ACT NO. 8136

BILL NO. 32-0309

THIRTY-SECOND LEGISLATURE OF THE VIRGIN ISLANDS

Regular Session

2018

An Act amending title 22 of the Virgin Islands Code, chapter 21 by designating the existing sections as subchapter I and by adding a subchapter II entitled "Standard Valuation Act of 2018," to meet the accreditation standards established by the National Association of Insurance Commissioners in its model laws and to update the insurance laws of the Territory placing them on par with other United States jurisdictions to more effectively protect the policyholders of the Territory

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WHEREAS, the laws governing the insurance industry in the Territory are outdated, as many of the laws were enacted in 1968 and have not been updated; and

WHEREAS, the laws governing the insurance industry in the Territory do not grant to the Commissioner of Insurance of the Virgin Islands all of the necessary authority to effectively regulate the solvency of the multi-state domestic insurance industry in the Territory; and

WHEREAS, all other United States jurisdictions have periodically updated their insurance laws commensurate with the ever-evolving insurance industry; and

WHEREAS, the National Association of Insurance Commissioners (NAIC) has established core accreditation standards and comprehensive model laws and regulations, in order to assist United States jurisdictions in their regulation of the solvency of their multi-state domestic insurance industry thereby affording greater protection to the policyholders in the United States; and

WHEREAS, all of the 50 United States and the Commonwealth of Puerto Rico have adopted the NAIC model laws and regulations and the accreditation requirements and are now in substantial compliance with the NAIC accreditation standards; and

WHEREAS, the Territory has not adopted most of the NAIC model laws and regulations that are necessary to obtain substantial compliance with the NAIC accreditation standards; and

WHEREAS, the enactment of the Standard Valuation Act of 2018 will place the Territory on par with other United States jurisdiction and will satisfy one of the NAIC requirements for the NAIC accreditation standards; Now, Therefore,

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 22 Virgin Islands Code, chapter 21 is amended by designating the existing sections as subchapter I and by adding a subchapter II entitled "Standard Valuation Act of 2018" to read as follows:

"Chapter 21. Subchapter II - Standard Valuation Act of 2018

§ 531. Short Title

This subchapter may be cited as the "Standard Valuation Act of 2018".

§ 532. Definitions

In this subchapter:

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

(b) "Alien company" means an insurer as defined in 22 V.I.C. § 201 (3).

(c) "Appointed actuary" means a qualified actuary who is appointed by a company in accordance with the valuation manual to prepare an actuarial opinion required under section 535, subsections (a), (b) and (c).

(d) "Company" means an entity that has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in the Territory and has at least one of these policies in force or on claim or has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in any state and is required to hold a certificate of authority to write life insurance, accident and health insurance, or deposit-type contracts in the Territory.

(e) "Commissioner" means the Commissioner of Insurance of the Virgin Islands.

(f) "Deposit-type contract" means a contract that does not incorporate mortality or morbidity risks and other contracts that may be specified in the valuation manual.

(g) "Foreign company" means an insurer as defined in 22 V.I.C. § 201 (2).

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

(i) "NAIC" means the National Association of Insurance Commissioners.

(j) "Policyholder behavior" means any action a policyholder, contract holder or any other person with the right to elect options, such as a certificate holder, may take under a policy or contract including, lapse, withdrawal, transfer, deposit, premium payment, loan, annuitization, or benefit elections prescribed by the policy or contract, but excluding events of mortality or morbidity that result in benefits prescribed in their essential aspects by the terms of the policy or contract.

(k) "Principle-based valuation" means a reserve valuation that uses one or more methods, or one or more assumptions determined by the insurer and is required to comply with section 538 as specified in the valuation manual.

(*l*) "Qualified actuary" means an individual who is qualified to sign the applicable statement of actuarial opinion in accordance with the American Academy of Actuaries qualification standards for actuaries and who meets the requirements specified in the valuation manual.

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

(n) "Territory" means the Virgin Islands of the United States as described in the Revised Organic Act of the Virgin Islands, section 2, subsection (a).

(o) "Valuation manual" means the NAIC manual of valuation instructions that became operative on January 1, 2017.

§ 533. Applicability of prior law

(a) The minimum standard for the valuation of policies and contracts issued before March 29, 1968 is the minimum standard provided by the laws in effect immediately before March 29, 1968.

