~  
19           ~~methods, net level premium method or other, used in the calculation of the~~  
20           ~~reserves~~ issued after June 30, 1977, and before the operative date of the  
21           valuation manual. In calculating the reserves, the commissioner may use group  
22           methods and approximate averages for fractions of a year or otherwise. In lieu of  
23           the valuation of the reserves required of anya foreign or alien ~~company~~insurer,  
24           the commissioner may accept anya valuation made, or caused to be made, by  
25           the insurance supervisory official of any state or other jurisdiction ~~where~~when the  
26           valuation complies with the minimum standards provided in this chapter, ~~if the~~  
27           ~~official of that state or jurisdiction accepts as sufficient and valid for all legal~~  
28           ~~purposes the certificate of valuation of the commissioner when the certificate~~  
29           ~~states the valuation to have been made in a specified manner according to which~~  
30           ~~the aggregate reserves would be at least as large as if they had been computed~~  
31           ~~in the manner prescribed by the law of that state or jurisdiction.~~

- 1           b. Except sections 26.1-35-00.2 and 26.1-35-12, this chapter applies to all policies  
2           and contracts, as appropriate, subject to this chapter issued after June 30, 1977,  
3           and before the operative date of the valuation manual; however, sections  
4           26.1-35-00.2 and 26.1-35-12 do not apply to such policies and contracts.
- 5           c. The minimum standard for the valuation of policies and contracts issued before  
6           July 1, 1977, are the standards provided by the laws in effect immediately before  
7           that date.
- 8           2. The following apply to policies and contracts issued on or after the operative date of  
9           the valuation manual:
- 10          a. Annually, the commissioner shall value, or cause to be valued, the reserve  
11          liabilities, in this chapter referred to as reserves, for all outstanding life insurance  
12          contracts, annuity and pure endowment contracts, accident and health contracts,  
13          and deposit-type contracts of every insurer issued on or after the operative date  
14          of the valuation manual. In lieu of the valuation of the reserves required of a  
15          foreign or alien insurer, the commissioner may accept a valuation made, or  
16          caused to be made, by the insurance supervisory official of any state or other  
17          jurisdiction when the valuation complies with the minimum standard provided in  
18          this chapter.
- 19          b. The provisions set forth in sections 26.1-35-00.2 and 26.1-35-12 apply to all  
20          policies and contracts issued on or after the operative date of the valuation  
21          manual.

22           **SECTION 4. AMENDMENT.** Section 26.1-35-01.1 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24           **26.1-35-01.1. Actuarial opinion of reserves.**

25           ~~This section becomes operative at the end of the first full calendar year following the year of~~  
26 ~~enactment.~~

- 27           1. The following apply to the actuarial opinions issued before the operative date of the  
28           valuation manual:
- 29           a. Every life insurance ~~company~~insurer doing business in this state shall annually  
30           submit the opinion of a qualified actuary as to whether the reserves and related  
31           actuarial items held in support of the policies and contracts specified by the

1 commissioner by rule are computed appropriately, are based on assumptions  
2 which satisfy contractual provisions, are consistent with prior reported amounts,  
3 and comply with applicable laws of this state. The commissioner by rule shall  
4 define the specifics of this opinion and add any other items deemed to be  
5 necessary to its scope.

6 2.b. Actuarial analysis of reserves and assets supporting such reserves.

7 a.(1) Every life ~~insurance company~~insurer, except as exempted by or pursuant to  
8 rule, shall also annually include in the opinion required by subsection 1, an  
9 opinion of the same qualified actuary as to whether the reserves and related  
10 actuarial items held in support of the policies and contracts specified by the  
11 commissioner by ~~regulation~~rule, when considered in light of the assets held  
12 by the ~~company~~insurer with respect to the reserves and related actuarial  
13 items, including the investment earnings on the assets and the  
14 considerations anticipated to be received and retained under the policies  
15 and contracts, make adequate provision for the ~~company's~~insurer's  
16 obligations under the policies and contracts, including the benefits under  
17 and expenses associated with the policies and contracts.

18 b.(2) The commissioner may provide by rule for a transition period for  
19 establishing any higher reserves which the qualified actuary may deem  
20 necessary in order to render the opinion required by this section.

21 3.c. Requirement for opinion under ~~subsection 2~~subdivision b. Each opinion required  
22 by ~~subsection 2~~subdivision b must be governed by the following provisions:

23 a.(1) A memorandum, in form and substance acceptable to the commissioner as  
24 specified by rule, must be prepared to support each actuarial opinion.

25 b.(2) If the ~~insurance company~~insurer fails to provide a supporting memorandum  
26 at the request of the commissioner within a period specified by rule or the  
27 commissioner determines that the supporting memorandum provided by the  
28 ~~insurance company~~insurer fails to meet the standards prescribed by rule or  
29 is otherwise unacceptable to the commissioner, the commissioner may  
30 engage a qualified actuary at the expense of the ~~company~~insurer to review

1                   the opinion and the basis for the opinion and prepare ~~such~~the supporting  
2                   memorandum ~~as is~~ required by the commissioner.

3           4.d.   Requirement for all opinions subject to subsection 1. Every opinion subject to  
4           subsection 1 must be governed by the following provisions:

5           a.(1)   The opinion must be submitted with the annual statement reflecting the  
6           valuation of such reserve liabilities for each year ending on or after  
7           December 31, 1994.

8           b.(2)   The opinion must apply to all business in force, including individual and  
9           group health insurance plans, in form and substance acceptable to the  
10          commissioner as specified by rule.

11          c.(3)   The opinion must be based on standards adopted from time to time by the  
12          actuarial standards board and on such additional standards as the  
13          commissioner may by rule prescribe.

14          d.(4)   In the case of an opinion required to be submitted by a foreign or alien  
15          ~~company~~insurer, the commissioner may accept the opinion filed by that  
16          ~~company~~insurer with the insurance supervisory official of another state if the  
17          commissioner determines that the opinion reasonably meets the  
18          requirements applicable to a ~~company~~an insurer domiciled in this state.

19          e.(5)   For the purposes of this section, "qualified actuary" means a member in  
20          good standing of the American academy of actuaries who meets the  
21          requirements set forth in ~~such regulations~~the rule.

22          f.(6)   Except in cases of fraud or willful misconduct, the qualified actuary is not  
23          liable for damages to any person, other than the ~~insurance company~~insurer  
24          and the commissioner, for any act, error, omission, decision, or conduct with  
25          respect to the actuary's opinion.

