



Ohio Revised Code

Section 3903.722 Submission of data prior to operative date of valuation manual.

Effective: September 4, 2014

Legislation: Senate Bill 140 - 130th General Assembly

(A) This section shall apply prior to the operative date of the valuation manual.

(B) Every life insurance company doing business in this state shall annually submit to the superintendent the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by rule by the superintendent are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts, and comply with the applicable laws of this state. The superintendent shall adopt rules establishing the form and content of this opinion, and may require the life insurance company to supply information in addition to that contained in the actuarial opinion.

(C)(1) Every life insurance company, except as exempted by rule adopted by the superintendent, shall also include in the annual opinion required by division (B) of this section an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by rule by the superintendent, 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, make adequate provision for the company's obligations under the policies and contracts, including the benefits under and the expenses associated with the policies and contracts.

(2) The superintendent may provide by rule for a transition period for establishing any higher reserves that the qualified actuary may consider necessary to render the opinion required by division (C) of this section.

(D) Each opinion required by division (C)(1) of this section shall be governed by the following provisions:



(1) The opinion shall be supported by a memorandum prepared in a form and contain content as specified by rule by the superintendent.

(2) If a life insurance company fails to provide a supporting memorandum within the period of time specified by rule by the superintendent, or if the superintendent determines that a supporting memorandum fails to meet the standards set out in the rule, or is otherwise unacceptable to the superintendent, the superintendent may employ, at the expense of the insurance company, a qualified actuary to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the superintendent.

(E) Every opinion required by this section is governed by the following:

(1) The opinion shall be submitted with the annual statement reflecting the valuation of the reserve liabilities for each year ending on or after December 31, 2012.

(2) The opinion shall apply to all business in force including individual and group health insurance plans in form and substance as specified in rules adopted by the superintendent.

(3) The opinion shall be based on standards adopted from time to time by the actuarial standards board of the American academy of actuaries and on such additional standards as the superintendent may prescribe by rule.

(4) In the case of an opinion required to be submitted by a foreign or alien life insurance company, the superintendent may accept the opinion filed by that company with the insurance regulatory authority of another state if the superintendent determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(5) Except in cases of fraud or willful misconduct, the qualified actuary is not liable for damages in any civil action to any person, other than the insurance company and the superintendent, for any act, error, omission, decision, or conduct with respect to the actuary's opinion.

(6) The superintendent shall establish by rule penalties for an insurance company's or qualified actuary's failure to comply with this section.



(7) Except as provided in divisions (E)(9) and (F) of this section, documents, materials, or other information in the possession or control of the department of insurance that are a memorandum in support of the opinion or other material provided by the insurance company to the superintendent in connection with the memorandum shall be confidential by law and privileged, is not a public record under section 149.43 of the Revised Code, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

(8) Neither the superintendent nor any person who received documents, materials, or other information while acting under the authority of the superintendent shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to division (F) of this section.

(9) A memorandum in support of the opinion, and any other associated material, may be subject to subpoena for the purpose of defending an action seeking damages from the actuary submitting the memorandum by reason of an action required by this section or by rules adopted by the superintendent.

(10) If any portion of a confidential and privileged memorandum is cited by the company in its marketing, is cited before any governmental agency other than a state insurance regulatory authority, or is released by the company to the news media, the entire memorandum shall no longer be confidential and privileged.

(F) Notwithstanding division (E) of this section, the superintendent may do any of the following:

(1) Disclose memoranda and other materials described in this section upon obtaining prior written consent from the insurer to which the memorandum or other materials pertain;

(2) Disclose memoranda and other materials described in this section to the American academy of actuaries upon receipt of a written request from the academy stating that a memorandum or other material is required for the purpose of professional disciplinary proceedings. A request from the American academy of actuaries shall set forth the procedures to be used by the academy for preserving the confidential and privileged status of the memorandum or other material. If the



procedures set forth are not satisfactory to the superintendent, the superintendent shall not release the memorandum or other material to the academy.

(3) Share documents and materials or other information, including the confidential and privileged documents, materials, or information subject to division (E) of this section, with other state, federal, and international regulatory agencies and law enforcement officials and with the national association of insurance commissioners and its affiliates and subsidiaries, provided that the recipient agrees to maintain the confidential or privileged status of any confidential or privileged memorandum or other material and has the legal authority to do so;

(4) Use memoranda and other materials described in this section in the furtherance of any regulatory or legal action brought by or on behalf of the superintendent or the state, resulting from the exercise of the superintendent's official duties.

(G) Notwithstanding divisions (E) and (F) of this section, the superintendent may authorize the national association of insurance commissioners and its affiliates and subsidiaries by agreement to share confidential or privileged memoranda and other material received pursuant to division (F)(3) of this section with local, state, federal, and international regulatory and law enforcement agencies and with local, state, and federal prosecutors, provided that the recipient agrees to maintain the confidential or privileged status of the confidential or privileged memorandum or other material and has authority to do so.

(H) Nothing in this section shall prohibit the superintendent from receiving memoranda and other material in accordance with section 3901.045 of the Revised Code.

(I) The superintendent may enter into agreements governing the sharing and use of memoranda and materials consistent with the requirements of this section.

(J) No waiver of any applicable privilege or claim of confidentiality in the memoranda and materials described in this section shall occur as a result of sharing or receiving memoranda and material as authorized in divisions (F)(2) and (3), (G), and (H) of this section.