(b) Notwithstanding any other requirements as provided in this subchapter, the Standard Valuation Law adopted on March 29, 1968 and encoded at title 22 Virgin Islands Code, section 513 is applicable to the reserves required under all policies issued before the effective date of this subchapter.

§ 534. Reserve valuation

(a) The Commissioner shall annually value, or cause to be valued, the reserve for all outstanding life insurance contracts, annuity and pure endowment contracts, accident and health contracts, and deposit-type contracts of every company issued on or after the effective date of this subchapter. In making a valuation, the Commissioner may use the Department's actuary or employ an actuary for that purpose. Upon demand by the Commissioner, the insurer shall pay the reasonable compensation and expenses of the actuary, at a rate approved by the Commissioner, which is supported by an itemized statement of the compensation and expenses.

(b) The Commissioner may accept a valuation of the reserves of a foreign or alien company made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when the valuation complies with the minimum standard provided in this subchapter.

(c) Sections 546 and 547 apply to all policies and contracts issued on or after the effective date of this subchapter.

§ 535. Actuarial opinion of reserves

(a) (1) Every company with outstanding life insurance contracts, accident and health insurance contracts or deposit-type contracts in the Virgin Islands and subject to regulation by the Commissioner shall annually submit the opinion of the appointed actuary stating whether the reserves and related actuarial items held in support of the policies and contracts are:

(A) computed appropriately;

(B) based on assumptions that satisfy contractual provisions;

(C) consistent with prior reported amounts; and

(D) comply with applicable laws of this Territory.

(2) The valuation manual prescribes the specifics of this opinion, including any items necessary to its scope.

(b) Every company with outstanding life insurance contracts, accident and health insurance contracts or deposit-type contracts in the Virgin Islands, subject to regulation by the Commissioner, except as exempted in the valuation manual, shall annually include in the opinion required by subsection (a), an opinion by the same appointed actuary stating whether the reserves and related actuarial items held in support of the policies and contracts specified in the valuation manual made adequate provision for the company's obligations under the policies and contracts, including the benefits under and expenses associated with the policies and contracts, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts.

(c)(1) Each opinion required by subsection (a) is governed by the following provisions:

(A) A memorandum, in form and substance as specified in the valuation manual, and acceptable to the Commissioner, must be prepared to support each actuarial opinion.

(B) The opinion must be in form and substance as specified in the valuation manual and acceptable to the Commissioner.

(C) The opinion must be submitted with the annual statement reflecting the valuation of the reserve liabilities for each year ending on or after the operative date of the valuation manual.

(D) The opinion applies to all policies and contracts subject to subsection (b), plus other actuarial liabilities as may be specified in the valuation manual.

(E) The opinion must be based on standards adopted from time to time by the Actuarial Standards Board or its successor, and on such additional standards as may be prescribed in the valuation manual.

(2) If the insurance company fails to provide a supporting memorandum at the request of the Commissioner within a period specified in the valuation manual or the Commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the valuation manual or is otherwise unacceptable to the Commissioner, the Commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting memorandum required by the Commissioner.

(d) For any opinion required under subsection (a), the following applies:

(1) For an opinion required to be submitted by a foreign or alien company, the Commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the Commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in the Territory.

(2) Neither the appointed actuary nor the qualified actuary is liable for damages to any person, other than the insurance company and the Commissioner for any act, error, omission, decision or conduct with respect to the actuary's opinion, except in cases of fraud or willful misconduct.

(3) The Commissioner may take disciplinary action against a company, a qualified actuary, or an appointed actuary as provided in the regulations promulgated by the Commissioner.

§ 536. Computation of minimum standard

Except as provided in sections 537, 538, and 545, the minimum standard for the valuation of policies and contracts issued before the effective date of this subchapter is that provided by the laws in effect immediately before that date. Except as otherwise provided in sections 537, 538, and 545, the minimum standard for the valuation of all policies and contracts issued on or after the effective date of this subchapter is the Commissioner's reserve valuation methods defined in sections 539, 540, 543, and 545, plus 3½ percent interest, and the following tables:

(1) For all policies of life insurance issued on or after the effective date of section 997 of the Standard Nonforfeiture Law of 2018 for Life Insurance, 22 V.I.C., sub ch. III:

(A) The Commissioner's 1980 Standard Ordinary Mortality Table;

(B) At the election of the company for any one or more specified plans of life insurance, the Commissioner's 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; or

(C) Any ordinary mortality table adopted after 1980 by the NAIC that is approved by the Commissioner for use in determining the minimum standard of valuation for the policies.

