

Subchapter Q. Actuarial Opinion and Memorandum Regulation

28 TAC §§3.1601-3.1608

1. INTRODUCTION. The Texas Department of Insurance proposes new §§3.1601-3.1608 concerning the submission of actuarial opinions and their supporting memoranda with the annual statements of life insurance companies. Insurance Code Article 3.28 §2A(a) requires every life insurance company doing business in this state to annually submit to the department the opinion of a qualified actuary that states whether the reserves and related actuarial items held in support of the policies and contracts of the insurer are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The existing Subchapter Q provides exemptions for life insurance companies with regard to the inclusion of an asset adequacy analysis with the actuarial opinion. The new subchapter will require all life insurance companies, with the exception of life insurance companies that only do business in Texas, to provide an actuarial opinion based on an asset adequacy analysis with their 2005 annual statement and thereafter. In addition to an actuarial opinion based on an asset adequacy analysis, the proposed sections require the preparation of an actuarial memorandum including an asset adequacy analysis and a regulatory asset adequacy issues summary. Proposed §3.1601 states the purpose of Subchapter Q. Proposed §3.1602 states the scope and applicability of the subchapter. Proposed §3.1603 provides the commissioner may require a life insurance company that only does business in Texas to provide an actuarial opinion based

on an asset adequacy analysis in accordance with the subchapter when he or she determines such an opinion is necessary. Proposed §3.1604 defines terms used in the subchapter. Proposed §3.1605 describes the general requirements for an actuarial opinion required by Insurance Code Article 3.28. Proposed §3.1606 describes the requirements for an actuarial opinion based on an asset adequacy analysis. Proposed §3.1607 describes the requirements for an actuarial memorandum including an asset adequacy analysis and a regulatory asset adequacy issues summary. Proposed §3.1608 provides an exemption for life insurance companies that only do business in Texas. Such companies do not have to perform the asset adequacy analysis required by §3.1606 unless directed by the commissioner to do so under §3.1603. The proposed sections are substantially based on the National Association of Insurance Commissioners "Model Actuarial Opinion and Memorandum Regulation." The existing §§3.1601-3.1611 are proposed for repeal elsewhere in this issue of the Texas Register.

2. FISCAL NOTE. Betty Patterson, Senior Associate Commissioner, Financial Program, has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There will be no measurable effect on local employment or the local economy as a result of the proposal.

3. PUBLIC BENEFIT/COST NOTE. Ms. Patterson has determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of the proposed sections will be more consistent and

stronger standards for reserves held by life insurance companies. These standards support adequate reserve levels in light of the assets held for such reserves and provide for a summary of analysis performed by the actuary to assist regulatory review. Other public benefits anticipated as a result of these proposed sections include information to companies to better manage risks inherent to its business including those related to assets in support of reserves. The estimated cost of providing an actuarial opinion based on an asset adequacy analysis, an actuarial memorandum and a regulatory asset issues summary will vary widely depending on an insurer's total assets that support actuarial liabilities, types of assets that support actuarial liabilities, number of products and complexity of products. Under the existing sections, some insurers are exempted from providing an actuarial opinion based on an asset adequacy analysis if they meet the criteria in existing §3.1606. Under the proposed sections all insurers will be required to provide an actuarial opinion based on an asset adequacy analysis, unless an insurer only does business in Texas. This change will result in approximately twenty-five additional domestic insurers being required to perform an asset adequacy analysis. The additional cost associated with the preparation of an actuarial opinion based on asset adequacy analysis depends on the type of analysis involved which ranges from the more involved cash flow testing to simpler and less costly methods based on actuarial judgment pursuant to actuarial standards of practice. The amount of the costs are primarily a function of the complexity of a company's asset and liability structures. More complex structures may require cash flow testing, while simpler structures may

