

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #4

FILED

Nov 27 2 37 PM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY W. Va. Code §§ 33-2-10 and 33-7-9(n)

AMENDMENT TO AN EXISTING RULE: YES___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 41

TITLE OF RULE BEING PROPOSED: Actuarial Opinion and
Memorandum Rule

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

B. Keith Huffman
Authorized Signature

8.00

114CSR41

LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 41
ACTUARIAL OPINION AND MEMORANDUM RULE

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LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 41
ACTUARIAL OPINION AND MEMORANDUM RULE

§ 114-41-1. Authority.

1.1. Scope. -- This legislative rule applies to all life insurance companies and fraternal benefit societies doing business in this State and to all life insurance companies and fraternal benefit societies which are authorized to reinsure life insurance, annuities or accident and health insurance business in this State.

a. This rule is applicable to all annual statements filed with the commissioner after the effective date of this rule. Except with respect to companies which are exempted pursuant to section 5 of this rule, a statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with section 7 of this rule, and a memorandum in support of the analysis in accordance with section 8 of this rule, is required each year. Any exempted company must file a statement of actuarial opinion pursuant to section 6 of this rule.

b. Notwithstanding the foregoing, the commissioner may require any company otherwise exempt pursuant to this rule to submit a statement of actuarial opinion and to prepare a memorandum in support of the opinion in accordance with sections 7 and 8 of this rule if, in the opinion of the commissioner, an asset adequacy analysis is necessary with respect to the company.

1.2. Authority. -- W. Va. Code §§ 33-2-10 and 33-7-9(n).

1.3. Filing Date. --

1.4 Effective Date. --

§ 114-41-2. Purpose.

2.1. The purpose of this rule is to prescribe:

a. Guidelines and standards for statements of actuarial opinion which are to be submitted in accordance with the Standard Valuation Law, W. Va. Code § 33-7-9(c), and for memoranda in support of the opinion;

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b. Guidelines and standards for statements of actuarial opinion which are to be submitted when a company is exempt from the Standard Valuation Law W. Va. Code § 33-7-9(c)(2); and

c. Rules applicable to the appointment of an appointed actuary.

§ 114-41-3. Definitions.

3.1. "Actuarial Opinion" means:

a. With respect to section 7, 8 or 9 of this rule, the opinion of the appointed actuary regarding the adequacy of the reserves and related actuarial items based on an asset adequacy test in accordance with section 7 of this rule and with presently accepted actuarial standards; or

b. With respect to section 6 of this rule, the opinion of an appointed actuary regarding the calculation of reserves and related items, in accordance with section 6 of this rule and with those presently accepted actuarial standards which specifically relate to this opinion.

3.2. "Actuarial Standards Board" is the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

3.3. "Annual Statement" means that statement required by W. Va. Code § 33-4-14 to be filed annually by the company with the office of the commissioner.

3.4. "Appointed Actuary" means any individual who is appointed or retained in accordance with the requirements set forth in subsection 4.3 of this rule to provide the actuarial opinion and supporting memorandum as required by the Standard Valuation Law, W. Va. Code § 33-7-9(c).

3.5. "Asset Adequacy Analysis" means an analysis that meets the standards and other requirements referred to in subsection 4.4 of this rule. It may take many forms, including, but not limited to, cash flow testing, sensitivity testing or applications of risk theory.

3.6. "Commissioner" means the Insurance Commissioner of West Virginia.

3.7. "Company" means a life insurance company, fraternal benefit society or reinsurer subject to the provisions of this rule.

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3.8. "Non-Investment Grade Bonds" are those designated as classes 3, 4, 5 or 6 by the National Association of Insurance Commissioners (NAIC) Securities Valuation Office.

3.9. "Qualified Actuary" means any individual who meets the requirements set forth in section 4.2 of this rule.

§ 114-41-4. General Requirements.