26          g.(7)   Disciplinary action by the commissioner against the ~~company~~insurer or the  
27          qualified actuary must be defined in rules by the commissioner.

28          h.(8)   Any~~Except as provided in paragraphs 12, 13, and 14, documents, materials,~~  
29          or other information in the possession or control of the insurance  
30          department that are a memorandum in support of the opinion, and any other  
31          material provided by the ~~company~~insurer to the commissioner in connection



1                    ~~therewithwith the memorandum, must be keptare~~ confidential by the  
2                    commissioner and may not be made public and is not subject to subpoena,  
3                    other than for the purpose of defending an action seeking damages from  
4                    any person by reason of any action required by this section or by rules  
5                    adopted hereunder; ~~provided, however, that therecords not subject to~~  
6                    section 44-04-18 and are privileged, are not subject to subpoena, and are  
7                    not subject to discovery or admissible in evidence in any private civil action.  
8                    However, the commissioner may use the documents, materials, or other  
9                    information in the furtherance of any regulatory or legal action brought as a  
10                   part of the commissioner's official duties.

11                   (9) Neither the commissioner nor any person who received documents,  
12                   materials, or other information while acting under the authority of the  
13                   commissioner is permitted or required to testify in any private civil action  
14                   concerning any confidential documents, materials, or information subject to  
15                   paragraph 8.

16                   (10) In order to assist in the performance of the commissioner's duties, the  
17                   commissioner:

18                   (a) May share documents, materials, or other information including the  
19                   confidential and privileged documents, materials, or information  
20                   subject to paragraph 8 with other state, federal, and international  
21                   regulatory agencies; with the national association of insurance  
22                   commissioners and its affiliates and subsidiaries; and with state,  
23                   federal, and international law enforcement authorities, if the recipient  
24                   agrees to maintain the confidentiality and privileged status of the  
25                   document, material or other information;

26                   (b) May receive documents, materials, or information, including otherwise  
27                   confidential and privileged documents, materials, or information, from  
28                   the national association of insurance commissioners and its affiliates  
29                   and subsidiaries, and from regulatory and law enforcement officials of  
30                   other foreign or domestic jurisdictions, and shall maintain as  
31                   confidential or privileged any document, material, or information

1                                   received with notice or the understanding that it is confidential or  
2                                   privileged under the laws of the jurisdiction that is the source of the  
3                                   document, material, or information; and

4                   (c) May enter agreements governing sharing and use of information  
5                                   consistent with paragraphs 8, 9, and 10.

6           (11) A waiver of any applicable privilege or claim of confidentiality in the  
7                                   documents, materials, or information may not occur as a result of disclosure  
8                                   to the commissioner under this section or as a result of sharing as  
9                                   authorized in paragraph 10.

10           (12) A memorandum in support of the opinion, and any other material provided  
11                                   by the insurer to the commissioner in connection with the memorandum,  
12                                   may be subject to subpoena for the purpose of defending an action seeking  
13                                   damages from the actuary submitting the memorandum by reason of an  
14                                   action required by this section or by rules adopted under this section.

15           (13) The memorandum or other material may otherwise be released by the  
16                                   commissioner with the written consent of the ~~company~~insurer or to the  
17                                   American academy of actuaries upon request stating that the memorandum  
18                                   or other material is required for the purpose of professional disciplinary  
19                                   proceedings and setting forth procedures satisfactory to the commissioner  
20                                   for preserving the confidentiality of the memorandum or other material.

21           (14) Once any portion of the confidential memorandum is cited by the  
22                                   ~~company~~insurer in its marketing or is cited before any governmental agency  
23                                   other than a state insurance department or is released by the  
24                                   ~~company~~insurer to the news media, all portions of the confidential  
25                                   memorandum are no longer confidential.

26           2. The following apply to actuarial opinions of reserves issued after the operative date of  
27                                   the valuation manual:

28           a. Every insurer with outstanding life insurance contracts, accident and health  
29                                   insurance contracts, or deposit-type contracts in this state and subject to  
30                                   regulation by the commissioner annually shall submit the opinion of the appointed  
31                                   actuary as to whether the reserves and related actuarial items held in support of

1           the policies and contracts are computed appropriately, are based on assumptions  
2           that satisfy contractual provisions, are consistent with prior reported amounts,  
3           and comply with applicable laws of this state. The valuation manual prescribes  
4           the specifics of this opinion, including any items deemed to be necessary to its  
5           scope.

6           b. Every insurer with outstanding life insurance contracts, accident and health  
7           insurance contracts, or deposit-type contracts in this state and subject to  
8           regulation by the commissioner, except as exempted in the valuation manual,  
9           also annually shall include in the opinion required by subdivision a an opinion of  
10           the same appointed actuary as to whether the reserves and related actuarial  
11           items held in support of the policies and contracts specified in the valuation  
12           manual, when considered in light of the assets held by the insurer with respect to  
13           the reserves and related actuarial items, including the investment earnings on the  
14           assets and the considerations anticipated to be received and retained under the  
15           policies and contracts, make adequate provision for the insurer's obligations  
16           under the policies and contracts, including the benefits under and expenses  
17           associated with the policies and contracts.

18           c. Each opinion required by this subsection is governed by the following provisions:

- 19           (1) A memorandum, in form and substance as specified in the valuation  
20           manual, and acceptable to the commissioner, must be prepared to support  
21           each actuarial opinion.
- 22           (2) If the insurer fails to provide a supporting memorandum at the request of the  
23           commissioner within a period specified in the valuation manual or the  
24           commissioner determines that the supporting memorandum provided by the  
25           insurer fails to meet the standards prescribed by the valuation manual or is  
26           otherwise unacceptable to the commissioner, the commissioner may  
27           engage a qualified actuary at the expense of the insurer to review the  
28           opinion and the basis for the opinion and prepare the supporting  
29           memorandum required by the commissioner.