not require such detailed analysis. Based on a sampling of industry actuaries who are familiar with asset adequacy analysis costs, they estimate that such costs for the first year may range from \$2,000 to \$5,000 for a small company with simple products, \$5,000 to \$20,000 for a small company with more complex products, \$5,000 to \$10,000 for medium companies with simple products and \$10,000 to \$40,000 for medium companies with more complex products. Industry actuaries further estimate subsequent years' costs to be half of the first year costs. Costs in subsequent years include reviewing the assumptions, updating the model to appropriately reflect current products and assets, and running any projections. Large companies have been required to perform asset adequacy analysis under the existing Subchapter, therefore, their costs will not change as a result of the proposed subchapter. The cost per hour of labor (i.e. actuarial services) is not expected to vary because a company is small, medium or large. Rather, more hours of labor may be required as the size, type and complexity of the assets and liabilities may increase. Such actuarial costs per hour of labor range from \$100 per hour to \$250 per hour based on the department's experience. Higher per hour costs may occur if additional specialized expertise is required for the very complicated assets and liabilities. The department believes it is unlikely that micro and small businesses will require the same level of expertise required by large businesses. As noted above, the costs depend on the complexity of the business and the size of the company. For these reasons, the cost of compliance for micro and small businesses should be far less than the cost of compliance of large businesses. The department

finds it is neither legal nor feasible to waive the proposed sections for micro or small businesses as Insurance Code Article 3.28 requires all life insurers to provide the department an actuarial opinion based on an asset adequacy analysis unless exempted by rule. The proposed exemption of life insurance companies that only do business in Texas from the requirement to perform an asset adequacy analysis reduces the cost of compliance for these companies. Generally, they are less complex than companies that engage in business in more than one state and since Texas is the domiciliary state, they are more closely monitored. Such companies may still have to provide an asset adequacy analysis if the commissioner determines one is necessary.

4. REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on January 17, 2005, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment should be simultaneously submitted to Betty Patterson, Senior Associate Commissioner, Financial Program, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A request for a public hearing should be submitted separately to the Office of the Chief Clerk.

5. STATUTORY AUTHORITY. The new sections are proposed under Insurance Code Article 3.28 and §36.001. Insurance Code Article 3.28, §2A, authorizes

and requires the department to define the specific requirements of actuarial opinions required under Article 3.28, including matters deemed to be necessary to the scope of such opinions, as well as to prescribe the qualifications of the persons who may certify to such opinions. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

6. CROSS REFERENCE TO STATUTE. Insurance Code Article 3.28 is affected by §§3.1601-3.1608.

7. TEXT.

§3.1601. Purpose. The purpose of these sections is to prescribe guidelines and standards for the activities described in paragraphs (1) - (3) of this section:

(1) the submission of a statement of actuarial opinion in accordance with Insurance Code Article 3.28, §2A, and for memoranda in support of such opinion;

(2) the appointment of an appointed actuary; and

(3) guidance as to the meaning of “adequacy of reserves.”

§3.1602. Scope and Applicability.

(a) This subchapter shall apply to all life insurance companies doing business in this state and to all life insurance companies which are authorized to

reinsure life insurance, annuities or accident and health insurance business in this state.

(b) This subchapter shall be applied in a manner that allows the appointed actuary to utilize his or her professional judgment in performing the asset analysis and developing the actuarial opinion and supporting memoranda, consistent with relevant actuarial standards of practice; however, the commissioner shall have the authority to specify specific methods of actuarial analysis and actuarial assumptions when, in the commissioner's judgment, these specifications are necessary for an acceptable opinion to be rendered relative to the adequacy of reserves and related items.

(c) This subchapter shall be applicable to the actuarial opinion for the 2005 Annual Statement and thereafter.

(d) A statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with §3.1606 of this title (relating to Statement of Actuarial Opinion Based on an Asset Adequacy Analysis), and a memorandum in support thereof in accordance with §3.1607 of this title (relating to Description of Actuarial Memorandum Including an Asset Adequacy Analysis and Regulatory Asset Adequacy Issues Summary), shall be required each year, unless exempt under §3.1608 of this title (relating to Asset Adequacy Analysis Exemption).