4.1. Submission of Statement of Actuarial Opinion.

a. The annual statement for each year beginning with the year in which this rule becomes effective shall include on or attached to page 1 the statement of an appointed actuary, entitled "Statement of Actuarial Opinion," setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts, in accordance with section 7 of this rule; provided, however, that any company exempted pursuant to section 5 of this rule from submitting a statement of actuarial opinion in accordance with section 7 of this rule shall include on or attach to page 1 of the annual statement a statement of actuarial opinion rendered by an appointed actuary in accordance with section 6 of this rule.

b. If in the previous year a company provided a statement of actuarial opinion in accordance with section 6 of this rule, and in the current year fails the exemption criteria of paragraphs a. b. and c of subsection 5.3, section 5 of this rule to again provide an actuarial opinion in accordance with section 6 of this rule, the statement of actuarial opinion in accordance with section 7 is not required until August 1 following the date of the annual statement. In this instance, the company shall provide a statement of actuarial opinion in accordance with section 6 of this rule with appropriate qualification noting the intent to subsequently provide a statement of actuarial opinion in accordance with section 7 of this rule.

c. In the case of a statement of actuarial opinion required to be submitted by a foreign or alien company, the commissioner may accept the statement of actuarial opinion filed by the company with the insurance supervisory regulator of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this State.

d. Upon written request by the company, the commissioner may grant an extension of the date for submission of the statement of actuarial opinion.

4.2. A "qualified actuary" is an individual who:

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- a. Is a member in good standing of the American Academy of Actuaries;
- b. Is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements;
- c. Is familiar with the valuation requirements applicable to life and health insurance companies;
- d. Has not been found by the commissioner (or if so found has subsequently been reinstated as a qualified actuary), following appropriate notice and hearing to have:
 - A. Violated any provision of, or any obligation imposed by, the insurance law or other law in the course of his or her dealings as a qualified actuary;
 - B. Been found guilty of fraudulent or dishonest practices;
 - C. Demonstrated his or her incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary;
 - D. Submitted to the commissioner during the past five (5) years, pursuant to this rule, an actuarial opinion or memorandum that the commissioner rejected because it did not meet the provisions of this rule including standards set by the Actuarial Standards Board; or
 - E. Resigned or been removed as an actuary within the past five (5) years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards; and
- e. Has not failed to notify the commissioner of any action taken by any commissioner of any other state similar to that under paragraph d of this subsection.

4.3. "Appointed actuary" is a qualified actuary who is appointed or retained either directly by or by the authority of the board of directors through an executive officer of the company to prepare the statement of actuarial opinion required by this rule. The 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 and shall state in the notice that the person meets the requirements set forth in subsection 4.2 of this rule. Once the company furnishes notice, no further notice is required with respect to this appointed actuary, provided that the company gives the

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commissioner timely written notice in the event the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements set forth in subsection 4.2 of this rule. If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice shall state that fact and give the reasons for replacement.

4.4. Standards for Asset Adequacy Analysis. The asset adequacy analysis required by this rule:

a. Shall conform to the standards of practice as promulgated from time to time by the Actuarial Standards Board and on any additional standards under this rule, the standards are to form the basis of the statement of actuarial opinion in accordance with section 7 of this rule; and

b. Shall be based on methods of analysis as are considered appropriate for such purposes by the Actuarial Standards Board.

4.5. Liabilities to be Covered.

a. Under authority of the Standard Valuation Law, W. Va. Code § 33-7-9(c), the statement of actuarial opinion applies to all in force business on the statement date regardless of when or where issued, e.g., reserves of Exhibits 8, 9 and 10, and claim liabilities in Exhibit 11. Part I and equivalent items in the separate account statement or statements.

b. If the appointed actuary determines as the result of asset adequacy analysis that a reserve should be held in addition to the aggregate reserve held by the company and calculated in accordance with methods set forth in the Standard Valuation Law, W. Va. Code § 33-7-9(g), (h), (k), (l) and (m), the company shall establish the additional reserve.

c. For years ending prior to December 31, 1997, the company may, in lieu of establishing the full amount of the additional reserve in the annual statement for that year, set up an additional reserve in an amount not less than:

A. For the year ending prior to December 31, 1995, the additional reserve divided by three; and

B. For the year ending prior to December 31, 1996, two times the additional reserve divided by three.

d. Additional reserves established under paragraphs b or c of this subsection and determined not necessary in subsequent years may be released. Any amounts released shall be

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disclosed in the actuarial opinion for the applicable year. The release of the reserves would not be considered an adoption of a lower standard of valuation.

§ 114-41-5. Required Opinions.

5.1. General. In accordance with the Standard Valuation Law, W. Va. Code § 33-7-9(c), every company doing business in this State shall annually submit the opinion of an appointed actuary as provided for by this rule. The type of opinion submitted is determined by the provisions set forth in this section and shall be in accordance with the applicable provisions in this rule.