(2) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in the policies:

(A) the 1937 Standard Annuity Mortality Table; or

(B) at the option of the company, the Annuity Mortality Table for 1949 Ultimate; or

(C) any modification of either of these tables approved by the Commissioner.

(3) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in the policies:

(A) The Group Annuity Mortality Table for 1951;

(B) a modification of the table approved by the Commissioner; or

(C) at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(4) For total and permanent disability benefits in or supplementary to ordinary policies or contracts, or policies or contracts issued on or after the effective date of this subchapter: the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates adopted after 1980 by the NAIC that are approved by the Commissioner for use in determining the minimum standard of valuation for those policies;

(5) For accidental death benefits in or supplementary to policies issued on or after the effective date of this subchapter: the 1959 Accidental Death Benefits Table or any accidental death benefits table adopted after 1980 by the NAIC that is approved by regulation promulgated by the Commissioner for use in determining the minimum standard of valuation; and

(6) For group life insurance, life insurance issued on the substandard basis and other special benefits: tables approved by the Commissioner.

§ 537. Computation of minimum standard for annuities

Except as provided in section 538, the minimum standard of valuation for individual annuity and pure endowment contracts issued on or after the effective date of this subchapter and for annuities and pure endowments under group annuity and pure endowment contracts purchased on or after the effective date of this subchapter is the Commissioner's reserve valuation methods defined in sections 539 and 540 and the following tables and interest rates:

(1) For individual single premium immediate annuity contracts issued on or after the effective date of this subchapter, excluding any disability and accidental death benefits in those contracts: the 1971 Individual Annuity Mortality Table or any individual annuity mortality table adopted after 1980 by the NAIC that is approved by the Commissioner for use in determining the minimum standard of valuation for these contracts, or any modification of these tables approved by the Commissioner and 7½ percent interest;

(2) For individual annuity and pure endowment contracts issued on or after the effective date of this subchapter, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in those contracts: the 1971 Individual Annuity Mortality Table or any individual annuity mortality table adopted after 1980 by the NAIC that is approved by the Commissioner for use in determining the minimum standard of valuation for those contracts, or any modification of these tables approved by the Commissioner, and 5½ percent interest for single premium deferred annuity and pure endowment contracts and 4½ percent interest for all other individual annuity and pure endowment contracts; and

(3) For annuities and pure endowments purchased on or after the effective date of this subchapter under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under those contracts: the 1971 Group

Annuity Mortality Table, or any group annuity mortality table adopted after 1980 by the NAIC that is approved by the Commissioner for use in determining the minimum standard of valuation for annuities and pure endowments, or any modification of these tables approved by the Commissioner and 7½ percent interest.

538. Computation of minimum standard by calendar year of issue

(a) The interest rates used in determining the minimum standard for the valuation as provided in subsections (b), (c) and (d) are the calendar year statutory valuation interest rates for the following:

(1) Life insurance policies issued in a particular calendar year, on or after the effective date of section 997 of the Standard Nonforfeiture Law of 2018 for Life Insurance;

(2) Individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1 of the calendar year next following the effective date of this subchapter;

(3) Annuities and pure endowments purchased in a particular calendar year on or after January 1 of the calendar year next following the effective date of this subchapter under group annuity and pure endowment contracts; and

(4) The net increase, if any, in a particular calendar year after January 1 of the calendar year next following the effective date of this subchapter, in amounts held under guaranteed interest contracts.

(b)(1)The calendar year statutory valuation interest rates, I, are determined as follows and the results rounded to the nearer $^1/_4$ of 1 percent:

(A) For life insurance:

$$I = .03 + W \cdot (R_1 - .03) + \frac{W}{2} \cdot (R_2 - .09)$$

(B) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options:

$$I = .03 + W \cdot (R - .03)$$

Where R_1 is the lesser of R and .09,

R_2 is the greater of R and .09,

R is the reference interest rate defined in this section,

W is the weighting factor defined in this section;

(C) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in subparagraph (B), the formula for life insurance stated in subparagraph (A) applies to annuities and guaranteed interest contracts with guarantee durations in excess of 10 years and the formula for single premium immediate annuities stated in subparagraph (B) applies to annuities and guaranteed interest contracts with guarantee duration of 10 years or less;

(D) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in subparagraph (B) applies.