§3.1603. Commissioner Discretion. The commissioner may require any company, otherwise exempt from asset adequacy analysis requirements in this

subchapter, to provide an actuarial opinion and actuarial memorandum which complies with the asset adequacy analysis requirements in this subchapter including requirements in §3.1606 of this title (relating to Statement of Actuarial Opinion Based on an Asset Adequacy Analysis) and in §3.1607 of this title (relating to Description of Actuarial Memorandum Including an Asset Adequacy Analysis and Regulatory Asset Adequacy Issues Summary) if, in the opinion of the commissioner, an asset adequacy analysis is necessary with respect to the company.

§3.1604. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) AVR--Asset valuation reserve.

(2) Actuarial opinion--The opinion of an appointed actuary regarding the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with §3.1606 of this title (relating to Statement of Actuarial Opinion Based on an Asset Adequacy Analysis) and with applicable Actuarial Standards of Practice.

(3) Actuarial Standards Board--The board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

(4) Annual statement--That financial statement as of December 31st of the preceding year required to be filed annually by the company with the Texas Department of Insurance.

(5) Appointed actuary--A qualified actuary who is appointed or retained to prepare the statement of actuarial opinion required by this subchapter, either directly by or by the authority of the board of directors through an executive officer of the company other than the qualified actuary.

(6) Asset adequacy analysis--An analysis that meets the standards and other requirements referred to in §3.1605(d) of this title (relating to General Requirements).

(7) Company--A life insurance company or reinsurer subject to the provisions of this subchapter which includes a stipulated premium insurance company insuring or assuming risk for coverages under Insurance Code §884.307 or §884.402.

(8) IMR--Interest maintenance reserve.

(9) Qualified actuary--An individual who:

(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 opportunity for hearing, to have:

(i) violated any provision of, or any obligation imposed by, the Insurance Code or other law in the course of his or her dealings as a qualified actuary;

(ii) been found guilty of fraudulent or dishonest practices;

(iii) demonstrated his or her incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary;

(iv) submitted to the commissioner during the past five years, pursuant to this subchapter, an actuarial opinion or memorandum that the commissioner rejected because it did not meet the provisions of this subchapter including standards set by the Actuarial Standards Board; or

(v) resigned or been removed as an actuary within the past five 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 subparagraph (D) of this paragraph.

§3.1605. General Requirements.

(a) Submission of statement of actuarial opinion. Any statement of actuarial opinion required by this subchapter shall be submitted in accordance with paragraphs (1) - (2) of this subsection.

(1) There is to be included on or attached to page one of the annual statement for each year beginning with the year in which this subchapter becomes effective 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 §3.1606 of this title (relating to Statement of Actuarial Opinion Based on an Asset Adequacy Analysis).

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

(b) Appointment of actuary. 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 is a qualified actuary. Once notice is furnished, no further notice is required with respect to this person, provided that the company shall give the commissioner timely written notice in the event the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements

for a qualified actuary. If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice shall so state and give the reasons for replacement.

(c) Standards for asset adequacy analysis. The asset adequacy analysis required by this subchapter:

(1) shall conform to the Standards of Practice as promulgated from time to time by the Actuarial Standards Board and any additional standards set forth in this subchapter, which standards are to form the basis of the statement of actuarial opinion in accordance with this subchapter; and

(2) shall be based on methods of analysis as are deemed appropriate for such purposes by the Actuarial Standards Board.

(d) Liabilities to be covered. The liabilities to be covered shall be in accordance with paragraphs (1) - (3) of this subsection.

(1) Under authority of Insurance Code Article 3.28, §2A, the statement of actuarial opinion shall apply to all in force business on the statement date, whether directly issued or assumed, regardless of when or where issued, for example, annual statement reserves in Exhibits 5, 6 and 7, and claim liabilities in Exhibit 8, Part 1 and equivalent items in the separate account statement or statements.

(2) 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 Insurance Code Article 3.28, §§6, 7, 10, and 11, and other applicable Insurance Code provisions, the company shall establish the additional reserve.

(3) Additional reserves established under paragraph (2) of this subsection and deemed not necessary in subsequent years may be released. Any amounts released shall be disclosed in the actuarial opinion for the applicable year. The release of such reserves would not be deemed an adoption of a lower standard of valuation.

§3.1606. Statement of Actuarial Opinion Based on an Asset Adequacy Analysis.