30           d. Under this subsection, every opinion is governed by the following provisions:

- 1           (1) The opinion must be in a form and substance as specified in the valuation  
2                   manual and acceptable to the commissioner.
- 3           (2) The opinion must be submitted with the annual statement reflecting the  
4                   valuation of such reserve liabilities for each year ending on or after the  
5                   operative date of the valuation manual.
- 6           (3) The opinion must apply to all policies and contracts subject to subdivision b.,  
7                   plus other actuarial liabilities as may be specified in the valuation manual.
- 8           (4) The opinion must be based on standards adopted by the actuarial standards  
9                   board or its successor and approved by the commissioner and on such  
10                  additional standards as may be prescribed in the valuation manual.
- 11          (5) In the case of an opinion required to be submitted by a foreign or alien  
12                  insurer, the commissioner may accept the opinion filed by that insurer with  
13                  the insurance supervisory official of another state if the commissioner  
14                  determines that the opinion reasonably meets the requirements applicable  
15                  to an insurer domiciled in this state.
- 16          (6) Except in cases of fraud or willful misconduct, the appointed actuary is not  
17                  liable for damages to any person, other than the insurer and the  
18                  commissioner, for any act, error, omission, decision, or conduct with respect  
19                  to the appointed actuary's opinion.
- 20          (7) Disciplinary action by the commissioner against the insurer or the appointed  
21                  actuary must be defined in rules adopted by the commissioner.

22           **SECTION 5. AMENDMENT.** Section 26.1-35-02 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24           **~~26.1-35-02. Minimum standards of valuation for life or accident~~**  
25 **insurance**Computation of minimum standard.

26           TheExcept as provided in sections 26.1-35-03, 26.1-35-04, and 26.1-35-11, the minimum  
27 standardsstandard for the valuation of all life or accident insurance policies and contracts  
28 issued prior to July 1, 1977, are those provided by sections 26-03-33, 26-03-34, and 26-10-01  
29 as they existed on June 30, 1977. Except as otherwise provided in sections 26.1-35-03and,  
30 26.1-35-04, and 26.1-35-11, the minimum standard for the valuation of all life or accident  
31 insurance policies and contracts issued after June 30, 1977, is the

1 ~~commissioners'~~commissioners reserve valuation methods defined in sections 26.1-35-05,  
2 26.1-35-06, and 26.1-35-09; ~~and 26.1-35-11~~, five and one-half percent interest for single  
3 premium life insurance policies and four and one-half percent interest for all other such policies  
4 and contracts issued after June 30, 1977, other than annuity and pure endowment contracts,  
5 and the following tables:

- 6 1. For all ~~ordinary~~ policies of ~~ordinary~~ life insurance issued on the standard basis,  
7 excluding any disability and accidental death benefits in the policies, the  
8 commissioners 1941 standard ordinary mortality table for policies issued before the  
9 operative date of section 26.1-33-22, the ~~commissioners'~~commissioners 1958  
10 standard ordinary mortality table for policies issued on or after the operative date of  
11 section 26.1-33-22 and prior to the earlier of a specified date filed by a ~~company~~an  
12 insurer with the commissioner in a written notice of the ~~company's~~insurer's election to  
13 comply with this chapter or January 1, 1989, provided that for any category of policies  
14 issued on female risks, all modified net premiums and present values referred to in  
15 this chapter may be calculated according to an age not more than six years younger  
16 than the actual age of the insured; and for policies issued on or after the earlier of a  
17 specified date filed by a ~~company~~an insurer with the commissioner in a written notice  
18 of the ~~company's~~insurer's election to comply with this chapter or January 1, 1989:
  - 19 a. The ~~commissioners'~~commissioners 1980 standard ordinary mortality table;
  - 20 b. At the election of the ~~company~~insurer for any one or more specified plans of life  
21 insurance, the ~~commissioners'~~commissioners 1980 standard ordinary mortality  
22 table with ten-year select mortality factors; or
  - 23 c. Any ordinary mortality table, adopted after 1980 by the national association of  
24 insurance commissioners, that is approved by rule adopted by the commissioner  
25 for use in determining the minimum standard of valuation for the policies.
- 26 2. For all ~~policies of~~ industrial life insurance policies issued on the standard basis,  
27 excluding any disability and accidental death benefits in the policies, the 1941  
28 standard industrial mortality table for policies issued before the operative date of  
29 section 26.1-33-23, and for policies issued on or after the operative date of section  
30 26.1-33-23, the ~~commissioners'~~commissioners 1961 standard industrial mortality table  
31 or any industrial mortality table, adopted after 1980 by the national association of

1 insurance commissioners, that is approved by rule adopted by the commissioner for  
2 use in determining the minimum standard of valuation for the policies.

3 3. For individual annuity and pure endowment contracts, excluding any disability and  
4 accidental death benefits in the policies, the 1937 standard annuity mortality table, or  
5 at the option of the insurer, the annuity mortality table for 1949, ultimate, or any  
6 modification of either of these tables approved by the commissioner.

7 4. For group annuity and pure endowment contracts, excluding any disability and  
8 accidental death benefits in the policies, the group annuity mortality table for 1951, a  
9 modification of the table approved by the commissioner, or at the option of the insurer,  
10 any of the tables or modifications of tables specified for individual annuity and pure  
11 endowment contracts.

12 5. For total and permanent disability benefits in or supplementary to policies or contracts,  
13 for policies or contracts issued after December 31, 1965, the tables of period 2  
14 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study  
15 of the society of actuaries, with due regard to the type of benefit or any tables of  
16 disablement rates and termination rates, adopted after 1980 by the national  
17 association of insurance commissioners, that are approved by rule adopted by the  
18 commissioner for use in determining the minimum standard of valuation for ~~the~~those  
19 policies; for policies or contracts issued after December 31, 1960, and before  
20 January 1, 1966, either those tables or, at the option of the insurer, the class (3)  
21 disability table (1926); and for policies issued before January 1, 1961, the class (3)  
22 disability table (1926). The table must, for active lives, be combined with a mortality  
23 table permitted for calculating the reserves for life insurance policies.

24 4.6. For accidental death benefits in or supplementary to policies or contracts issued after  
25 December 31, 1965, the 1959 accidental death benefits table or any accidental death  
26 benefits table, adopted after 1980 by the national association of insurance  
27 commissioners, that is approved by rule adopted by the commissioner for use in  
28 determining the minimum standard of valuation for the policies. ~~The; for policies issued~~  
29 after December 31, 1960, and before January 1, 1966, either that table or, at the  
30 option of the insurer, the intercompany double indemnity mortality table; and for  
31 policies issued before January 1, 1961, the intercompany double indemnity mortality

1            table. Either table must be combined with a mortality table permitted for calculating the  
2            reserves for life insurance policies.

3        ~~5.7.~~ For group life insurance, life insurance issued on the substandard basis and other  
4            special benefits, any tables that may be approved by the commissioner.