5.2. Company Categories. For purposes of this rule, companies are classified as set forth in this subsection based on the admitted assets as of the end of the calendar year for which the actuarial opinion is applicable:

a. Category A consists of those companies whose admitted assets do not exceed \$20 million;

b. Category B consists of those companies whose admitted assets exceed \$20 million but do not exceed \$100 million;

c. Category C consists of those companies whose admitted assets exceed \$100 million but do not exceed \$500 million; and

d. Category D consists of those companies whose admitted assets exceed \$500 million.

5.3. Exemption Eligibility Tests.

a. Any Category A company that, for any year beginning with the year in which this rule becomes effective, meets all of the criteria in this subsection is eligible for exemption from submission of a statement of actuarial opinion in accordance with section 7 of this rule for the year in which these criteria are met. The ratios in subparagraphs A, B and C of this subsection shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.

A. The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to .10.

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B. The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than .30.

C. The ratio of the book value of the non-investment grade bonds to the sum of capital and surplus is less than .50.

D. The examiner team for the National Association of Insurance Commissioners (NAIC) has not designated the company as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the commissioner of the state of domicile and the commissioner has notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office of the resolution.

b. Any Category B company that, for any year beginning with the year in which this rule becomes effective, meets all of the criteria in subparagraphs A, B, C, and D of this paragraph is eligible for exemption from submission of a statement of actuarial opinion in accordance with section 7 of this rule for the year in which the criteria are met. The ratios in subparagraphs A, B, and C shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.

A. The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to .07.

B. The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than .40.

C. The ratio of the book value of the non-investment grade bonds to the sum of capital and surplus is less than .50.

D. The examiner team for the National Association of Insurance Commissioners (NAIC) has not designated the company as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the commissioner of the state of domicile and the commissioner has notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office of the resolution.

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c. Any Category A or Category B company that meets all of the criteria set forth in paragraph a or b of this subsection, whichever is applicable, is exempted from submission of a statement of actuarial opinion in accordance with section 7 of this rule unless the commissioner specifically indicates to the company that the exemption is not to be taken.

d. Any Category A or Category B company that, for any year beginning with the year in which this rule becomes effective, is not exempted under paragraph c of this subsection is required to submit a statement of actuarial opinion in accordance with section 7 of this rule for the year for which it is not exempt.

e. Any Category C company that, after submitting an opinion in accordance with section 7 of this rule, meets all of the criteria in subparagraphs A, B, C, and D of this paragraph is not required, unless required in accordance with paragraph f of this subsection, to submit a statement of actuarial opinion in accordance with section 7 of this rule more frequently than every third year. Any Category C company which fails to meet all of the criteria in this paragraph for any year shall submit a statement of actuarial opinion in accordance with section 7 of this rule for that year. The ratios in subparagraphs A, B and C of this paragraph shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.

A. The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to .05.

B. The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than .50.

C. The ratio of the book value of the non-investment grade bonds to the sum of the capital and surplus is less than .50.

D. The examiner team for the National Association of Insurance Commissioners (NAIC) has not designated the company as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the commissioner of the state of domicile and the commissioner has notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office of the resolution.

f. Any company which is not required by this section to submit a statement of actuarial opinion in accordance with section 7 of this rule for any year shall submit a statement of

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actuarial opinion in accordance with section 6 of this rule for that year unless as provided for paragraph a of subsection 2.1 of this rule the commissioner requires a statement of actuarial opinion in accordance with section 7 of this rule.

5.4. Large Companies. Every Category D company shall submit a statement of actuarial opinion in accordance with section 7 of this rule for each year beginning with the year in which this rule becomes effective.

§ 114-41-6. Statement of Actuarial Opinion Not Including an Asset Adequacy Analysis.

6.1. General Description. The statement of actuarial opinion required by this section shall consist of a paragraph identifying the appointed actuary and his or her qualifications; a regulatory authority paragraph stating that the company is exempt pursuant to this rule from submitting a statement of actuarial opinion based on an asset adequacy analysis and that the opinion, which is not based on an asset adequacy analysis, is rendered in accordance with section 6 of this rule; a scope paragraph identifying the subjects on which the opinion is to be expressed and describing the scope of the appointed actuary's work; and an opinion paragraph expressing the appointed actuary's opinion as required by the Standard Valuation Law, W. Va. Code § 33-7-9(c).

6.2. Recommended Language. The following language provided is that which in typical circumstances would be included in a statement of actuarial opinion in accordance with this section. The appointed actuary may modify the language as needed to meet the circumstances of a particular case, but should use language which clearly expresses his or her professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in this section.

a. The opening paragraph should indicate the appointed actuary's relationship to the company.

A. For a company actuary, the opening paragraph of the actuarial opinion should read as follows:

"I, [name of actuary], am [title] of [name of company] and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health companies."

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B. For a consulting actuary, the opening paragraph of the actuarial opinion should contain a sentence such as:

"I, [name and title of actuary], a member of the American Academy of Actuaries, am associated with the firm of [insert name of consulting firm]. I have been appointed by, or by the authority of, the Board of Directors of [name of company] to render this opinion as stated in the letter to the commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

b. The regulatory authority paragraph should include a statement such as the following: "Said company is exempt pursuant to Rule or Regulation [insert designation] of the [name of state] Insurance Department from submitting a statement of actuarial opinion based on an asset adequacy analysis. This opinion, which is not based on an asset adequacy analysis, is rendered in accordance with section 6 of the rule."

c. The scope paragraph should contain a sentence such as the following: "I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, []."

The paragraph should list items and amounts with respect to which the appointed actuary is expressing an opinion. The list should include but not be necessarily limited to:

A. Aggregate reserve and deposit funds for policies and contracts included in exhibit 8 of the Annual Statement;

B. Aggregate reserve and deposit funds for policies and contracts included in exhibit 9 of the Annual Statement;

C. Deposit funds, premiums, dividend and coupon accumulations and supplementary contracts not involving life contingencies included in exhibit 10 of the Annual Statement; and

D. Policy and contract claims--liability end of current year included in exhibit 11, part I of the Annual Statement.

d. If the appointed actuary has examined the underlying records, the scope paragraph should also include the following:

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"My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic records and such tests of the actuarial calculations as I considered necessary."

e. If the appointed actuary has not examined the underlying records, but has relied upon listings and summaries of policies in force prepared by the company or a third party, the scope paragraph should include a sentence such as one of the following:

"I have relied upon listings and summaries of policies and contracts and other liabilities in force prepared by [name and title of company officer certifying in force records] as certified in the attached statement. (See accompanying affidavit by a company officer.) In other respects my examination included review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary.";

or

"I have relied upon [name of accounting firm] for the substantial accuracy of the in force records inventory and information concerning other liabilities, as certified in the attached statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary."

The statement of the person certifying the actuarial opinion shall follow the form indicated by paragraph j, subsection 6.2 of this rule.

f. The opinion paragraph should include the following:

"In my opinion the amounts carried in the balance sheet on account of the actuarial items identified above:

A. Are computed in accordance with those presently accepted actuarial standards which specifically relate to the opinion required under this section;

B. Are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

C. Meet the requirements of the insurance law and rules or regulations of the state of [state of domicile] and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;

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D. Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end with any exceptions as noted below; and

E. Include provision for all actuarial reserves and related statement items which ought to be established.

The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate compliance guidelines as promulgated by the Actuarial Standards Board, which guidelines form the basis of this statement of opinion."

g. The concluding paragraph should document the eligibility for the company to provide an opinion as provided by this section. It shall include the following:

"This opinion is provided in accordance with section 7 of the NAIC Actuarial Opinion and Memorandum Regulation. As such it does not include an opinion regarding the adequacy of reserves and related actuarial items when considered in light of the assets which support them.

Eligibility for this section of the rule is confirmed as follows:

A. The ratio of the sum of capital and surplus to the sum of cash and invested assets is [insert amount], which equals or exceeds the applicable criterion based on the admitted assets of the company as set forth in subsection 5.3 of this rule.

B. The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is [insert amount], which is less than the applicable criteria based on the admitted assets of the company as set forth in subsection 5.3 of this rule.

C. The ratio of the book value of the non-investment grade bonds to the sum of capital and surplus is [insert amount], which is less than the applicable criteria of .50.

D. To my knowledge, the NAIC examiner team has not designated the company as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable or the company has resolved the first or second priority status to the satisfaction of the commissioner of the state of domicile.

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E. To my knowledge there is not a specific request from any commissioner requiring an asset adequacy analysis opinion.

Signature of Appointed Actuary

Address of Appointed Actuary

Telephone Number of Appointed Actuary"

h. If there has been any change in the actuarial assumptions from those previously employed, that change should be described in the annual statement or in a paragraph of the statement of actuarial opinion, and the reference in subparagraph D. of paragraph f. of subsection 6.2 of this rule to consistency should read as follows:

... with the exception of the change described on page [] of the annual statement (or in the preceding paragraph)."

The adoption for new issues or new claims or other new liabilities of an actuarial assumption which differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this paragraph.

i. If the appointed actuary is unable to form an opinion, he or she shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, he or she shall issue an adverse or qualified actuarial opinion explicitly stating the reason(s) for the opinion. This statement should follow the scope paragraph and precede the opinion paragraph.

j. If the appointed actuary does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in force, there should be attached to the opinion, the statement of a company officer or accounting firm who prepared the underlying data similar to the following:

"I [name of officer], [title] of [name and address of company or accounting firm], hereby affirm that the listings and summaries of policies and contracts in force as of December 31,

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[], prepared for and submitted to [name of appointed actuary], were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.

Signature of the Officer of the Company
or Accounting Firm

Address of the Officer of the Company
or Accounting Firm

Telephone Number of the Officer of the
Company or Accounting Firm"

§ 114-41-7. Statement of Actuarial Opinion Based On an Asset Adequacy Analysis.

7.1. General Description. The statement of actuarial opinion submitted in accordance with this section shall consist of:

a. A paragraph identifying the appointed actuary and his or her qualifications such as that set forth in paragraph a of subsection 7.2 of this rule.;

b. A scope paragraph identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary's work, including a tabulation delineating the reserves and related actuarial items which have been analyzed for asset adequacy and the method of analysis, as set forth in paragraph b of subsection 7.2 of this rule, and identifying the reserves and related actuarial items covered by the opinion which have not been analyzed;

c. A reliance paragraph describing those areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures or assumptions, (e.g., anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios, as set forth in paragraph c of subsection 7.2 of this rule , supported by a statement of each expert in the form prescribed by subsection 7.5 of this rule; and

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d. An opinion paragraph expressing the appointed actuary's opinion with respect to the adequacy of the supporting assets to mature the liabilities as set forth in paragraph f of subsection 7.2 of this rule.

e. One or more additional paragraphs will be needed in individual company cases as follows:

A. If the appointed actuary considers it necessary to state a qualification of his or her opinion;

B. If the appointed actuary must disclose the method of aggregation for reserves of different products or lines of business for asset adequacy analysis;

C. If the appointed actuary must disclose reliance upon any portion of the assets supporting the Asset Valuation Reserve (AVR), Interest Maintenance Reserve (IMR) or other mandatory or voluntary statement of reserves for asset adequacy analysis;

D. If the appointed actuary must disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for this opinion;

E. If the appointed actuary must disclose whether additional reserves of the prior opinion date are released as of this opinion date, and the extent of the release; and

F. If the appointed actuary chooses to add a paragraph briefly describing the assumptions which form the basis for the actuarial opinion.

7.2. Recommended Language. The appointed actuary shall include the paragraphs in this subsection in the statement of actuarial opinion in accordance with this section. Language is that which in typical circumstances should be included in a statement of actuarial opinion. The appointed actuary may modify the language as needed to meet the circumstances of a particular case, but should use language which clearly expresses his or her professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in this section.

a. The opening paragraph should generally indicate the appointed actuary's relationship to the company and his or her qualifications to sign the opinion. For a company actuary, the opening paragraph of the actuarial opinion should read as follows:

"I, [name], am [title] of [insurance company name] and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said

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insurer to render this opinion as stated in the letter to the commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

For a consulting actuary, the opening paragraph should contain a sentence such as:

"I, [name], a member of the American Academy of Actuaries, am associated with the firm of [name of consulting firm]. I have been appointed by, or by the authority of, the Board of Directors of [name of company] to render this opinion as stated in the letter to the commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

b. The scope paragraph should include a statement and table such as the following:

"I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, 19[]. Tabulated below are those reserves and related actuarial items which have been subjected to asset adequacy analysis.