(a) General description. The statement of actuarial opinion required by this section shall consist of the following paragraphs:

(1) a paragraph identifying the appointed actuary and his or her qualifications, recommended language is provided in subsection (b)(1) of this section;

(2) a scope paragraph, recommended language is provided in subsection (b)(2) of this section, 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 that have been analyzed for asset adequacy and the method of analysis, and identifying the reserves and related actuarial items covered by the opinion that have not been so analyzed;

(3) a reliance paragraph, recommended language is provided in subsection (b)(3) of this section, 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) supported by a statement of each such expert with the information prescribed by subsection (e) of this section; and

(4) an opinion paragraph expressing the appointed actuary's opinion with respect to the adequacy of the supporting assets to mature the liabilities, recommended language is provided in subsection (b)(6) of this section.

(5) 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 an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for this opinion;

(C) if the appointed actuary must disclose whether additional reserves as of the prior opinion date are released as of this opinion date, and the extent of the release; or

(D) if the appointed actuary chooses to add a paragraph briefly describing the assumptions that form the basis for the actuarial opinion.

(b) Recommended language. The following paragraphs are to be included in the statement of actuarial opinion in accordance with this section. The language is that which should be included in typical circumstances in a statement of actuarial opinion. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language which clearly expresses his or her professional judgment. Regardless of the language used, the opinion shall retain all pertinent aspects of the language provided in this section.

(1) The opening paragraph should generally indicate the appointed actuary's relationship to the company and his or her qualifications to sign the opinion.

(A) For a company actuary, the opening paragraph of the actuarial opinion should include a statement such as:

"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 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."

(B) For a consulting actuary, the opening paragraph should include a statement 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.”

(2) The scope paragraph should include a statement such as:

Figure: 28 TAC §3.1606(b)(2)

“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, 20(). Tabulated below are those reserves and related actuarial items which have been subjected to asset adequacy analysis.

<u>Asset Adequacy Tested Amounts—Reserves and Liabilities</u>

<u>Statement Item</u>	<u>Formula Reserves</u> (1)	<u>Additional Actuarial Reserves (*)</u> (2)	<u>Analysis Method</u> (**)	<u>Other Amount</u> (3)	<u>Total Amount</u> <u>(1)+(2)+(3)</u> (4)
<u>Exhibit 5</u> <u>Life Insurance</u>					
<u>Annuities</u>					
<u>Supplementary Contracts With Life Contingencies</u>					
<u>Accidental Death Benefits</u>					
<u>Disability - Active Lives</u>					
<u>Disability - Disabled Lives</u>					
<u>Miscellaneous Reserves</u>					
<u>Total Exhibit 5</u> (Page 3, Line 1)					
<u>Exhibit 6</u> <u>Active Life Reserve</u>					
<u>Claim Reserve</u>					

<u>Total Exhibit 6</u> <u>(Page 3, Line 2)</u>					
<u>Exhibit 7</u> <u>Guaranteed Interest</u> <u>Contracts</u> <u>Column 2, Line 14</u>					
<u>Annuities Certain</u> <u>Column 3, Line 14</u>					
<u>Supplemental Contracts</u> <u>Column 4, Line 14</u>					
<u>Dividend Accumulations</u> <u>or Refunds</u> <u>Column 5, Line 14</u>					
<u>Premium and Other</u> <u>Deposit Funds</u> <u>Column 6, Line 14</u>					
<u>Total Exhibit 7</u> <u>Column 1, Line 14</u> <u>(Page 3, Line 3)</u>					
<u>Exhibit 8, Part 1</u> <u>Life (Page 3, Line 4.1)</u>					
<u>Health (Page 3, Line 4)</u>					

<u>Total Exhibit 8, Part 1</u>					
<u>Column 1, Line 4.4</u>					
<u>Separate Accounts</u> <u>(Page 3 of the Annual</u> <u>Statement of the Separate</u> <u>Accounts, Lines 1, 2, 3.1,</u> <u>3.2, 3.3)</u>					
<u>TOTAL RESERVES</u>					

<u>IMR (General Account, Page ____ Line ____)</u>	
<u>(Separate Accounts, Page ____ Line ____)</u>	
<u>AVR (Page ____ Line ____)</u>	(***)
<u>Net Deferred and Uncollected Premium</u>	

Notes:

(*) The additional actuarial reserves are the reserves established under §3.1605(e)(2) of this title (relating to General Requirements).