5            **SECTION 6. AMENDMENT.** Section 26.1-35-03 of the North Dakota Century Code is  
6            amended and reenacted as follows:

7            **26.1-35-03. ~~Minimum standards of valuation~~ Computation of minimum standard for**  
8            **annuities.**

9            1. Except as provided in section 26.1-35-04, the minimum ~~standards for the~~ standard of  
10            valuation of ~~all~~ for individual annuity and pure endowment contracts issued on or after  
11            the operative date of this section, and for all annuities and pure endowments  
12            purchased on or after the operative date under group annuity and pure endowment  
13            contracts, must be the ~~commissioners'~~ commissioners reserve valuation methods  
14            defined in sections 26.1-35-05 and 26.1-35-06 and the following tables and interest  
15            rates:

16            ~~4.a.~~ For individual annuity and pure endowment contracts issued before July 1, 1977,  
17            excluding any disability and accidental death benefits in those contracts, the  
18            1971 individual annuity mortality table, or any modification of this table approved  
19            by the commissioner, and six percent interest for single premium immediate  
20            annuity contracts and four percent interest for all other individual annuity and  
21            pure endowment contracts.

22            b. For individual single premium immediate annuity contracts, ~~excluding any~~  
23            ~~disability and accidental death benefits in the contracts~~ issued after June 30,  
24            1977, excluding any disability and accidental death benefits in those contracts,  
25            the 1971 individual annuity mortality table or any individual annuity mortality  
26            table, adopted after 1980 by the national association of insurance  
27            commissioners, that is approved by rule adopted by the commissioner for use in  
28            determining the minimum standard of valuation for the contracts, or any  
29            modification of these tables approved by the commissioner, and seven and  
30            one-half percent interest.

- 1            2-c. For individual annuity and pure endowment contracts issued after June 30, 1977,  
2            other than single premium immediate annuity contracts, excluding any disability  
3            and accidental death benefits in the contracts, the 1971 individual annuity  
4            mortality table or any individual annuity mortality table; adopted after 1980 by the  
5            national association of insurance commissioners, that is approved by rule  
6            adopted by the commissioner for use in determining the minimum standard of  
7            valuation for the contracts, or any modification of these tables approved by the  
8            commissioner, and five and one-half percent interest for single premium deferred  
9            annuity and pure endowment contracts and four and one-half percent interest for  
10           all other individual annuity and pure endowment contracts.
- 11           d. For annuities and pure endowments purchased prior to July 1, 1977, under group  
12           annuity and pure endowment contracts, excluding any disability and accidental  
13           death benefits purchased under those contracts, the 1971 group annuity mortality  
14           table or any modification of this table approved by the commissioner, and six  
15           percent interest.
- 16           3-e. For all annuities and pure endowments purchased after June 30, 1977, under  
17           group annuity and pure endowment contracts, excluding any disability and  
18           accidental death benefits purchased under ~~the~~these contracts, the 1971 group  
19           annuity mortality table or any group annuity mortality table; adopted after 1980 by  
20           the national association of insurance commissioners, that is approved by rule  
21           adopted by the commissioner for use in determining the minimum standard of  
22           valuation for ~~the~~ annuities and pure endowments, or any modification of these  
23           tables approved by the commissioner, and seven and one-half percent interest.
- 24           2. After June 30, 1977, any insurer may file with the commissioner a written notice of its  
25           election to comply with the provisions of this section after a specified date before  
26           January 1, 1979, which must be the operative date of this section for that insurer. If an  
27           insurer makes no election, the operative date of this section for that insurer must be  
28           January 1, 1979.

29           **SECTION 7. AMENDMENT.** Section 26.1-35-04 of the North Dakota Century Code is  
30           amended and reenacted as follows:





1 stated in subdivision b, the formula for life insurance stated in subdivision a  
2 applies to annuities and guaranteed interest contracts with guarantee durations in  
3 excess of ten years and the formula for single premium immediate annuities  
4 stated in subdivision b applies to annuities and guaranteed interest contracts with  
5 guarantee duration of ten years or less.

6 d. For other annuities with no cash settlement options and for guaranteed interest  
7 contracts with no cash settlement options, the formula for single premium  
8 immediate annuities stated in subdivision b applies.

9 e. For other annuities with cash settlement options and guaranteed interest  
10 contracts with cash settlement options, valued on a change in fund basis, the  
11 formula for single premium immediate annuities stated in subdivision b applies.

12 However, if the calendar year statutory valuation interest rate for ~~any~~a life insurance  
13 ~~policies~~policy issued in any calendar year determined without reference to this  
14 sentence differs from the corresponding actual rate for similar policies issued in the  
15 immediately preceding calendar year by less than one-half of one percent, the  
16 calendar year statutory valuation interest rate for the life insurance policies must equal  
17 the corresponding actual rate for the immediately preceding calendar year. For  
18 purposes of applying the preceding sentence, the calendar year statutory valuation  
19 interest rate for life insurance policies issued in a calendar year must be determined  
20 for 1980 by using the reference interest rate defined for 1979, and must be determined  
21 for each subsequent calendar year regardless of when section ~~26.1-33-26~~26.1-33-24  
22 becomes operative.

23 3. The weighting factors referred to in the formulas in subsection 2 are given in the  
24 following tables:

25 a. The weighting factors for life insurance are:

26	Guarantee	Weighting
27	Duration	Factors
28	10 years or less	.50
29	More than 10 years, but not	
30	more than 20 years	.45
31	More than 20 years	.35

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

5 b. The weighting factor for single premium immediate annuities and for annuity  
6 benefits involving life contingencies arising from other annuities with cash  
7 settlement options and guaranteed interest contracts with cash settlement  
8 options is eighty hundredths.

9 c. The weighting factors for other annuities and for guaranteed interest contracts,  
10 except as stated in subdivision b, are as specified in paragraphs 1, 2, and 3,  
11 according to the requirements and definitions in paragraphs 4, 5, and 6:

12 (1) For annuities and guaranteed interest contracts valued on an issue year  
13 basis:

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

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23 (2) For annuities and  
24 guaranteed interest  
25 contracts valued on  
26 a change in fund basis,  
27 the factors shown in  
28 paragraph 1 increased  
29 by .15 .25 .05

30 (3) For annuities and  
31 guaranteed interest

1 contracts valued on  
2 an issue year basis,  
3 other than those with  
4 no cash settlement  
5 options, which do not  
6 guarantee interest on  
7 considerations received  
8 more than one year after  
9 issue or purchase and  
10 for annuities and  
11 guaranteed interest  
12 contracts valued on a  
13 change in fund  
14 basis which do not  
15 guarantee interest  
16 rates on considerations  
17 received more  
18 than twelve months beyond  
19 the valuation date,  
20 the factors shown in  
21 paragraph 1 or  
22 derived in paragraph 2  
23 increased by .05 .05 .05  
24 (4) For other annuities with cash settlement options and guaranteed interest  
25 contracts with cash settlement options, the guarantee duration is the  
26 number of years for which the contract guarantees interest rates in excess  
27 of the calendar year statutory valuation interest rate for life insurance  
28 policies with guarantee duration in excess of twenty years. For other  
29 annuities with no cash settlement options and for guaranteed interest  
30 contracts with no cash settlement options, the guarantee guaranteed

1 duration is the number of years from the date of issue or date of purchase to  
2 the date annuity benefits are scheduled to commence.

3 (5) The plan type as used in the tables in this subsection is defined as follows:

4 (a) Plan type A: At any time the policyholder may withdraw funds only  
5 with an adjustment to reflect changes in interest rates or asset values  
6 since receipt of the funds by the ~~insurance company~~insurer, without  
7 such adjustment but in installments over five years or more, as an  
8 immediate life annuity, or no withdrawal permitted.

9 (b) Plan type B: Before expiration of the interest rate guarantee, the  
10 policyholder may withdraw funds only with an adjustment to reflect  
11 changes in interest rates or asset values since receipt of the funds by  
12 the ~~insurance company~~insurer, without such an adjustment but in  
13 installments over five years or more, or no withdrawal permitted. At  
14 the end of the interest rate guarantee, funds may be withdrawn  
15 without such an adjustment in a single sum or installments over less  
16 than five years.

17 (c) Plan type C: The policyholder may withdraw funds before expiration of  
18 the interest rate guarantee in a single sum or installments over less  
19 than five years either without adjustment to reflect changes in interest  
20 rates or asset values since receipt of the funds by the ~~insurance~~  
21 ~~company~~insurer, or subject only to a fixed surrender charge stipulated  
22 in the contract as a percentage of the fund.

23 (6) ~~A company~~An insurer may elect to value guaranteed interest contracts with  
24 cash settlement options and annuities with cash settlement options on either  
25 an issue year basis or on a change in fund basis. Guaranteed interest  
26 contracts with no cash settlement options and other annuities with no cash  
27 settlement options must be valued on an issue year basis. ~~An~~As used in this  
28 section, an issue year basis of valuation refers to a valuation basis under  
29 which the interest rate used to determine the minimum valuation standard  
30 for the entire duration of the annuity or guaranteed interest contract is the  
31 calendar year valuation interest rate for the year of issue or year of

1 purchase of the annuity or guaranteed interest contract. A change in fund  
2 basis of valuation refers to a valuation basis under which the interest rate  
3 used to determine the minimum valuation standard applicable to each  
4 change in the fund held under the annuity or guaranteed interest contract is  
5 the calendar year valuation interest rate for the year of the change in the  
6 fund.

7 4. The reference interest rate referred to in subsection 2 is defined as follows:

- 8 a. For all life insurance, the lesser of the average over a period of thirty-six months  
9 and the average over a period of twelve months, ending on June thirtieth of the  
10 calendar year next preceding the year of issue, ~~of Moody's corporate bond yield~~  
11 ~~average~~ the monthly average ~~corporate~~of the composite yield on seasoned  
12 corporate bonds, as published by Moody's investors service, incorporated.
- 13 b. For single premium immediate annuities and for annuity benefits involving life  
14 contingencies arising from other annuities with cash settlement options and  
15 guaranteed interest contracts with cash settlement options, the average over a  
16 period of twelve months, ending on June thirtieth of the calendar year of issue or  
17 year of purchase, ~~of Moody's corporate bond yield average~~ the monthly average  
18 ~~corporate~~of the composite yield on seasoned corporate bonds, as published by  
19 Moody's investors service, incorporated.
- 20 c. For other annuities with cash settlement options and guaranteed interest  
21 contracts with cash settlement options, valued on a year of issue basis, except as  
22 stated in subdivision b with guarantee duration in excess of ten years, the lesser  
23 of the average over a period of thirty-six months and the average over a period of  
24 twelve months, ending on June thirtieth of the calendar year of issue or purchase,  
25 ~~of Moody's corporate bond yield average~~ the monthly average ~~corporate~~of the  
26 composite yield on seasoned corporate bonds, as published by Moody's  
27 investors service, incorporated.
- 28 d. For other annuities with cash settlement options and guaranteed interest  
29 contracts with cash settlement options, valued on a year of issue basis, except as  
30 stated in subdivision b with guaranteed duration of ten years or less, the average  
31 over a period of twelve months, ending on June thirtieth of the calendar year of

1 issue or purchase, of ~~Moody's corporate bond yield average—the~~ monthly  
2 ~~average eorporatesof the composite yield on seasoned corporate bonds~~, as  
3 published by Moody's investors service, incorporated.

4 e. For other annuities with no cash settlement options and for guaranteed interest  
5 contracts with no cash settlement options, the average over a period of twelve  
6 months, ending on June thirtieth of the calendar year of issue or purchase, of  
7 ~~Moody's corporate bond yield average—the~~ monthly average ~~eorporatesof the~~  
8 composite yield on seasoned corporate bonds, as published by Moody's  
9 investors service, incorporated.

10 f. For other annuities with cash settlement options and guaranteed interest  
11 contracts with cash settlement options, valued on a change in fund basis, except  
12 as stated in subdivision b the average over a period of twelve months, ending on  
13 June thirtieth of the calendar year of the change in the fund, of ~~Moody's corporate~~  
14 ~~bond yield average—the~~ monthly average ~~eorporatesof the composite yield on~~  
15 seasoned corporate bonds, as published by Moody's investors service,  
16 incorporated.

17 5. If ~~Moody's corporate bond yield average—the~~ monthly average ~~eorporatesof the~~  
18 composite yield on seasoned corporate bonds is no longer published by Moody's  
19 investors service, incorporated, or if the national association of insurance  
20 commissioners determines that ~~Moody's corporate bond yield average—the~~ monthly  
21 ~~average eorporatesof the composite yield on seasoned corporate bonds~~ as published  
22 by Moody's investors service, incorporated, is no longer appropriate for the  
23 determination of the reference interest rate, then an alternative method for  
24 determination of the reference interest rate, ~~which is~~ adopted by the national  
25 association of insurance commissioners and approved by rule adopted by the  
26 commissioner, may be substituted.

27 **SECTION 8. AMENDMENT.** Section 26.1-35-05 of the North Dakota Century Code is  
28 amended and reenacted as follows:





1 anniversary calculated as described in this section and the reserve as of ~~such~~the  
2 policy anniversary calculated as described in this section, but with the value defined in  
3 ~~subdivision a~~ of subsection 1 being reduced by fifteen percent of the amount of such  
4 excess first year premium; all present values of benefits and premiums being  
5 determined without reference to premiums or benefits provided for by the policy after  
6 the assumed ending date; the policy being assumed to mature on such date as an  
7 endowment; and the cash surrender value provided on ~~such~~that date being  
8 considered as an endowment benefit. In making the above comparison, the mortality  
9 and interest bases stated in sections 26.1-35-02 and 26.1-35-04 must be used.

10 3. Reserves according to the ~~commissioners'~~commissioners' reserve valuation method  
11 must be calculated by a method consistent with the principles as described in this  
12 section for life:

- 13 a. Life insurance policies providing a varying amount of insurance or requiring the  
14 payment of varying premiums; ~~group~~
- 15 b. Group annuity and pure endowment contracts purchased under a retirement plan  
16 or plan of deferred compensation, established or maintained by an employer,  
17 including a partnership, limited liability company, or sole proprietorship, or by an  
18 employee organization, or by both, other than a plan providing individual  
19 retirement accounts or individual retirement annuities under section 408 of the  
20 federal Internal Revenue Code, as amended; ~~disability~~
- 21 c. Disability and accidental death benefits in all policies and contracts; and all  
22 d. All other benefits, except life insurance and endowment benefits in life insurance  
23 policies and benefits provided by all other annuity and pure endowment  
24 contracts, ~~must be calculated by a method consistent with the principles of this~~  
25 section.

26 **SECTION 9. AMENDMENT.** Section 26.1-35-06 of the North Dakota Century Code is  
27 amended and reenacted as follows:

28 **26.1-35-06. Reserves by commissioners' annuity reserve**Reserve valuation - Annuity  
29 **and pure endowment benefits method.**

- 30 1. This section applies to all annuity and pure endowment contracts other than group  
31 annuity and pure endowment contracts purchased under a retirement plan or plan of

1 deferred compensation, established or maintained by an employer, including a  
2 partnership or sole proprietorship, or by an employee organization, or by both, other  
3 than a plan providing individual retirement accounts or individual retirement annuities  
4 under section 408 of the federal Internal Revenue Code of 1954, as amended.

5 2. Reserves according to the ~~commissioners'~~commissioner annuity reserve method for  
6 benefits under annuity or pure endowment contracts, excluding any disability and  
7 accidental death benefits in the contracts, must be the greatest of the respective  
8 excesses of the present values, at the date of valuation, of the future guaranteed  
9 benefits, including guaranteed nonforfeiture benefits, provided for by the contracts at  
10 the end of each respective contract year, over the present value, at the date of  
11 valuation, of any future valuation considerations derived from future gross  
12 considerations, required by the terms of the contracts, that become payable prior to  
13 the end of ~~such~~the respective contract year. The future guaranteed benefits must be  
14 determined by using the mortality tables, if any, and the interest rate, or rates,  
15 specified in the contracts for determining guaranteed benefits. The valuation  
16 considerations are the portions of the respective gross considerations applied under  
17 the terms of the contracts to determine nonforfeiture values.

18 **SECTION 10. AMENDMENT.** Section 26.1-35-07 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20 **~~26.1-35-07. Minimum aggregate reserves for life policies issued after June 30, 1977.~~**

- 21 1. ~~A company's~~An insurer's aggregate reserves for all life insurance policies, excluding  
22 disability and accidental death benefits, issued after June 30, 1977, may not be less  
23 than the aggregate reserves calculated in accordance with the methods set forth in  
24 sections 26.1-35-05, 26.1-35-06, ~~and 26.1-35-09,~~ and 26.1-35-10 and the mortality  
25 table or tables and rate or rates of interest used in calculating nonforfeiture benefits for  
26 the policies.
- 27 2. ~~In no event may the~~The aggregate reserves for all policies, contracts, and benefits  
28 may not be less than the aggregate reserves determined by the qualified actuary to be  
29 necessary to render the opinion required by section 26.1-35-01.1.

30 **SECTION 11. AMENDMENT.** Section 26.1-35-08 of the North Dakota Century Code is  
31 amended and reenacted as follows:

1        **~~26.1-35-08. Calculation of minimum aggregate reserves by other standards~~Optional**  
2 **reserve calculation.**

3        1. Reserves for all policies and contracts issued prior to July 1, 1977, may be calculated,  
4        at the option of the ~~company~~insurer, according to any standards which produce  
5        greater aggregate reserves for the policies and contracts than the minimum reserves  
6        required by the laws in effect on June 30, 1977.

7        2. Reserves for any category of policies, contracts, or benefits, as established by the  
8        commissioner, issued on or after July 1, 1977, may be calculated, at the option of the  
9        ~~company~~insurer, according to any standards which produce greater aggregate  
10       reserves for the category than those calculated according to the minimum standard  
11       provided in this chapter, but the rate or rates of interest used for policies and contracts,  
12       other than annuity and pure endowment contracts, may not be ~~higher~~greater than the  
13       corresponding rate or rates of interest used in calculating any nonforfeiture benefits  
14       provided in the policies and contracts.

15       3. ~~Any company~~An insurer that has adopted any standard of valuation producing greater  
16       aggregate reserves than those calculated according to the minimum standard  
17       provided in this chapter may, with the approval of the commissioner, adopt any lower  
18       standard of valuation, but not lower than the minimum provided in this chapter;  
19       provided, however, that for the purposes of this section, the holding of additional  
20       reserves previously determined by ~~a qualified~~the appointed actuary to be necessary to  
21       render the opinion required by section 26.1-35-01.1 may not be deemed to be the  
22       adoption of a higher standard of valuation.

23       **SECTION 12. AMENDMENT.** Section 26.1-35-09 of the North Dakota Century Code is  
24       amended and reenacted as follows:

25       **~~26.1-35-09. Minimum reserve if~~Reserve calculation - Valuation net premium**  
26 **exceedsexceeding the gross premium charged.**

27       1. If in any contract year the gross premium charged by ~~any life insurance company~~an  
28       insurer on any policy or contract is less than the valuation net premium for the policy  
29       or contract calculated by the method used in calculating the reserve ~~on the policy or~~  
30       ~~contract~~ but using the minimum valuation standards of mortality and rate of interest,  
31       the minimum reserve required for the policy or contract is the greater of either the

1 reserve calculated according to the mortality table, rate of interest, and method  
2 actually used for the policy or contract, or the reserve calculated by the method  
3 actually used for the policy or contract but using the minimum valuation standards of  
4 mortality and rate of interest and replacing the valuation net premium by the actual  
5 gross premium in each contract year for which the valuation net premium exceeds the  
6 actual gross premium. The minimum valuation standards of mortality and rate of  
7 interest referred to in this section are those standards stated in sections 26.1-35-02  
8 and 26.1-35-04.

9 2. For ~~any~~ life insurance policy issued after December 31, 1986, for which the gross  
10 premium in the first policy year exceeds that of the second year and for which no  
11 comparable additional benefit is provided in the first year for the excess and which  
12 provides an endowment benefit or a cash surrender value or a combination thereof in  
13 an amount greater than the excess premium, ~~subsection 1~~ the provisions of this  
14 section must be applied as if the method actually used in calculating the reserve for  
15 the policy was the method described in section 26.1-35-05, ignoring subsection 2 of  
16 that section. The minimum reserve at each policy anniversary must be the greater of  
17 the minimum reserve calculated in accordance with section 26.1-35-05, including  
18 subsection 2 of that section, and the minimum reserve calculated in accordance with  
19 this section.

20 **SECTION 13. AMENDMENT.** Section 26.1-35-10 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22 **26.1-35-10. Future premium determination Reserve calculation - Indeterminate**  
23 **premium plans.**

24 In the case of any plan of life insurance which provides for future premium determination,  
25 the amounts of which are to be determined by the ~~insurance company~~ insurer based on then  
26 estimates of future experience, or in the case of any plan of life insurance or annuity which is of  
27 such a nature that the minimum reserves cannot be determined by the methods described in  
28 sections 26.1-35-05, 26.1-35-06, and 26.1-35-09, the reserves which are held under the plan  
29 must be appropriate in relation to the benefits and the pattern of premiums for that plan, and  
30 must be computed by a method that is consistent with the principles of this chapter, as  
31 determined by rules adopted by the commissioner.

1       **SECTION 14.** Section 26.1-35-11 of the North Dakota Century Code is created and enacted  
2 as follows:

3       **26.1-35-11. Minimum standard for accident and health insurance contracts.**

4       For an accident and health insurance contract issued on or after the operative date of the  
5 valuation manual, the standard prescribed in the valuation manual is the minimum standard of  
6 valuation required under subsection 2 of section 26.1-35-01. For an accident and health  
7 insurance contract issued after June 30, 1977, and before the operative date of the valuation  
8 manual, the minimum standard of valuation is the standard adopted by the commissioner by  
9 rule.

10       **SECTION 15.** Section 26.1-35-12 of the North Dakota Century Code is created and enacted  
11 as follows:

12       **26.1-35-12. Requirements of a principle-based valuation.**

- 13       1. An insurer shall establish reserves using a principle-based valuation that meets the  
14 following conditions for policies or contracts as specified in the valuation manual:
- 15       a. Quantify the benefits and guarantees and the funding associated with the  
16 contracts and their risks at a level of conservatism that reflects conditions that  
17 include unfavorable events that have a reasonable probability of occurring during  
18 the lifetime of the contracts. For polices or contracts with significant tail risk,  
19 reflects conditions appropriately adverse to quantify the tail risk.
  - 20       b. Incorporate assumptions, risk analysis methods, and financial models and  
21 management techniques that are consistent with, but not necessarily identical to,  
22 those utilized within the insurer's overall risk assessment process, while  
23 recognizing potential differences in financial reporting structures and any  
24 prescribed assumptions or methods.
  - 25       c. Incorporate assumptions that are derived in one of the following manners:
    - 26       (1) The assumption is prescribed in the valuation manual.
    - 27       (2) For assumptions that are not prescribed, the assumptions must:
      - 28       (a) Be established utilizing the insurer's available experience, to the  
29 extent the experience is relevant and statistically credible; or

- 1                   (b) To the extent that insurer data is not available, relevant, or statistically  
2                   credible, be established utilizing other relevant, statistically credible  
3                   experience.
- 4           d. Provide margins for uncertainty, including adverse deviation and estimation error,  
5           such that the greater the uncertainty the larger the margin and resulting reserve.
- 6    2. An insurer using a principle-based valuation for one or more policies or contracts  
7    subject to this section as specified in the valuation manual shall:
- 8           a. Establish procedures for corporate governance and oversight of the actuarial  
9           valuation function consistent with those described in the valuation manual.
- 10          b. Provide to the commissioner and the board of directors an annual certification of  
11          the effectiveness of the internal controls with respect to the principle-based  
12          valuation. The controls must be designed to assure that all material risks inherent  
13          in the liabilities and associated assets subject to the valuation are included in the  
14          valuation, and that valuations are made in accordance with the valuation manual.  
15          The certification must be based on the controls in place as of the end of the  
16          preceding calendar year.
- 17          c. Develop, and file with the commissioner upon request, a principle-based  
18          valuation report that complies with standards prescribed in the valuation manual.
- 19    3. A principle-based valuation may include a prescribed formulaic reserve component.

20    **SECTION 16.** Section 26.1-35-13 of the North Dakota Century Code is created and enacted  
21 as follows:

22    **26.1-35-13. Experience reporting for policies in force on or after the operative date of**  
23 **the valuation manual.**

24    An insurer shall submit mortality, morbidity, policyholder behavior, and expense experience  
25 and other data as prescribed in the valuation manual.

26    **SECTION 17.** Section 26.1-35-14 of the North Dakota Century Code is created and enacted  
27 as follows:

28    **26.1-35-14. Confidentiality.**

29    1. For purposes of this section, "confidential information" means:

- 30          a. A memorandum in support of an opinion submitted under section 26.1-35-01.1  
31          and any other documents, materials, and other information, including all working

1 papers, and copies thereof, created, produced, or obtained by or disclosed to the  
2 commissioner or any other person in connection with such memorandum;

3 b. All documents, materials, and other information, including all working papers and  
4 copies of working papers, created, produced, or obtained by or disclosed to the  
5 commissioner or any other person in the course of an examination made under  
6 subsection 5 of section 26.1-35-00.2. However, if an examination report or other  
7 material prepared in connection with an examination made under chapter 26.1-03  
8 is not held as private and confidential information under chapter 26.1-03, an  
9 examination report or other material prepared in connection with an examination  
10 made under subsection 5 of section 26.1-35-00.2 may not be confidential  
11 information to the same extent as if such examination report or other material had  
12 been prepared under chapter 26.1-03;

13 c. Any reports, documents, materials, and other information developed by an  
14 insurer in support of, or in connection with, an annual certification by the insurer  
15 under subdivision b of subsection 2 of section 26.1-35-12 evaluating the  
16 effectiveness of the insurer's internal controls with respect to a principle-based  
17 valuation and any other documents, materials, and other information, including all  
18 working papers and copies of working papers created, produced, or obtained by  
19 or disclosed to the commissioner or any other person in connection with such  
20 reports, documents, materials, and other information;

21 d. Any principle-based valuation report developed under subdivision c of  
22 subsection 2 of section 26.1-35-12 and any other documents, materials, and  
23 other information, including all working papers and copies of working papers  
24 created, produced, or obtained by or disclosed to the commissioner or any other  
25 person in connection with such report; and

26 e. Any documents, materials, data, and other information submitted by an insurer  
27 under section 26.1-35-13, collectively referred to as experience data, and any  
28 other documents, materials, data, and other information, including all working  
29 papers and copies of working papers created or produced in connection with  
30 such experience data, in each case that include any potentially insurer-identifying  
31 or personally identifiable information, that is provided to or obtained by the

1 commissioner, together with any experience data, the experience materials, and  
2 any other documents, materials, data, and other information, including all working  
3 papers and copies of working papers created, produced, or obtained by or  
4 disclosed to the commissioner or any other person in connection with such  
5 experience materials.

- 6 2. a. Except as provided in this section, an insurer's confidential information is  
7 confidential and privileged, and is not subject to section 44-04-18, is not subject  
8 to subpoena, and is not subject to discovery or admissible in evidence in any  
9 private civil action. However, the commissioner may use the confidential  
10 information in the furtherance of any regulatory or legal action brought against  
11 the insurer as a part of the commissioner's official duties.
- 12 b. Neither the commissioner nor any person that received confidential information  
13 while acting under the authority of the commissioner is permitted or required to  
14 testify in any private civil action concerning any confidential information.
- 15 c. In order to assist in the performance of the commissioner's duties, the  
16 commissioner may share confidential information with other state, federal, and  
17 international regulatory agencies and with the national association of insurance  
18 commissioners and its affiliates and subsidiaries, and in the case of confidential  
19 information specified in subdivisions a and d of subsection 1 only, with the  
20 actuarial board for counseling and discipline or its successor upon request stating  
21 that the confidential information is required for the purpose of professional  
22 disciplinary proceedings and with state, federal, and international law  
23 enforcement officials, provided that such recipient agrees, and has the legal  
24 authority to agree, to maintain the confidentiality and privileged status of such  
25 documents, materials, data, and other information in the same manner and to the  
26 same extent as required for the commissioner.
- 27 d. The commissioner may receive documents, materials, data, and other  
28 information, including otherwise confidential and privileged documents, materials,  
29 data, or information, from the national association of insurance commissioners  
30 and its affiliates and subsidiaries, from regulatory or law enforcement officials of  
31 other foreign or domestic jurisdictions, and from the actuarial board for



1 counseling and discipline or its successor and shall maintain as confidential or  
2 privileged any document, material, data, or other information received with notice  
3 or the understanding that it is confidential or privileged under the laws of the  
4 jurisdiction that is the source of the document, material, or other information.

5 e. The commissioner may enter agreements governing sharing and use of  
6 information consistent with this subsection.

7 f. A waiver of any applicable privilege or claim of confidentiality in the confidential  
8 information may not occur as a result of disclosure to the commissioner under  
9 this section or as a result of sharing as authorized in subdivision c.

10 g. A privilege established under the law of any state or jurisdiction which is  
11 substantially similar to the privilege established under this subsection is available  
12 and must be enforced in any proceeding in and in any court of this state.

13 h. In this section, reference to regulatory agency, law enforcement agency, and the  
14 national association of insurance commissioners, includes the employees,  
15 agents, consultants, and contractors of these entities.

16 3. Notwithstanding subsection 2, any confidential information specified in subdivisions a  
17 and d of subsection 1:

18 a. May be subject to subpoena for the purpose of defending an action seeking  
19 damages from the appointed actuary submitting the related memorandum in  
20 support of an opinion submitted under section 26.1-35-01.1 or principle-based  
21 valuation report developed under subdivision c of subsection 2 of section  
22 26.1-35-12 by reason of an action required by this chapter or by rules adopted  
23 under this chapter;

24 b. May otherwise be released by the commissioner with the written consent of the  
25 insurer; and

26 c. Once any portion of a memorandum in support of an opinion submitted under  
27 section 26.1-35-01.1 or a principle-based valuation report developed under  
28 subdivision c of subsection 2 of section 26.1-35-12 is cited by the insurer in its  
29 marketing or is publicly volunteered to or before a governmental agency other  
30 than a state insurance department or is released by the insurer to the news  
31 media, all portions of such memorandum or report are no longer confidential.

1       **SECTION 18. CONTINGENT EFFECTIVE DATE.** This Act is effective on the January first  
2 following the date the insurance commissioner certifies to the secretary of state and the  
3 legislative council that all of the following have occurred:

4       1. The valuation manual has been adopted by the national association of insurance  
5 commissioners by an affirmative vote of the greater of at least forty-two members or  
6 three-fourths of the members voting.

7       2. The standard valuation law, as amended by the national association of insurance  
8 commissioners in 2009, or legislation including substantially similar terms and  
9 provisions, has been enacted by states representing greater than seventy-five percent  
10 of the direct premiums written as reported in the following annual statements  
11 submitted for 2008: life, accident and health annual statements; health annual  
12 statements; or fraternal annual statements.

13       3. The standard valuation law, as amended by the national association of insurance  
14 commissioners in 2009, or legislation including substantially similar terms and  
15 provisions, has been enacted by at least forty-two of the following fifty-five  
16 jurisdictions:

17       a. The fifty states of the United States of America;

18       b. American Samoa;

19       c. The United States Virgin Islands;

20       d. The District of Columbia;

21       e. Guam; and

22       f. The Commonwealth of Puerto Rico.