Asset Adequacy Tested Amounts		Reserves and Liabilities			
Statement Item	Formula Reserves (1)	Additional Actuarial Reserves (a) (2)	Analysis Method (b)	Other Amount (3)	Total Amount (1) + (2) + (3) (4)
Exhibit 8					
A Life Insurance					
B Annuities					
C Supplementary Contracts Involving Life Contingencies					
D Accidental Death Benefits					
E Disability - Active					

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Asset Adequacy Tested Amounts Reserves and Liabilities					
Statement Item	Formula Reserves (1)	Additional Actuarial Reserves (a) (2)	Analysis Method (b)	Other Amount (3)	Total Amount (1)+(2)+(3) (4)
F Disability- Disabled					
G Miscellaneous					
Total (Exhibit 8 Item 1, Page 3)					
Exhibit 9					
A Active Life Reserve					
B Claim Reserve					
Total (Exhibit 9 Item 2, Page 3)					
Exhibit 10					
1 Premiums and Other Deposit Funds					
1.1 Policyholder Premium (Page 3, Line 10.1)					
1.2 Guaranteed Interest Contracts (Page 3, Line 10.2)					
1.3 Other Contract Deposit Funds (Page 3, Line 10.3)					

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Statement Item	Formula Reserves (1)	Additional Actuarial Reserves (a) (2)	Analysis Method (b)	Other Amount (3)	Total Amount (1)+(2)+(3) (4)
2 Supplementary Contracts Not Involving Life Contingencies (Page 3, Line 5)					
3 Dividend and Coupon Accumulations (Page 3, Line 5)					
Total Exhibit 10					
Exhibit 11 Part 1					
1 Life (Page 3, Line 4.1)					
2 Health (Page 3, Line 4.2)					
Total Exhibit 11, Part 1					
Separate Accounts (Page 3, Line 27)					
TOTAL RESERVES					

IMR (Page ___ Line ___)	
AVR (Page ___ Line ___)	(c)

- A. The additional actuarial reserves are the reserves established under paragraphs b or c of subsection 4.5 of this rule.
- B. The appointed actuary should indicate the method of analysis, determined in accordance with the standards for asset adequacy analysis referred to in subsection 4.4 of this rule, by means of symbols which should be defined in footnotes to the table.
- C. Allocated amount.

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c. If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph should include a statement such as the following:

"I have relied on [name], [title] for [e.g., anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios] and, as certified in the attached statement, ..."

or

"I have relied on personnel as cited in the supporting memorandum for certain critical aspects of the analysis in reference to the accompanying statement."

A statement of reliance on other experts should be accompanied by a statement by each of the experts of the form prescribed by subsection 7.5 of this rule.

d. If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph should also include the following:

"My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary."

e. If the appointed actuary has not examined the underlying records, but has relied upon listings and summaries of policies in force and/or asset records prepared by the company or a third party, the reliance paragraph should include a sentence such as:

"I have relied upon listings and summaries [of policies and contracts, of asset records] prepared by [name and title of company officer certifying in-force records] as certified in the attached statement. In other respects my examination included such review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary.";

or

"I have relied upon [name of accounting firm] for the substantial accuracy of the in-force records inventory and information concerning other liabilities, as certified in the attached

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statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and tests of the actuarial calculations as I considered necessary."

The section must be accompanied by a statement by each person relied upon of the form prescribed by subsection 7.5 of this rule.

f. The opinion paragraph should include the following:

"In my opinion the reserves and related actuarial values concerning the statement items identified above:

A. Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;

B. Are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

C. Meet the requirements of the Insurance Law and rule or regulation of the state of [state of domicile] and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;

D. Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions noted below); and

E. Include provision for all actuarial reserves and related statement items which ought to be established.

The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company.

The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion.

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This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion.

or

The following material change(s) which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion: (Describe the change or changes.)

The actuary should choose one of the above two paragraphs, whichever is applicable.

The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis.

Signature of Appointed Actuary

Address of Appointed Actuary

Telephone Number of Appointed Actuary"

7.3. Assumptions for New Issues. The adoption for new issues or new claims or other new liabilities of an actuarial assumption which differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this section.

7.4. Adverse Opinions. If the appointed actuary is unable to form an opinion, then he or she shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, then he or she shall issue an adverse or qualified actuarial opinion explicitly stating the reason(s) for their opinion. This statement should follow the scope paragraph and precede the opinion paragraph.

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7.5. Reliance on Data Furnished by Other Persons. If the appointed actuary does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in force and/or asset oriented information, there shall be attached to the opinion the statement of a company officer or accounting firm who prepared the underlying data similar to the following:

"I [name of officer], [title], of [name of company or accounting firm], hereby affirm that the listings and summaries of policies and contracts in force as of December 31, 19[], and other liabilities prepared for and submitted to [name of appointed actuary] were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.

Signature of the Officer of the Company
or Accounting Firm

Address of the Officer of the Company
or Accounting Firm

Telephone Number of the Officer of the
Company or Accounting Firm"

and/or

"I, [name of officer], [title] of [name of company, accounting firm, or security analyst], hereby affirm that the listings, summaries and analyses relating to data prepared for and submitted to [name of appointed actuary] in support of the asset-oriented aspects of the opinion were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.

Signature of the Officer of the Company,
Accounting Firm or the Security Analyst

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Address of the Officer of the Company,
Accounting Firm or the Security Analyst

Telephone Number of the Officer of the
Company, Accounting Firm or
the Security Analyst"

§ 114-41-8. Description of Actuarial Memorandum Including an Asset Adequacy Analysis.

8.1. General.

a. In accordance with the Standard Valuation Law, W. Va. Code § 33-7-9(c), the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of his or her opinion regarding the reserves under a section 7 opinion. The company shall make the memorandum available for examination by the commissioner upon his or her request but shall be returned to the company after the examination and shall not be considered a record of the insurance department or subject to automatic filing with the commissioner.

b. In preparing the memorandum, the appointed actuary may rely on, and include as a part of his or her own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of subsection 4.2 of this rule, with respect to the areas covered in the memoranda, and so stated in their memoranda.

c. If the commissioner requests a memorandum and no memorandum exists or if the commissioner finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of this rule, the commissioner may designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the commissioner.

d. The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the commissioner; provided, however, that any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the commissioner and shall be kept confidential to the same extent as is prescribed by law with respect to other material provided by the company to the commissioner

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pursuant to W. Va. Code § 33-2-9(1)(4). The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this rule for any one of the current year or the preceding three (3) years.

8.2. Details of the Memorandum Section Documenting Asset Adequacy Analysis. When an actuarial opinion under section 7 of this rule is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in subsection 4.4 of this rule and any additional standards under this rule. It shall specify:

- a. For reserves:
 - A. Product descriptions including market description, underwriting and other aspects of a risk profile and the specific risks the appointed actuary considers significant;
 - B. Source of liability in force;
 - C. Reserve method and basis;
 - D. Investment reserves; and
 - E. Reinsurance arrangements;
- b. For assets:
 - A. Portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets;
 - B. Investment and disinvestment assumptions;
 - C. Source of asset data; and
 - D. Asset valuation bases;
- c. Analysis basis:
 - A. Methodology;
 - B. Rationale for inclusion/exclusion of different blocks of business and how pertinent risks were analyzed;

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- C. Rationale for degree of rigor in analyzing different blocks of business;
- D. Criteria for determining asset adequacy; and
- E. Effect of federal income taxes, reinsurance and other relevant factors;
- d. Summary of Results; and
- e. Conclusion(s).

8.3. Conformity to Standards of Practice. The memorandum shall include a statement:

"Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which form the basis for this memorandum."

§ 114-41-9. Additional Considerations for Analysis.

9.1. Aggregation. For the asset adequacy analysis for the statement of actuarial opinion provided in accordance with section 7 of this rule, reserves and assets may be aggregated by either of the methods set forth in paragraphs a or b of this subsection:

a. The appointed actuary may aggregate the reserves and related actuarial items, and the supporting assets, for different products or lines of business, before analyzing the adequacy of the combined assets to mature the combined liabilities. The appointed actuary must be satisfied that the assets held in support of the reserves and related actuarial items so aggregated are managed in such a manner that the cash flows from the aggregated assets are available to help mature the liabilities from the blocks of business that have been aggregated; or

b. The appointed actuary may aggregate the results of asset adequacy analysis of one or more products or lines of business, the reserves for which prove through analysis to be redundant, with the results of one or more products or lines of business, the reserves for which prove through analysis to be deficient. The appointed actuary must be satisfied that the asset adequacy results for the various products or lines of business for which the results are so aggregated:

- A. Are developed using consistent economic scenarios; or

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B. Are subject to mutually independent risks, i.e., the likelihood of events impacting the adequacy of the assets supporting the redundant reserves is completely unrelated to the likelihood of events impacting the adequacy of the assets supporting the deficient reserves.

C. In the event of any aggregation, the actuary must disclose in his or her opinion that the reserves were aggregated on the basis of the method set forth in paragraph a or b of this subsection, whichever is applicable, and describe the aggregation in the supporting memorandum.

9.2. Selection of Assets for Analysis. The appointed actuary shall analyze only those assets held in support of the reserves which are the subject for specific analysis, hereafter called "specified reserves." A particular asset or portion of an asset supporting a group of specified reserves cannot support any other group of specified reserves. An asset may be allocated over several groups of specified reserves. The annual statement value of the assets held in support of the reserves shall not exceed the annual statement value of the specified reserves, except as provided in subsection 9.3 below. If the method of asset allocation is not consistent from year to year, the extent of its inconsistency should be described in the supporting memorandum.

9.3. Use of Assets Supporting the Interest Maintenance Reserve and the Asset Valuation Reserve:

a. The appointed actuary must use an appropriate allocation of assets in the amount of the Interest Maintenance Reserve (IMR), whether positive or negative, in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the Asset Valuation Reserve (AVR); these AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support.

b. The amount of the assets used for the AVR must be disclosed in the table of reserves and liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets must be disclosed in the memorandum.

9.4. Required Interest Scenarios. For the purpose of performing the asset adequacy analysis required by this rule, the qualified actuary is expected to follow standards adopted by the Actuarial Standards Board; nevertheless, the appointed actuary must consider in the analysis the effect of at least the following interest rate scenarios:

a. Level with no deviation;

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- b. Uniformly increasing over ten (10) years at a half percent per year and then level;
- c. Uniformly increasing at one percent per year over five (5) years and then uniformly decreasing at one percent per year to the original level at the end of ten (10) years and then level;
- d. An immediate increase of three percent (3%) and then level;
- e. Uniformly decreasing over ten (10) years at a half percent per year and then level;
- f. Uniformly decreasing at one percent per year over five (5) years and then uniformly increasing at one percent per year to the original level at the end of ten (10) years and then level; and
- g. An immediate decrease of three percent (3%) and then level.

For these and other scenarios which may be used, projected interest rates for a five (5) year Treasury Note need not be reduced beyond the point where the five (5) year Treasury Note yield would be at fifty (50%) of its initial level.

The beginning interest rates may be based on interest rates for new investments as of the valuation date similar to recent investments allocated to support the product being tested or be based on an outside index, such as treasury yields, of assets of the appropriate length on a date close to the valuation date. Whatever method is used to determine the beginning yield curve and associated interest rates should be specifically defined. The beginning yield curve and associated interest rates should be consistent for all interest rate scenarios.

9.5. Documentation. The appointed actuary shall retain on file, for at least seven (7) years, sufficient documentation supporting the opinion and the actuarial memorandum so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained.



STATE OF WEST VIRGINIA
Offices of the Insurance Commissioner

GASTON CAPERTON
Governor

November 27, 1995

HANLEY C. CLARK
Insurance Commissioner

HAND DELIVERED

Ms. Judy Cooper, Director
Administrative Law Division
Office of Secretary of State
State Capitol
Charleston, West Virginia 25305

Dear Ms. Cooper:

Enclosed please find for filing one (1) copy of the following:

- (1) Notice of Rule Modification of a Proposed Rule and Filing with the Legislative Rule-Making Review Committee;
- (2) The proposed rule entitled "Actuarial Opinion and Memorandum Rule" (Series 41).

Please contact me if further information is required.

Very truly yours,

Donna S. Quesenberry
- Donna S. Quesenberry
Associate Counsel

DSQ/sar
Enclosures

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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West Virginia Legislature
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Room MB47-State Capitol
Charleston, West Virginia 25305
(304) 347-4840

Senator Mike Ross, Co-Chair
Delegate Vickie Douglas, Co-Chair

Debra A. Graham, Counsel
Joe Altizer, Associate Counsel
Marie Nickerson, Admr. Assistant

November 15, 1995

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. B. Keith Huffman
General Counsel
Office of Insurance Commissioner
2019 Washington St., East
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Actuarial Opinion and Memorandum Rule

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency X
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
- 5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Donna S. Quesenberry
Associate Counsel

114-41