(**) The appointed actuary should indicate the method of analysis, determined in accordance with the standards for asset adequacy analysis referred to in §3.1605(d) of this title, by means of symbols that should be defined in footnotes to the table.

(***) Allocated amount of AVR."

(3) 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:

“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” or “certain critical aspects of the analysis performed in conjunction with forming my opinion”), as certified in the attached statement. I have reviewed the information relied upon for reasonableness.”

A statement of reliance on other experts should be accompanied by a statement by each of the experts with the information prescribed by subsection (e) of this section.

(4) If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph should include a statement such as:

“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. I also reconciled the underlying basic asset and liability records to (exhibits and schedules listed as applicable) of the company’s current annual statement.”

(5) If the appointed actuary has not examined the underlying records, but has relied upon data (e.g., listings and summaries of policies in force

or asset records) prepared by the company, the reliance paragraph should include a statement such as:

"In forming my opinion on (specify types of reserves) I relied upon data prepared by (name and title of company officer certifying in force records or other data) as certified in the attached statements. I evaluated that data for reasonableness and consistency. I also reconciled that data to (exhibits and schedules to be listed as applicable) of the company's current annual statement. In other respects, my examination included review of the actuarial assumptions and actuarial methods used and tests of the calculations I considered necessary."

The reliance paragraph shall be accompanied by a statement by each person relied upon with the information prescribed by subsection (e) of this section.

(6) The opinion paragraph should include a statement such as:

"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 that 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 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 the assets, and the considerations anticipated to be received and retained under the 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.

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 changes 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.)

Choose whichever of the two immediately preceding paragraphs is appropriate.

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

Date"

(c) Assumptions for new issues. The adoption for new issues or new claims or other new liabilities of an actuarial assumption that 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.

(d) 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 reasons for the opinion. This statement should follow the scope paragraph and precede the opinion paragraph.

(e) Reliance on information furnished by other persons. If the appointed actuary relies on the certification of others on matters concerning the accuracy or completeness of any data underlying the actuarial opinion, or the appropriateness of any other information used by the appointed actuary in forming the actuarial opinion, the actuarial opinion should so indicate the persons the actuary is relying upon and a precise identification of the items subject to reliance. In addition, the persons on whom the appointed actuary relies shall provide a certification that precisely identifies the items on which the person is providing information and a statement as to the accuracy, completeness or reasonableness, as applicable, of the items. This certification shall include the signature, title, company, address and telephone number of the person rendering the certification, as well as the date on which it is signed.

(f) Alternate option.

(1) Insurance Code Article 3.28 gives the commissioner broad authority to accept the valuation of a foreign insurer when that valuation meets the requirements applicable to a company domiciled in this state in the aggregate. As an alternative to the requirements of subsection (b)(6) of this section, the commissioner may make one or more of the following additional approaches available to the opining actuary:

(A) a statement that the reserves “meet the requirements of the insurance laws and regulations of the State of (state of domicile) and the formal written standards and conditions of this state for filing an opinion based on the law of the state of domicile.” If the commissioner chooses to allow this alternative, a formal written list of standards and conditions shall be made available. If a company chooses to use this alternative, the standards and conditions in effect on July 1 of a calendar year shall apply to statements for that calendar year, and they shall remain in effect until they are revised or revoked. If no list is available, this alternative is not available.

(B) a statement that the reserves “meet the requirements of the insurance laws and regulations of the State of (state of domicile) and I have verified that the company’s request to file an opinion based on the law of the state of domicile has been approved and that any conditions required by the commissioner for approval of that request have been met.” If the commissioner chooses to allow this alternative, a formal written statement of such allowance shall be issued no later than March 31 of the year it is first effective. It shall

remain valid until rescinded or modified by the commissioner. The rescission or modifications shall be issued no later than March 31 of the year they are first effective. Subsequent to that statement being issued, if a company chooses to use this alternative, the company shall file a request to do so, along with justification for its use, no later than April 30 of the year of the opinion to be filed. The request shall be deemed approved on October 1 of that year if the commissioner has not denied the request by that date.