(E) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in subparagraph (B) applies.

(2) However, if the calendar year statutory valuation interest rate for a life insurance policy issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than $^{1}/_{2}$ of 1 percent, the calendar year statutory valuation interest rate for the life insurance policies is equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year must be determined for 1980 using the reference interest rate defined in 1979 and must be determined for each subsequent calendar year regardless of when section 997 of the Standard Nonforfeiture Law of 2018 for Life Insurance became operative.

(c)(1) The weighting factors referred to in the formulas are given in the following tables:

(A) Weighting Factors for Life Insurance:

Guarantee Duration (Years)	Weighting Factors
10 or less	.50
More than 10, but not more than 20	.45
More than 20	.35

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

(B) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options:

(D) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in subparagraph (B), are specified in clauses (i), (ii) and (iii), according to the rules and definitions in clauses (iv), (v) and (vi):

(i) For annuities and guaranteed interest contracts valued on an issue year basis:

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

	Plan Type A	B	C
(ii) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in item (i) above increased by:	.15	.25	.05

	Plan Type A	B	C
(iii) For annuities and guaranteed interest contracts valued on an issue year basis other than those with no cash settlement options that do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis that do not guarantee interest rates on considerations received more than 12 months beyond the valuation date, the factors shown in clause (i) or derived in clause (ii) increased by:	.05	.05	.05

(iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of 20 years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guaranteed duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(v) Plan type as used in the tables is defined as follows:

a. Plan Type A: At any time, policyholder may withdraw funds only:

1. with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or

2. without an adjustment but installments over five years or more, or

3. as an immediate life annuity, or

4. no withdrawal permitted.

b. Plan Type B: At the end of interest rate guarantee, funds may be withdrawn without an adjustment in a single sum or installments over less than five years; but before expiration of the interest rate guarantee, policyholder may withdraw funds only:

1. with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or

2. without an adjustment but in installments over five years or more, or

3. no withdrawal permitted.

c. Plan Type C: Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either:

1. without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or

2. subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(vi) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. As used in this section, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(d)(1) The interest rate referred to in subsection (b) is defined as follows:

(A) For life insurance, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year preceding the year of issue, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(B) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or year of purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(C) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subparagraph (B), with guarantee duration in excess of 10 years, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(D) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subparagraph (B), with guarantee duration of 10 years or less, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(E) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(F) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in subparagraph (B), the average over a period of 12 months, ending on June 30 of the calendar year of the change in the fund, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(2) If the monthly average of the composite yield on seasoned corporate bonds is no longer published by Moody's Investors Service, Inc. or if the NAIC determines that the monthly average of the composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc. is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate adopted by the NAIC and approved by regulation promulgated by the Commissioner may be substituted.

§ 539. Reserve valuation method—life insurance and endowment benefits

(a) Except as otherwise provided in sections 540, 543, and 545, reserves according to the Commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, are the excess, if any, of the present value, at the date of valuation, of the future guaranteed benefits provided for by those policies, over the then present value of any future modified net premiums therefor. The modified net premiums for a policy is the uniform percentage of the respective contract premiums for the benefits such that the present value, at the date of issue of the policy, of all modified net premiums is equal to the sum of the then present value of the benefits provided for by the policy and the excess of paragraph (1) over paragraph (2), as follows:

(1) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium may not exceed the net level annual premium on the 19-year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of the policy.

(2) A net one-year term premium for the benefits provided for in the first policy year.

(b)(1)For a life insurance policy issued on or after January 1 of the fourth calendar year commencing after the effective date of this subchapter for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for the excess and which provides an endowment benefit or a cash surrender value or a combination in an amount greater than the excess premium, the reserve according to the Commissioner's reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined in this subchapter as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than the excess premium, except as otherwise provided in section 543, is the greater of the reserve as of the policy anniversary calculated as described in subsection (a) and the reserve as of the policy anniversary calculated as described in subsection (a), but with:

(A) the value defined in subsection (a) being reduced by 15% percent of the amount of such excess first year premium,

(B) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date,

(C) the policy being assumed to mature on that date as an endowment, and

(D) the cash surrender value provided on that date being considered as an endowment benefit.

(2) In making the above comparison the mortality and interest bases stated in sections 536 and 538 must be used.

(c) Reserves according to the Commissioner's reserve valuation method must be calculated by a method consistent with the principles in subsections (a) and (b) for:

(1) Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums;

(2) Group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation established or maintained by an employer including a partnership or sole proprietorship or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code;

(3) Disability and accidental death benefits in all policies and contracts; and

(4) All other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts.

§ 540. Reserve valuation method—annuity and pure endowment benefits

(a) This section applies to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer including a partnership or sole proprietorship or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code.

(b) Reserves according to the Commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in the contracts, is the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by the contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of the contract, that become payable before the end of the respective contract year. The future guaranteed benefits must be determined by using the mortality table, if any, and the interest rate, or rates, specified in the contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of the contracts to determine nonforfeiture values.

§ 541. Minimum reserves

(a) A company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after the effective date of this subchapter, may not be less than the aggregate reserves calculated in accordance with the methods set forth in sections 539, 540, 543 and 544 and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for the policies.

(b) The aggregate reserves for all policies, contracts and benefits may not be less than the aggregate reserves determined by the appointed actuary to be necessary to render the opinion required by section 535.

§ 542. Optional reserve calculation

(a) Reserves for policies and contracts issued before the effective date of this subchapter may be calculated, at the option of the company, according to any standards that produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately before the effective date of this subchapter.

(b) Reserves for any category of policies, contracts or benefits established by the Commissioner, issued on or after the effective date of this subchapter, may be calculated, at the option of the company, according to any standards that produce greater aggregate reserves for the category than those calculated according to the minimum standard provided in this subchapter, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts may not be greater than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided in the policies or contracts.

(c) A company that adopts a standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided under this subchapter, may adopt a lower standard of valuation with the approval of the Commissioner, but not lower than the minimum provided in this subchapter; but, for the purposes of this section, the holding of additional reserves previously determined by the appointed actuary to be necessary to render the opinion required by section 535 may not be considered the adoption of a higher standard of valuation.

§ 543. Reserve calculation—valuation net premium exceeding the gross premium charged

(a) If in any contract year the gross premium charged by a company on a policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve, but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for the policy or contract is the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for the policy or contract, or the reserve calculated by the method actually used for the policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in sections 536 and 538.

(b) For a life insurance policy issued on or after January 1 of the fourth calendar year commencing after the effective date of this subchapter for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for the excess and which provides an endowment benefit or a cash surrender value or a combination in an amount greater than the excess premium, the provisions of this section must be applied as if the method actually used in calculating the reserve for the policy was the method described in section 539, ignoring 539(b). The minimum reserve at each policy anniversary of such a policy is the greater of the minimum reserve calculated in accordance with section 539, including section 539(b), and the minimum reserve calculated in accordance with this section.

§ 544. Reserve calculation—indeterminate premium plans

(a) For a plan of life insurance that provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or for a plan of life insurance or annuity that is of a nature that the minimum reserves cannot be determined by the methods described in sections 539, 540, and 543, the reserves that are held under the plan must:

(1) Be appropriate in relation to the benefits and the pattern of premiums for that plan; and

(2) Be computed by a method that is consistent with the principles of this subchapter, as determined by regulations promulgated by the Commissioner.

(b) Notwithstanding section 810 of this title or any other provision in the laws of this Territory, a policy, contract or certificate providing a plan described in subsection (a), must be affirmatively approved by the Commissioner before it can be marketed, issued, delivered or used in this Territory.

§ 545. Minimum standard for accident and health insurance contracts

For accident and health insurance contracts issued on or after the effective date of this subchapter, the standard prescribed in the valuation manual is the minimum standard of valuation required under section 534(a). For disability, accident and health or sickness insurance contracts issued on or after March 29, 1968, and before the effective date of this subchapter, the minimum standard of valuation is the standard adopted by the Commissioner by regulation.

§ 546. Valuation manual for policies issued on or after the effective date of this subchapter

(a) For policies issued on or after the effective date of this subchapter, the standard prescribed in the valuation manual is the minimum standard of valuation required under section 534(a), except as provided under subsections (e) or (g).

(b) The operative date of the valuation manual is January 1, 2017.

(c) Unless a change in the valuation manual specifies a later effective date, changes to the valuation manual are effective on January 1 following the date when all of the following have occurred:

(1) The change to the valuation manual has been adopted by the NAIC by an affirmative vote representing:

(A) At least 3/4 of the members of the NAIC voting, but not less than a majority of the total membership, and

(B) Members of the NAIC representing jurisdictions totaling greater than 75 percent of the direct premiums written as reported in the following annual statements most recently available before the vote referred to in paragraph (1)(A): life, accident and health annual statements, health annual statements, or fraternal annual statements.

(2) The valuation manual becomes effective pursuant to an order issued by or by regulation of the Commissioner.

(d) The valuation manual must specify all of the following:

(1) Minimum valuation standards for and definitions of the policies or contracts subject to section 534(a). The minimum valuation standards must be:

(A) The Commissioner's reserve valuation method for life insurance contracts, other than annuity contracts, subject to section 534(a);

(B) The Commissioner's annuity reserve valuation method for annuity contracts subject to section 534(a); and

(C) Minimum reserves for all other policies or contracts subject to section 534(a).

(2) Which policies or contracts or types of policies or contracts that are subject to the requirements of a principle-based valuation provided for in section 547(a) and the minimum valuation standards consistent with those requirements;

(3) For policies and contracts subject to a principle-based valuation under section 547:

(A) Requirements for the format of reports to the Commissioner under section 547(b)(3) and which must include information necessary to determine if the valuation is appropriate and in compliance with this subchapter;

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

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

(4) For policies not subject to a principle-based valuation under section 547, the minimum valuation standard must either:

(A) Be consistent with the minimum standard of valuation before the operative date of the valuation manual; or

(B) Develop reserves that quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring.

(5) Other requirements, including those relating to reserve methods, models for measuring risk, generation of economic scenarios, assumptions, margins, use of company experience, risk measurement, disclosure, certifications, reports, actuarial opinions and memorandums, transition rules and internal controls; and

(6) The data and form of the data required under section 548, with whom the data must be submitted, and may specify other requirements, including data analyses and reporting of analyses.

(e) In the absence of a specific valuation requirement or if a specific valuation requirement in the valuation manual is not, in the opinion of the Commissioner, in compliance with this subchapter, then the company shall, with respect to such requirements, comply with minimum valuation standards prescribed by the Commissioner.

(f) The Commissioner may engage a qualified actuary, at the expense of the company, to perform an actuarial examination of the company and opine on the appropriateness of any reserve assumption or method used by the company, or to review and opine on a company's compliance with any requirement set forth in this subchapter. The Commissioner may rely upon the opinion of a qualified actuary engaged by the Commissioner from another state, district or territory of the United States regarding provisions contained within this subchapter. As used in this subsection, the term "engage" includes employment and contracting.

(g) The Commissioner may require a company to change any assumption or method that in the opinion of the Commissioner is necessary in order to comply with the requirements of the valuation manual or this subchapter; and the company shall adjust the reserves as required by the Commissioner. The Commissioner may take other disciplinary action as permitted pursuant to chapters 7 and 9 of this title.

§ 547. Requirements of a principle-based valuation

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

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

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

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

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

(B) For assumptions that are not prescribed, the assumptions must:

(i) Be established utilizing the company's available experience, to the extent it is relevant and statistically credible; or

(ii) if that company data is not available, relevant, or statistically credible, be established utilizing other relevant, statistically credible experience.

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

(b) A company using a principle-based valuation for one or more policies or contracts subject to this section as specified in the valuation manual shall:

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

(2) Provide to the Commissioner and the board of directors for the company an annual certification of the effectiveness of the internal controls with respect to the principle-based valuation. The internal controls must be designed to assure that all material risks inherent in the liabilities and associated assets subject to the valuation are included in the valuation, and that valuations are made in accordance with the valuation manual. The certification must be based on the controls in place as of the end of the preceding calendar year.

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

(c) A principle-based valuation may include a prescribed formulaic reserve component.

§ 548. Experience reporting for policies in force on or after the effective date of the valuation manual

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

§ 549. Confidentiality

(a) For purposes of this section, "Confidential Information" means:

(1) A memorandum in support of an opinion submitted under section 535 and any other documents, materials and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by or disclosed to the Commissioner or any other person in connection with the memorandum;

(2) All documents, materials and other information, including, all working papers, and copies, created, produced or obtained by or disclosed to the

Commissioner or any other person in the course of an examination made under section 546(f); but if an examination report or other material prepared in connection with an examination made under chapter 5 of this title is not held as private and confidential information under chapter 5 of this title, an examination report or other material prepared in connection with an examination made under section 546(f) is not Confidential Information if the examination report or other material had been prepared under chapter 5 of this title;

(3) Any reports, documents, materials and other information developed by a company in support of, or in connection with, an annual certification by the company under section 547(b)(2), evaluating the effectiveness of the company's internal controls with respect to a principle-based valuation and any other documents, materials and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by or disclosed to the Commissioner or any other person in connection with such reports, documents, materials and other information;

(4) Any principle-based valuation report developed under section 547(b)(3) and any other documents, materials and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by or disclosed to the Commissioner or any other person in connection with such report; and

(5) Any documents, materials, data and other information submitted by a company under section 548, collectively, "experience data"; and any other documents; material; data and other information; including, all working papers; and copies of working papers, created or produced in connection with such experience data, in each case that includes any potentially company-identifying or personally identifiable information, that is provided to or obtained by the Commissioner together with any experience data, and any other documents, materials, data and other information, including, all working papers, and copies of working papers, created, produced or obtained by or disclosed to the Commissioner or any other person in connection with such experience materials.

(b)(1) As provided in this section, a company's Confidential Information in the possession or control of the Division of Banking, Insurance and Financial Regulation or the Commissioner is confidential and privileged, and is not subject to examination by the public, subject to subpoena, to discovery, or admissible in evidence in any private civil action; but the Commissioner may use the Confidential Information in the furtherance of any regulatory or legal action brought against the company by the Commissioner.

(2) Neither the Commissioner nor any person who receives Confidential Information while acting under the authority of the Commissioner is permitted or required to testify in any private civil action concerning any Confidential Information.

(3) The Commissioner may share Confidential Information with state, federal and international regulatory agencies and with the NAIC and its affiliates and subsidiaries. The Commissioner may share Confidential Information specified in subsection (a)(1) and (4) with the Actuarial Board for Counseling and Discipline or its successor, or the American Academy of Actuaries or its successor upon request stating that the Confidential Information is required for the purpose of professional disciplinary proceedings, and with state, territorial, federal and international law enforcement officials; but the recipient shall agree to maintain the confidentiality and privileged status of such documents, materials, data and other information in the same manner and to the same extent as required for the Commissioner.

(4) The Commissioner may receive documents, materials, data and other information from the NAIC and its affiliates and subsidiaries, from regulatory or law enforcement officials of other foreign or domestic jurisdictions and from the Actuarial Board for Counseling and Discipline or its successor and shall maintain as confidential or privileged any document, material, data or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.

(5) The Commissioner may enter into agreements governing sharing and use of information consistent with this section.

(6) No waiver of any applicable privilege or claim of confidentiality in the Confidential Information occurs as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in paragraph (3).

(7) A privilege established under the law of any state or jurisdiction which is substantially similar to the privilege established under this section is available and enforceable in any proceeding in, and in any court of this Territory.

(8) In this section, "regulatory agency," "law enforcement agency" and the "NAIC" include their employees, agents, consultants and contractors.

(c) Notwithstanding subsection (b), any Confidential Information specified in subsection (a)(1) and (4):

(1) May be subject to subpoena for the purpose of defending a proceeding brought pursuant to this subchapter seeking damages from the appointed actuary who submitted a memorandum in support of an opinion required under section 535 or a principle-based valuation report provided under section 547(b)(3) by reason of an action required by this subchapter or by regulations promulgated hereunder;

(2) May otherwise be released by the Commissioner with the written consent of the company; and

(3) Once any portion of a memorandum in support of an opinion submitted under section 535 or a principle-based valuation report developed under section

547(b)(3) is cited by the company in its marketing or is publicly volunteered to or before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of such memorandum or report are no longer confidential."

SECTION 2. This subchapter takes effect 60 days after its enactment. All acts and parts of acts inconsistent with the provisions of this subchapter are repealed as of the date of the enactment of this subchapter.

Thus passed by the Legislature of the Virgin Islands on October 12, 2018.

Witness our Hands and Seal of the Legislature of the Virgin Islands this 21st Day of October, A.D., 2018.

Myron D. Jackson
President

Jean A. Forde
Legislative Secretary

Bill No. 32-0309 is hereby approved.

Witness my hand and the seal of the Government of the United States Virgin Islands at Charlotte Amalie, St. Thomas, this 10th day of November, 2018 A.D.

Kenneth E. Mapp
Governor