(C) a statement that the reserves “meet the requirements of the insurance laws and regulations of the State of (state of domicile) and I have submitted the required comparison as specified by this state.”

(i) If the commissioner chooses to allow this alternative, a formal written list of products (to be added to the table in clause (ii) of this paragraph) for which the required comparison shall be provided will be published. If a company chooses to use this alternative, the list in effect on July 1 of a calendar year shall apply to statements for that calendar year, and it shall remain in effect until it is revised or revoked. If no list is available, this alternative is not available.

(ii) If a company desires to use this alternative, the appointed actuary shall provide a comparison of the gross nationwide reserves held to the gross nationwide reserves that would be held under §7.18 of this title (relating to NAIC Accounting Practices and Procedures Manual). Gross nationwide reserves are the total reserves calculated for the total company in force business directly sold and assumed, indifferent to the state in which the risk

resides, without reduction for reinsurance ceded. The information provided shall be at least:

Figure: 28 TAC §3.1606(f)(1)(C)(ii)

<u>(1)</u> <u>Product Type</u>	<u>(2)</u> <u>Death Benefit</u> <u>or Account</u> <u>Value</u>	<u>(3)</u> <u>Reserves Held</u>	<u>(4)</u> <u>Codification</u> <u>Reserves</u>	<u>(5)</u> <u>Codification</u> <u>Standard</u>

(iii) The information listed shall include all products identified by either the state of filing or any other states subscribing to this alternative.

(iv) If there is no codification standard for the type of product or risk in force or if the codification standard does not directly address the type of product or risk in force, the appointed actuary shall provide detailed disclosure of the specific method and assumptions used in determining the reserves held.

(2) The commissioner may reject an opinion based on the laws and regulations of the state of domicile and require an opinion based on the laws of this state. If a company is unable to provide the opinion within 60 days of the request or such other period of time determined by the commissioner after consultation with the company, the commissioner may contract with an independent actuary at the company's expense to prepare and file the opinion.

§3.1607. Description of Actuarial Memorandum Including an Asset Adequacy Analysis and Regulatory Asset Adequacy Issues Summary.

(a) General. Any actuarial memorandum required by the provisions of this subchapter shall be prepared in accordance with and subject to the provisions and qualifications of paragraphs (1) - (5) of this subsection.

(1) In accordance with Insurance Code Article 3.28, §2A, 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 the opinion. The memorandum shall be made available for examination by the commissioner upon his or her request.

(2) 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 §3.1604 of this title (relating to Definitions), with respect to the areas covered in such memoranda, and so state in their memoranda.

(3) If the commissioner requests a memorandum and no such memorandum exists or if the commissioner finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board as required by §3.1605 of this title (relating to General Requirements), or the standards and requirements of this subchapter, 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.

(4) 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. 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 required by this subchapter for any one of the current year or the preceding three years.

(5) In accordance with Insurance Code Article 3.28, §2A, the appointed actuary shall prepare a regulatory asset adequacy issues summary, the contents of which are specified in subsection (c) of this section. The regulatory asset adequacy issues summary will be submitted to the Actuarial Division, Financial Program, M.C. 302-3A, Texas Department of Insurance, 333 Guadalupe, P.O. Box 14904, Austin, Texas 78714-9104 no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required.

(b) Details of the memorandum section documenting asset adequacy analysis. When an actuarial opinion under §3.1606 of this title (relating to Statement of Actuarial Opinion Based on an Asset Adequacy Analysis) is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in §3.1605(d) of this title and any additional standards under this subchapter. The documentation of the assumptions used in paragraphs (1) - (2) of this subsection shall be such

that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions. The memorandum shall specify:

(1) for reserves:

(A) product descriptions including market description, underwriting and other aspects of a risk profile and the specific risks the appointed actuary deems significant;

(B) source of liability in force;

(C) reserve method and basis;

(D) investment reserves;

(E) reinsurance arrangements;

(F) identification of any explicit or implied guarantees made by the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis;

(G) documentation of assumptions to test reserves for the following:

(i) lapse rates (both base and excess);

(ii) interest crediting rate strategy;

(iii) mortality;

(iv) policyholder dividend strategy;

(v) competitor or market interest rate;

(vi) annuitization rates;

(vii) commissions and expenses; and

(viii) morbidity.

(2) 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;

(D) asset valuation bases; and

(E) documentation of assumptions made for:

(i) default costs;

(ii) bond call function;

(iii) mortgage prepayment function;

(iv) determining market value for assets sold due to disinvestment strategy; and

(v) determining yield on assets acquired through the investment strategy.

(3) For the analysis basis:

(A) methodology;

(B) rationale for inclusion or exclusion of different blocks of business and how pertinent risks were analyzed;

(C) rationale for degree of rigor in analyzing different blocks of business (include in the rationale the level of “materiality” that was used in determining how rigorously to analyze different blocks of business);

(D) criteria for determining asset adequacy (include in the criteria the precise basis for determining if assets are adequate to cover reserves under “moderately adverse conditions” or other conditions as specified in relevant actuarial standards of practice); and

(E) whether the impact of federal income taxes was considered and the method of treating reinsurance in the asset adequacy analysis;

(4) summary of material changes in methods, procedures, or assumptions from prior year’s asset adequacy analysis;

(5) summary of results; and

(6) conclusions.

(c) Details of the regulatory asset adequacy issues summary.

(1) The regulatory asset adequacy issues summary shall include:

(A) descriptions of the scenarios tested (including whether those scenarios are stochastic or deterministic) and the sensitivity testing done relative to those scenarios. If negative ending surplus results under certain tests in the aggregate, the actuary should describe those tests and the amount of additional reserve as of the valuation date which, if held, would eliminate the negative aggregate surplus values. Ending surplus values shall be determined by either extending the projection period until the in force and associated assets and liabilities at the end of the projection period are immaterial or by adjusting the surplus amount at the end of the projection period by an amount that

appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force.

(B) the extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different than the assumptions used in the previous asset adequacy analysis.

(C) the amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion.

(D) comments on any interim results that may be of significant concern to the appointed actuary.

(E) the methods used by the actuary to recognize the impact of reinsurance on the company's cash flows, including both assets and liabilities, under each of the scenarios tested.

(F) whether the actuary has been satisfied that all options whether explicit or embedded, in any asset or liability (including but not limited to those affecting cash flows embedded in fixed income securities) and equity-like features in any investments have been appropriately considered in the asset adequacy analysis.

(2) The regulatory asset adequacy issues summary shall contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and shall be signed and dated by the appointed actuary rendering the actuarial opinion.

(3) The regulatory asset adequacy issues summary will be used to examine the company's financial condition and ability to meet its liabilities. It will be considered information obtained during the course of an examination under Insurance Code Article 1.15 and treated as confidential.

(d) Conformity to standards of practice. The memorandum shall include a statement with wording substantially similar to that of this subsection as follows: 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 standards form the basis for this memorandum.

(e) Use of assets supporting the IMR and the AVR. An appropriate allocation of assets in the amount of the IMR, whether positive or negative, shall be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the 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. The amount of the assets used for the AVR shall 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 shall be disclosed in the memorandum.

(f) Documentation retention. The appointed actuary shall retain on file, for at least seven years, sufficient documentation so that it will be possible to

determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained.

§3.1608. Asset Adequacy Analysis Exemption.

(a) Companies that do business only in Texas and no other state are not required to perform the asset adequacy analysis required by §3.1605 of this title (relating to General Requirements) unless required by the commissioner pursuant to §3.1603 of this title (relating to Commissioner Discretion).

(b) Companies exempted under subsection (a) of this section shall submit with the annual statement an actuarial opinion pursuant to this subchapter but not based on an asset adequacy analysis.

8. CERTIFICATION. This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued at Austin, Texas, on _____, 2004.

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance