

**SENATE . . . . . No. 539**

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**The Commonwealth of Massachusetts**

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PRESENTED BY:

*Anthony W. Petrucci*

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to principle-based reserving for life insurance.

\_\_\_\_\_

PETITION OF:

NAME:

*Anthony W. Petrucci*

DISTRICT/ADDRESS:

*First Suffolk and Middlesex*

**SENATE . . . . . No. 539**

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By Mr. Petruccelli, a petition (accompanied by bill, Senate, No. 539) of Anthony W. Petruccelli for legislation relative to principle-based reserving for life insurance. Financial Services.

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Eighty-Ninth General Court  
(2015-2016)**  
\_\_\_\_\_

An Act relative to principle-based reserving for life insurance.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           Section 1. Chapter 175 of the General Laws, as appearing in the 2012 Official Edition, is  
2 hereby amended by adding after Section 9 the following new Section:

3           9 ½. Standard Valuation Law

4           (a) This Section shall apply to all life insurance contracts, accident and health insurance  
5 contracts and deposit-type contracts issued on or after the operative date of the valuation manual  
6 as defined herein. The provisions of Section 9 shall not apply to such policies.

7           (b) As used in this Section, the following words, unless the context clearly requires  
8 otherwise, shall have the following meanings:-

9           “accident and health insurance” means contracts that incorporate morbidity risk and  
10 provide protection against economic loss resulting from accident, sickness, or medical conditions  
11 and as may be specified in the valuation manual.

12           “appointed actuary” means a qualified actuary who is appointed in accordance with the  
13 valuation manual to prepare the actuarial opinion required in Section 9B 1/2 of this Chapter.

14           “company” means an entity, which (a) has written, issued, or reinsured life insurance  
15 contracts, accident and health insurance contracts, or deposit-type contracts in this  
16 Commonwealth and has at least one such policy in force or on claim or (b) has written, issued, or  
17 reinsured life insurance contracts, accident and health insurance contracts, or deposit-type  
18 contracts in any state and is required to hold a certificate of authority to write life insurance,  
19 accident and health insurance, or deposit-type contracts in this State.

20           “deposit-type contract” means contracts that do not incorporate mortality or morbidity  
21 risks and as may be specified in the valuation manual.

22           “life insurance” means contracts that incorporate mortality risk, including annuity and  
23 pure endowment contracts, and as may be specified in the valuation manual.

24           “NAIC” means the National Association of Insurance Commissioners.

25           “policyholder behavior” means any action a policyholder, contract holder or any other  
26 person with the right to elect options, such as a certificate holder, may take under a policy or  
27 contract subject to this Section including, but not limited to, lapse, withdrawal, transfer, deposit,  
28 premium payment, loan, annuitization, or benefit elections prescribed by the policy or contract  
29 but excluding events of mortality or morbidity that result in benefits prescribed in their essential  
30 aspects by the terms of the policy or contract.

31 “principle-based valuation” means a reserve valuation that uses one or more methods or  
32 one or more assumptions determined by the insurer and is required to comply with subsection (g)  
33 of this Section as specified in the valuation manual.

34 “qualified actuary” means an individual who is qualified to sign the applicable statement  
35 of actuarial opinion in accordance with the American Academy of Actuaries qualification  
36 standards for actuaries signing such statements and who meets the requirements specified in the  
37 valuation manual.

38 “tail risk” means a risk that occurs either where the frequency of low probability events is  
39 higher than expected under a normal probability distribution or where there are observed events  
40 of very significant size or magnitude.

41 “valuation manual” means the manual of valuation instructions adopted by the NAIC as  
42 specified in this Section or as subsequently amended.

43 (c)

44 (1) The commissioner shall annually value, or cause to be valued, the reserve liabilities  
45 (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure  
46 endowment contracts of every life insurance company doing business in this Commonwealth  
47 issued prior to the operative date of the valuation manual. In calculating reserves, the  
48 commissioner may use group methods and approximate averages for fractions of a year or  
49 otherwise. In lieu of the valuation of the reserves required of a foreign or alien company, the  
50 commissioner may accept a valuation made, or caused to be made, by the insurance supervisory  
51 official of any State or other jurisdiction when the valuation complies with the minimum  
52 standard provided in this Section.

53           (2) The minimum standard for the valuation of all policies and contracts, as appropriate,  
54 subject to this Section issued prior to the operative date of the valuation manual shall be that  
55 provided by the laws in effect immediately prior to the effective date of this Section. The  
56 provisions set forth in subsections (e), (f) and (g) of this Section shall not apply to any such  
57 policies and contracts.

58           (d)

59           (1) The commissioner shall annually value, or cause to be valued, the reserve liabilities  
60 (hereinafter called reserves) for all outstanding life insurance contracts, annuity and pure  
61 endowment contracts, accident and health contracts, and deposit-type contracts of every  
62 company issued on or after the operative date of the valuation manual. In lieu of the valuation of  
63 the reserves required of a foreign or alien company, the commissioner may accept a valuation  
64 made, or caused to be made, by the insurance supervisory official of any State or other  
65 jurisdiction when the valuation complies with the minimum standard provided in this Section.

66           (2) The provisions set forth in subsections (e), (f) and (g) of this Section shall apply to all  
67 policies and contracts issued on or after the operative date of the valuation manual. The  
68 provisions of Section 9 shall not apply to such policies and contracts.

69           (3) Notwithstanding any provision in the valuation manual, a mortality table shall only be  
70 applied to an individual or group annuity or pure endowment contract subject to this subsection  
71 on a gender-neutral or gender-blended basis in accordance with regulations promulgated by the  
72 commissioner.

73 (e) For accident and health insurance contracts issued on or after the operative date of the  
74 valuation manual, the standard prescribed in the valuation manual is the minimum standard of  
75 valuation required under subsection (d) of this Section.

76 (f)

77 (1) For policies issued on or after the operative date of the valuation manual, the standard  
78 prescribed in the valuation manual is the minimum standard of valuation required under  
79 subsection (d) of this Section, except as provided under subparagraphs (5) or (7) of this  
80 subsection.

81 (2) The operative date of the valuation manual is January 1 of the first calendar year  
82 following the first July 1 as of which all of the following have occurred:

83 (i) The valuation manual has been adopted by the NAIC by an affirmative vote of at least  
84 forty-two (42) members, or three-fourths of the members voting, whichever is greater.

85 (ii) The Standard Valuation Law, as amended by the NAIC in 2009, or legislation  
86 including substantially similar terms and provisions, has been enacted by States representing  
87 greater than 75% of the direct premiums written as reported in the following annual statements  
88 submitted for 2008: life, accident and health annual statements; health annual statements; or  
89 fraternal annual statements.

90 (iii) The Standard Valuation Law, as amended by the NAIC in 2009, or legislation  
91 including substantially similar terms and provisions, has been enacted by at least forty-two (42)  
92 of the following fifty-five (55) jurisdictions: The fifty States of the United States, American  
93 Samoa, the American Virgin Islands, the District of Columbia, Guam, and Puerto Rico.

94 (3) Unless a change in the valuation manual specifies a later effective date, changes to the  
95 valuation manual shall be effective on January 1 following the date when :

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

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

100 (B) Members of the NAIC representing jurisdictions totaling greater than 75% of the  
101 direct premiums written as reported in the following annual statements most recently available  
102 prior to the vote in subsection (f), paragraph (3), clause (i), subclause (A) of this Section: life,  
103 accident and health annual statements, health annual statements, or fraternal annual statements.

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

105 (i) Minimum valuation standards for and definitions of the policies or contracts subject to  
106 subsection (d) of this Section. Such minimum valuation standards shall be:

107 (A) The commissioners reserve valuation method for life insurance contracts, other than  
108 annuity contracts, subject to subsection (d) of this Section;

109 (B) The commissioners annuity reserve valuation method for annuity contracts subject to  
110 subsection (d) of this Section; and

111 (C) Minimum reserves for all other policies or contracts subject to subsection (d) of this  
112 Section.

113 (ii) Which policies or contracts or types of policies or contracts that are subject to the  
114 requirements of a principle-based valuation in subsection (g) paragraph (1) and the minimum  
115 valuation standards consistent with those requirements;

116 (iii) For policies and contracts subject to a principle-based valuation under subsection (g):

117 (A) Requirements for the format of reports to the commissioner under subsection (g),  
118 paragraph (2), clause (iii) and which shall include information necessary to determine if the  
119 valuation is appropriate and in compliance with this Section;

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

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

124 (iv) For policies not subject to a principle-based valuation under subsection (g) the  
125 minimum valuation standard shall either

126 (A) Be consistent with the minimum standard of valuation prior to the operative date of  
127 the valuation manual; or

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

131 (v) Other requirements, including, but not limited to, those relating to reserve methods,  
132 models for measuring risk, generation of economic scenarios, assumptions, margins, use of

133 company experience, risk measurement, disclosure, certifications, reports, actuarial opinions and  
134 memorandums, transition rules and internal controls; and

135 (vi) The data and form of the data required under subsection (h), with whom the data  
136 must be submitted, and may specify other requirements including data analyses and reporting of  
137 analyses.

138 (5) In the absence of a specific valuation requirement or if a specific valuation  
139 requirement in the valuation manual is not, in the opinion of the commissioner, in compliance  
140 with this Section, then the company shall, with respect to such requirements, comply with  
141 minimum valuation standards prescribed by the commissioner by regulation.

142 (6) The commissioner may engage a qualified actuary, at the expense of the company, to  
143 perform an actuarial examination of the company and opine on the appropriateness of any  
144 reserve assumption or method used by the company, or to review and opine on a company's  
145 compliance with any requirement set forth in this Section. The commissioner may rely upon the  
146 opinion, regarding provisions contained within this Section, of a qualified actuary engaged by  
147 the commissioner of another State, district or territory of the United States. As used in this  
148 paragraph, term "engage" includes employment and contracting.

149 (7) The commissioner may require a company to change any assumption or method that  
150 in the opinion of the commissioner is necessary in order to comply with the requirements of the  
151 valuation manual or this Section; and the company shall adjust the reserves as required by the  
152 commissioner. The commissioner may take other disciplinary action as permitted pursuant to  
153 Chapters 175 and Chapters 176D of the General Laws.

154 (g)

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

157 (i) Quantify the benefits and guarantees, and the funding, associated with the contracts  
158 and their risks at a level of conservatism that reflects conditions that include unfavorable events  
159 that have a reasonable probability of occurring during the lifetime of the contracts. For policies  
160 or contracts with significant tail risk, reflects conditions appropriately adverse to quantify the tail  
161 risk.

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

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

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

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

169 1. Be established utilizing the company's available experience, to the extent it is relevant  
170 and statistically credible; or

171 2. To the extent that company data is not available, relevant, or statistically credible, be  
172 established utilizing other relevant, statistically credible experience.

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

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

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

179 (ii) Provide to the commissioner and the board of directors an annual certification of the  
180 effectiveness of the internal controls with respect to the principle-based valuation. Such controls  
181 shall be designed to assure that all material risks inherent in the liabilities and associated assets  
182 subject to such valuation are included in the valuation, and that valuations are made in  
183 accordance with the valuation manual. The certification shall be based on the controls in place as  
184 of the end of the preceding calendar year.

185 (iii) Develop, and file with the commissioner upon request, a principle-based valuation  
186 report that complies with standards prescribed in the valuation manual.

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

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

190 (i)

191 (1) For purposes of this subsection (i), “Confidential Information” shall mean:

192 (i) A memorandum in support of an opinion submitted under Section 9B 1/2 and any  
193 other documents, materials and other information, including, but not limited to, all working  
194 papers, and copies thereof, created, produced or obtained by or disclosed to the commissioner or  
195 any other person in connection with such memorandum;

196 (ii) All documents, materials and other information, including, but not limited to, all  
197 working papers, and copies thereof, created, produced or obtained by or disclosed to the  
198 commissioner or any other person in the course of an examination made under subsection (f),  
199 paragraph (6) of this Section; provided, however, that if an examination report or other material  
200 prepared in connection with an examination made under the provisions of Section 4 of this  
201 Chapter is not held as private and confidential information under the provisions of Section 4 of  
202 this Chapter, an examination report or other material prepared in connection with an examination  
203 made under subsection (f), paragraph (6) of this Section shall not be “Confidential Information”  
204 to the same extent as if such examination report or other material had been prepared under the  
205 provisions of Section 4 of Chapter 175 ;

206 (iii) Any reports, documents, materials and other information developed by a company in  
207 support of, or in connection with, an annual certification by the company under subsection (g),  
208 paragraph (2), clause (ii) of this Section evaluating the effectiveness of the company’s internal  
209 controls with respect to a principle-based valuation and any other documents, materials and other  
210 information, including, but not limited to, all working papers, and copies thereof, created,  
211 produced or obtained by or disclosed to the commissioner or any other person in connection with  
212 such reports, documents, materials and other information;

213 (iv) Any principle-based valuation report developed under subsection (g), paragraph (2),  
214 clause (iii) of this Section and any other documents, materials and other information, including,  
215 but not limited to, all working papers, and copies thereof, created, produced or obtained by or  
216 disclosed to the commissioner or any other person in connection with such report; and

217 (v) Any documents, materials, data and other information submitted by a company under  
218 subsection (h) of this Section (collectively, “experience data”) and any other documents,  
219 materials, data and other information, including, but not limited to, all working papers, and  
220 copies thereof, created or produced in connection with such experience data, in each case that  
221 include any potentially company-identifying or personally identifiable information, that is  
222 provided to or obtained by the commissioner (together with any “experience data”, the  
223 “experience materials”) and any other documents, materials, data and other information,  
224 including, but not limited to, all working papers, and copies thereof, created, produced or  
225 obtained by or disclosed to the commissioner or any other person in connection with such  
226 experience materials.

227 (2) Privilege for, and Confidentiality of, Confidential Information

228 (i) Except as provided in this subsection (i), a company’s Confidential Information is  
229 confidential by law and privileged, and shall not be subject to Chapter 66 of the General Laws,  
230 or the twenty-sixth clause of Section 7 of Chapter 4 of the General Laws, shall not be subject to  
231 subpoena and shall not be subject to discovery or admissible in evidence in any private civil  
232 action; provided, however, that the commissioner is authorized to use the Confidential  
233 Information in the furtherance of any regulatory or legal action brought against the company as a  
234 part of the commissioner’s official duties.

235 (ii) Neither the commissioner nor any person who received Confidential Information  
236 while acting under the authority of the commissioner shall be permitted or required to testify in  
237 any private civil action concerning any Confidential Information.

238 (iii) In order to assist in the performance of the commissioner's duties, the commissioner  
239 may share Confidential Information (a) with other state, federal and international regulatory  
240 agencies and with the NAIC and its affiliates and subsidiaries and (b) in the case of Confidential  
241 Information specified in subsection (i), paragraph (1), clause (i) and subsection (i), paragraph (1),  
242 clause (iv) of this Section only, with the Actuarial Board for Counseling and Discipline or its  
243 successor upon request stating that the Confidential Information is required for the purpose of  
244 professional disciplinary proceedings and with state, federal and international law enforcement  
245 officials; in the case of (a) and (b), provided that such recipient agrees, and has the legal  
246 authority to agree, to maintain the confidentiality and privileged status of such documents,  
247 materials, data and other information in the same manner and to the same extent as required for  
248 the commissioner.

249 (iv) The commissioner may receive documents, materials, data and other information,  
250 including otherwise confidential and privileged documents, materials, data or information, from  
251 the NAIC and its affiliates and subsidiaries, from regulatory or law enforcement officials of other  
252 foreign or domestic jurisdictions and from the Actuarial Board for Counseling and Discipline or  
253 its successor and shall maintain as confidential or privileged any document, material, data or  
254 other information received with notice or the understanding that it is confidential or privileged  
255 under the laws of the jurisdiction that is the source of the document, material or other  
256 information.

257 (v) The commissioner may enter into agreements governing sharing and use of  
258 information consistent with this subsection (i), paragraph (2) of this Section.

259 (vi) No waiver of any applicable privilege or claim of confidentiality in the Confidential  
260 Information shall occur as a result of disclosure to the commissioner under this section or as a  
261 result of sharing as authorized in subsection (i), paragraph (2), clause (iii) of this Section.

262 (vii) A privilege established under the law of any state or jurisdiction that is substantially  
263 similar to the privilege established under this subsection (i), paragraph (2) shall be available and  
264 enforced in any proceeding in, and in any court of this State.

265 (viii) In this subsection (i) “regulatory agency,” “law enforcement agency” and the  
266 “NAIC” include, but are not limited to, their employees, agents, consultants and contractors.

267 (3) Notwithstanding subsection (i), paragraph (2) of this Section, any Confidential  
268 Information specified in subsections (i), paragraph (1), clause (i) and subsection (i), paragraph  
269 (1), clause (iv) of this Section:

270 (i) May be subject to subpoena for the purpose of defending an action seeking damages  
271 from the appointed actuary submitting the related memorandum in support of an opinion  
272 submitted under Section 9B 1/2 of this Chapter or principle-based valuation report developed  
273 under subsection (g), paragraph (2), clause (iii) by reason of an action required by this Section  
274 or by regulations promulgated hereunder;

275 (ii) May otherwise be released by the commissioner with the written consent of the  
276 company; and

277 (iii.) Once any portion of a memorandum in support of an opinion submitted under  
278 Section 9B 1/2 of this Chapter or a principle-based valuation report developed under subsection  
279 (g), paragraph (3), clause (iii) of this Section is cited by the company in its marketing or is

280 publicly volunteered to or before a governmental agency other than a state insurance department  
281 or is released by the company to the news media, all portions of such memorandum or report  
282 shall no longer be confidential.

283 (j) Single State Exemption

284 (1) The commissioner may exempt specific product forms or product lines of a domestic  
285 company that is licensed and doing business only in Massachusetts from the requirements of  
286 subsection (f) provided:

287 (i) The commissioner has issued an exemption in writing to the company and has not  
288 subsequently revoked the exemption in writing; and

289 (ii) The company computes reserves using assumptions and methods used prior to the  
290 operative date of the valuation manual in addition to any requirements established by the  
291 commissioner and promulgated by regulation.

292 (2) For any company granted an exemption under this Section, Section 9B 1/2, subsection  
293 (e), and the minimum standards for the valuation of all applicable policies and contracts provided  
294 by the laws in effect immediately prior to the effective date of this Section shall be applicable.

295 (k) The commissioner may, pursuant to Chapter 30A of the General Laws, upon notice  
296 and opportunity for all interested parties to be heard, issue such rules, regulations and orders as  
297 shall be necessary to carry out the provisions of this Section.

298 (l) If any provision of this Section, or the application thereof to any person or  
299 circumstance, is held invalid, such determination shall not affect the provisions or applications of

300 this Section which can be given effect without the invalid provision or application, and to that  
301 end the provisions of this Section are severable.

302 SECTION 2. Said Chapter 175 of the General Laws as appearing in the 2012 Official  
303 Edition is hereby further amended by inserting after Section 9B the following new Section:-

304 Section 9B ½. Actuarial Opinion of Reserves

305 This Section shall apply to actuarial opinion of reserves.

306 The words defined in Section 9 1/2 shall, unless the context clearly requires otherwise,  
307 have the same meanings when used in this Section.

308 (a) After the operative date of the valuation manual as defined in Section 9 1/2 of this  
309 Chapter, every company with outstanding life insurance contracts, accident and health insurance  
310 contracts or deposit-type contracts in the Commonwealth and subject to regulation by the  
311 commissioner shall annually submit the opinion of the appointed actuary as to whether the  
312 reserves and related actuarial items held in support of the policies and contracts are computed  
313 appropriately, are based on assumptions that satisfy contractual provisions, are consistent with  
314 prior reported amounts and comply with applicable laws of this State. The valuation manual will  
315 prescribe the specifics of this opinion including any items deemed to be necessary to its scope.

316 (b) After the effective date of this Section and prior to the operative date of the valuation  
317 manual as defined in Section 9½ of this Chapter, the specifics of this opinion and the manner in  
318 which the confidentiality of the memorandum in support of the opinion shall be protected will be  
319 as prescribed by Section 9B of this Chapter.

320 (c) After the operative of the valuation manual as defined in Section 9 1/2 of this  
321 Chapter, every company with outstanding life insurance contracts, accident and health insurance  
322 contracts or deposit-type contracts in the Commonwealth and subject to regulation by the  
323 commissioner, except as exempted in the valuation manual, shall also annually include in the  
324 opinion required by Subsection (a) of this Section, an opinion of the same appointed actuary as  
325 to whether the reserves and related actuarial items held in support of the policies and contracts  
326 specified in the valuation manual, when considered in light of the assets held by the company  
327 with respect to the reserves and related actuarial items, including but not limited to the  
328 investment earnings on the assets and the considerations anticipated to be received and retained  
329 under the policies and contracts, make adequate provision for the company's obligations under  
330 the policies and contracts, including but not limited to the benefits under and expenses associated  
331 with the policies and contracts.

332 (d) The commissioner may provide by regulation for a transition period for establishing  
333 any higher reserves that the appointed actuary may deem necessary in order to render the opinion  
334 required by subsection (a) of this Section.

335 (e) Each opinion required by subsection (a) of this Section shall be governed by the  
336 following provisions:

337 (1) A memorandum, in form and substance as specified in the valuation manual, and  
338 acceptable to the commissioner, shall be prepared to support each actuarial opinion.

339 (2) If the insurance company fails to provide a supporting memorandum at the request of  
340 the commissioner within a period specified in the valuation manual or the commissioner  
341 determines that the supporting memorandum provided by the insurance company fails to meet

342 the standards prescribed by the valuation manual or is otherwise unacceptable to the  
343 commissioner, the commissioner may engage a qualified actuary at the expense of the company  
344 to review the opinion and the basis for the opinion and prepare the supporting memorandum  
345 required by the commissioner.

346 (f) Every opinion required by subsection (a) of this Section shall be governed by the  
347 following provisions:

348 (1) The opinion shall be in form and substance as specified in the valuation manual and  
349 acceptable to the commissioner.

350 (2) The opinion shall be submitted with the annual statement reflecting the valuation of  
351 such reserve liabilities for each year ending on or after the operative date of the valuation  
352 manual.

353 (3) The opinion shall apply to all policies and contracts subject to subsection (c) of this  
354 Section, plus other actuarial liabilities as may be specified in the valuation manual.

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

358 (5) In the case of an opinion required to be submitted by a foreign or alien company, the  
359 commissioner may accept the opinion filed by that company with the insurance supervisory  
360 official of another State if the commissioner determines that the opinion reasonably meets the  
361 requirements applicable to a company domiciled in this State.

362 (6) Except in cases of fraud or willful misconduct, the appointed actuary shall not be  
363 liable for damages to any person (other than the insurance company and the commissioner) for  
364 any act, error, omission, decision or conduct with respect to the appointed actuary's opinion.

365 (7) Disciplinary action by the commissioner against the company or the appointed  
366 actuary shall be defined in regulations by the commissioner.

367 (8) After the operative date of the valuation manual as defined in Section 9 ½ of this  
368 Chapter, a memorandum in support of an opinion submitted under Section 9B 1/2 and any other  
369 documents, materials and other information, including, but not limited to, all working papers,  
370 and copies thereof, created, produced or obtained by or disclosed to the commissioner or any  
371 other person in connection with such memorandum is "Confidential Information" under section  
372 (i) paragraph (1) clause (i) of Section 9 ½ of this chapter and shall be treated and protected as  
373 required under that section.

374 (k) The commissioner may, pursuant to Chapter 30A of the General Laws, upon notice  
375 and opportunity for all interested parties to be heard, issue such rules, regulations and orders as  
376 shall be necessary to carry out the provisions of this Section.

377 (l) If any provision of this Section, or the application thereof to any person or  
378 circumstance, is held invalid, such determination shall not affect the provisions or applications of  
379 this Section which can be given effect without the invalid provision or application, and to that  
380 end the provisions of this Section are severable.

381 SECTION 3. Said Chapter 175 of the General Laws as appearing in the 2012 Official  
382 Edition, is hereby further amended by inserting after Section 144, the following new Section: -

383 Section 144 ½ . Standard Nonforfeiture Law for Life Insurance

384 (a) The provisions of Section 144 shall not apply to policies issued on and after the  
385 operative date of the valuation manual as defined by Section 9 1/2. The “operative date of the  
386 valuation manual” means the January 1 of the first calendar year that the valuation manual as  
387 defined in Section 9 ½, is effective.

388 (b) In the case of policies issued on and after the operative date of the valuation manual  
389 as defined in subsection (a), no policy of life insurance, except as stated in subsection (i), shall be  
390 delivered or issued for delivery in the Commonwealth unless it shall contain in substance the  
391 following provisions, or corresponding provisions which in the opinion of the commissioner are  
392 at least as favorable to the defaulting or surrendering policyholder as are the minimum  
393 requirements specified here and are essentially in compliance with subsection (h) of this Section:

394 (1) That, in the event of default in any premium payment, the company will grant, upon  
395 proper request not later than sixty (60) days after the due date of the premium in default, a paid-  
396 up nonforfeiture benefit on a plan stipulated in the policy, effective as of the due date, of such  
397 amount as may be hereinafter specified. In lieu of the stipulated paid-up nonforfeiture benefit,  
398 the company may substitute, upon proper request not later than sixty (60) days after the due date  
399 of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit  
400 which provides a greater amount or longer period of death benefits or, if applicable, a greater  
401 amount or earlier payment of endowment benefits.

402 (2) That, upon surrender of the policy within sixty (60) days after the due date of any  
403 premium payment in default after premiums have been paid for at least three (3) full years in the  
404 case of ordinary insurance or five (5) full years in the case of industrial insurance, the company

405 will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as  
406 may be hereinafter specified.

407 (3) That a specified paid-up nonforfeiture benefit shall become effective as specified in  
408 the policy unless the person entitled to make the election elects another available option not later  
409 than sixty (60) days after the due date of the premium in default.

410 (4) That if the policy shall have become paid-up by completion of all premium payments  
411 or if it is continued under any paid-up nonforfeiture benefit which became effective on or after  
412 the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the  
413 case of industrial insurance, the company will pay, upon surrender of the policy within thirty  
414 (30) days after any policy anniversary, a cash surrender value of such amount as may be  
415 hereinafter specified.

416 (5) In the case of policies which cause, on a basis guaranteed in the policy, unscheduled  
417 changes in benefits or premiums, or which provide an option for changes in benefits or premiums  
418 other than a change to a new policy; a statement of the mortality table, interest rate and method  
419 used in calculating cash surrender values and the paid-up nonforfeiture benefits available under  
420 the policy. In the case of all other policies, a statement of the mortality table and interest rate  
421 used in calculating the cash surrender values and the paid-up nonforfeiture benefits available  
422 under the policy, together with a table showing the cash surrender value, if any, and paid-up  
423 nonforfeiture benefit, if any, available under the policy on each policy anniversary either during  
424 the first twenty (20) policy years or during the term of the policy, whichever is shorter, such  
425 values and benefits to be calculated upon the assumption that there are no dividends or paid-up  
426 additions credited to the policy and that there is no indebtedness to the company on the policy.

427 (6) A statement that the cash surrender values and the paid-up nonforfeiture benefits  
428 available under the policy are not less than the minimum values and benefits required by or  
429 pursuant to the insurance law of the state in which the policy is delivered; an explanation of the  
430 manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by  
431 the existence of any paid-up additions credited to the policy or any indebtedness to the company  
432 on the policy; if a detailed statement of the method of computation of the values and benefits  
433 shown in the policy is not stated therein, a statement that such method of computation has been  
434 filed with the insurance supervisory official of the state in which the policy is delivered; and a  
435 statement of the method to be used in calculating the cash surrender value and a paid-up  
436 nonforfeiture benefit available under the policy on any policy anniversary beyond the last  
437 anniversary for which values and benefits are consecutively shown in the policy.

438 Any of the foregoing provisions or portions thereof not applicable by reason of the plan  
439 of insurance may, to the extent inapplicable, be omitted from the policy.

440 The company shall reserve the right to defer the payment of any cash surrender value for  
441 a period of six (6) months after demand therefor with surrender of the policy.

442 (c)(1) Any cash surrender value available under the policy in the event of default in a  
443 premium payment due on any policy anniversary, whether or not required by subsection (b),  
444 shall be an amount not less than the excess, if any, of the present value, on the anniversary, of the  
445 future guaranteed benefits which would have been provided for by the policy, including any  
446 existing paid-up additions, if there had been no default, over the sum of:

447 (i) The then present value of the adjusted premiums as defined in subsection (e),  
448 corresponding to premiums which would have fallen due on and after the anniversary; and

449 (ii) The amount of any indebtedness to the company on the policy.

450 (2) Provided, however, that for any policy issued on or after the operative date of  
451 subsection (e), which provides supplemental life insurance or annuity benefits at the option of  
452 the insured and for an identifiable additional premium by rider or supplemental policy provision,  
453 the cash surrender value referred to in paragraph (1) of this subsection shall be an amount not  
454 less than the sum of the cash surrender value for an otherwise similar policy issued at the same  
455 age without the rider or supplemental policy provision and the cash surrender value as defined in  
456 paragraph (1) of this subsection for a policy which provides only the benefits otherwise provided  
457 by such rider or supplemental policy provision.

458 (3) Provided, further, that for any family policy issued on or after the operative date of  
459 subsection (e), which defines a primary insured and provides term insurance on the life of the  
460 spouse of the primary insured expiring before the spouse's age seventy-one (71), the cash  
461 surrender value referred to in paragraph (1) of this subsection shall be an amount not less than  
462 the sum of the cash surrender value for an otherwise similar policy issued at the same age  
463 without term insurance on the life of the spouse and the cash surrender value as defined in  
464 paragraph (1) of this subsection for a policy which provides only the benefits otherwise provided  
465 by term insurance on the life of the spouse.

466 (4) Any cash surrender value available within thirty (30) days after any policy  
467 anniversary under any policy paid-up by completion of all premium payments or any policy  
468 continued under any paid-up nonforfeiture benefit, whether or not required by subsection (b),  
469 shall be an amount not less than the present value, on the anniversary, of the future guaranteed

470 benefits provided for by the policy, including any existing paid-up additions, decreased by any  
471 indebtedness to the company on the policy.

472 (d) Any paid-up nonforfeiture benefit available under the policy in the event of default in  
473 a premium payment due on any policy anniversary shall be such that its present value as of the  
474 anniversary shall be at least equal to the cash surrender value then provided for by the policy or,  
475 if none is provided for, that cash surrender value which would have been required by this Section  
476 in the absence of the condition that premiums shall have been paid for at least a specified period.

477 (e)(1) This subsection shall apply to all policies issued on or after the operative date of  
478 this Section. Except as provided in paragraph 7 subsection , the adjusted premiums for any  
479 policy shall be calculated on an annual basis and shall be such uniform percentage of the  
480 respective premiums specified in the policy for each policy year, excluding amounts payable as  
481 extra premiums to cover impairments or special hazards and also excluding any uniform annual  
482 contract charge or policy fee specified in the policy in a statement of the method to be used in  
483 calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at  
484 the date of issue of the policy, of all adjusted premiums shall be equal to the sum of:

485 (i) The then present value of the future guaranteed benefits provided for by the policy;

486 (ii) One percent of either the amount of insurance, if the insurance be uniform in amount,  
487 or the average amount of insurance at the beginning of each of the first ten (10) policy years; and

488 (iii) One hundred twenty-five percent (125%) of the nonforfeiture net level premium as  
489 hereinafter defined.

490            Provided, however, that in applying the percentage specified in (iii) above no  
491 nonforfeiture net level premium shall be deemed to exceed four percent (4%) of either the  
492 amount of insurance, if the insurance be uniform in amount, or the average amount of insurance  
493 at the beginning of each of the first ten (10) policy years. The date of issue of a policy for the  
494 purpose of this Section shall be the date as of which the rated age of the insured is determined.

495            (2) The nonforfeiture net level premium shall be equal to the present value, at the date of  
496 issue of the policy, of the guaranteed benefits provided for by the policy divided by the present  
497 value, at the date of issue of the policy, of an annuity of one per annum payable on the date of  
498 issue of the policy and on each anniversary of the policy on which a premium falls due.

499            (3) In the case of policies which cause, on a basis guaranteed in the policy, unscheduled  
500 changes in benefits or premiums; or which provide an option for changes in benefits or  
501 premiums, other than a change to a new policy; the adjusted premiums and present values shall  
502 initially be calculated on the assumption that future benefits and premiums do not change from  
503 those stipulated at the date of issue of the policy. At the time of any change in the benefits or  
504 premiums, the future adjusted premiums, nonforfeiture net level premiums and present values  
505 shall be recalculated on the assumption that future benefits and premiums do not change from  
506 those stipulated by the policy immediately after the change.

507            (4) Except as otherwise provided in paragraph (7) of this subsection, the recalculated  
508 future adjusted premiums for any policy shall be uniform percentage of the respective future  
509 premiums specified in the policy for each policy year, excluding amounts payable as extra  
510 premiums to cover impairments and special hazards, and also excluding any uniform annual  
511 contract charge or policy fee specified in the policy in a statement of the method to be used in

512 calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at  
513 the time of change to the newly defined benefits or premiums, of all such future adjusted  
514 premiums shall be equal to the excess of:

515 (i) The sum of

516 (A) The then present value of the then future guaranteed benefits  
517 provided for by the policy, and

518 (B) The additional expense allowance, if any, over

519 (ii) The then cash surrender value, if any, or present value of any paid-up nonforfeiture  
520 benefit under this policy.

521 (5) The additional expense allowance, at the time of the change to the newly defined  
522 benefits or premiums, shall be the sum of:

523 (i) One percent of the excess, if positive, of the average amount of insurance at the  
524 beginning of each of the first ten (10) policy years subsequent to the change over the average  
525 amount of insurance prior to the change at the beginning of each of the first ten (10) policy years  
526 subsequent to the time of the most recent previous change, or, if there has been no previous  
527 change, the date of issue of the policy; and

528 (ii) One hundred twenty-five percent (125%) of the increase, if positive, in the  
529 nonforfeiture net level premium.

530 (6) The recalculated nonforfeiture net level premium shall be equal to the result obtained  
531 by dividing (i) by (ii) where

532 (i) Equals the sum of

533 (A) The nonforfeiture net level premium applicable prior to the change times the present  
534 value of an annuity of one per annum payable on each anniversary of the policy on or subsequent  
535 to the date of the change on which a premium would have fallen due had the change not  
536 occurred, and

537 (B) The present value of the increase in future guaranteed benefits provided for by the  
538 policy, and

539 (ii) Equals the present value of an annuity of one per annum payable on each anniversary  
540 of the policy on or subsequent to the date of change on which a premium falls due.

541 (7) Notwithstanding any other provisions of this section to the contrary, in the case of a  
542 policy issued on a substandard basis which provides reduced graded amounts of insurance so  
543 that, in each policy year, the policy has the same tabular mortality cost as an otherwise similar  
544 policy issued on the standard basis which provides higher uniform amount of insurance, adjusted  
545 premiums and present values for the substandard policy may be calculated as if it were issued to  
546 provide higher uniform amounts of insurance on the standard basis.

547 (8) All adjusted premiums and present values referred to in this Section shall for all  
548 policies of ordinary insurance be calculated on the basis of the Commissioners 1980 Standard  
549 Ordinary Mortality Table; or, at the election of the company for any one or more specified plans  
550 of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year  
551 Select Mortality Factors; shall for all policies of industrial insurance be calculated on the basis of  
552 the Commissioners 1961 Standard Industrial Mortality Table; and shall for all policies issued in a

553 particular calendar year be calculated on the basis of a rate of interest not exceeding the  
554 nonforfeiture interest rate as defined in this section, for policies issued in that calendar year.

555         Provided, however, that:

556             (i) At the option of the company, calculations for all policies issued in a particular  
557 calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture  
558 interest rate, as defined in this Section, for policies issued in the immediately preceding calendar  
559 year.

560             (ii) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions,  
561 any cash surrender value available, whether or not required by subsection(b), shall be calculated  
562 on the basis of the mortality table and rate of interest used in determining the amount of such  
563 paid-up nonforfeiture benefit and paid-up dividend additions, if any.

564             (iii) A company may calculate the amount of any guaranteed paid-up nonforfeiture  
565 benefit including any paid-up additions under the policy on the basis of an interest rate no lower  
566 than that specified in the policy for calculating cash surrender values.

567             (iv) In calculating the present value of any paid-up term insurance with accompanying  
568 pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be  
569 not more than those shown in the Commissioners 1980 Extended Term Insurance Table for  
570 policies of ordinary insurance and not more than the Commissioners 1961 Industrial Extended  
571 Term Insurance Table for policies of industrial insurance.

572             (v) For insurance issued on a substandard basis, the calculation of any adjusted premiums  
573 and present values may be based on appropriate modifications of the aforementioned tables.

574 (vi) For policies issued on or after the operative date of the valuation manual the  
575 valuation manual shall provide the Commissioners Standard mortality table for use in  
576 determining the minimum nonforfeiture standard that may be substituted for the Commissioners  
577 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or  
578 for the Commissioners 1980 Extended Term Insurance Table. If the commissioner approves by  
579 regulation any Commissioners Standard ordinary mortality table adopted by the National  
580 Association of Insurance Commissioners for use in determining the minimum nonforfeiture  
581 standard for policies issued on or after the operative date of the valuation manual then that  
582 minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the  
583 valuation manual.

584 (vii) For policies issued on or after the operative date of the valuation manual the  
585 valuation manual shall provide the Commissioners Standard mortality table for use in  
586 determining the minimum nonforfeiture standard that may be substituted for the Commissioners  
587 1961 Standard Industrial Mortality Table or the Commissioners 1961 Industrial Extended Term  
588 Insurance Table. If the commissioner approves by regulation any Commissioners Standard  
589 industrial mortality table adopted by the National Association of Insurance Commissioners for  
590 use in determining the minimum nonforfeiture standard for policies issued on or after the  
591 operative date of the valuation manual then that minimum nonforfeiture standard supersedes the  
592 minimum nonforfeiture standard provided by the valuation manual.

593 (9) For policies issued on and after the operative date of the valuation manual, the  
594 nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be  
595 provided by the valuation manual.

596 (10) Notwithstanding any other provision in this Chapter to the contrary, any refiling of  
597 nonforfeiture values or their methods of computation for any previously approved policy form  
598 which involves only a change in the interest rate or mortality table used to compute nonforfeiture  
599 values shall not require refiling of any other provisions of that policy form.

600 (f) In the case of any plan of life insurance which provides for future premium  
601 determination, the amounts of which are to be determined by the insurance company based on  
602 estimates of future experience, or in the case of any plan of life insurance which is of such a  
603 nature that minimum values cannot be determined by the methods described in subsections  
604 (b),(c),(d) or (e):

605 (1) The commissioner must be satisfied that the benefits provided under the plan are  
606 substantially as favorable to policyholders and insureds as the minimum benefits otherwise  
607 required by subsections (b), (c), (d) or (e);

608 (2) The commissioner must be satisfied that the benefits and the pattern of premiums of  
609 that plan are not such as to mislead prospective policyholders or insureds;

610 (3) The cash surrender values and paid-up nonforfeiture benefits provided by such plan  
611 must not be less than the minimum values and benefits required for the plan computed by a  
612 method consistent with the principles of this Section, as determined by regulations promulgated  
613 by the commissioner;

614 (g) Any cash surrender value and any paid-up nonforfeiture benefit, available under the  
615 policy in the event of default in a premium payment due at any time other than on the policy  
616 anniversary, shall be calculated with allowance for the lapse of time and the payment of  
617 fractional premiums beyond the last preceding policy anniversary. All values referred to in

618 subsections (c), (d) and (e) may be calculated upon the assumption that any death benefit is  
619 payable at the end of the policy year of death. The net value of any paid-up additions, other than  
620 paid-up term additions, shall not be less than the amounts used to provide such additions.

621 Notwithstanding the provisions of subsection (c), additional benefits payable:

622 (1) In the event of death or dismemberment by accident or accidental means;

623 (2) In the event of total and permanent disability;

624 (3) As reversionary annuity or deferred reversionary annuity benefits;

625 (4) As term insurance benefits provided by a rider or supplemental policy provision to  
626 which, if issued as a separate policy, this Section would not apply;

627 (5) As term insurance in the life on a child or on the lives of children provided in a policy  
628 on the life of a parent of the child, if such term insurance expires before the child's age is twenty-  
629 six, is uniform in amount after the child's age is one, and has not become paid-up by reason of  
630 the death of a parent of the child; and

631 (6) As other policy benefits additional to life insurance and endowment benefits, and  
632 premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender  
633 values and nonforfeiture benefits required by this Section and no such additional benefits shall be  
634 required to be included in any paid-up nonforfeiture benefits.

635 (h) This subsection, in addition to all other applicable subsections of this Section, shall  
636 apply to all policies issued on or after the operative date of the valuation manual.

637 (1) Any cash surrender value available under the policy in the event of default in a  
638 premium payment due on any policy anniversary shall be in an amount which does not differ by

639 more than two tenths of one percent (.2%) of either the amount of insurance, if the insurance be  
640 uniform in amount, or the average amount of insurance at the beginning of each of the first ten  
641 (10) policy years, from the sum of:

642 (i) The greater of zero and the basic cash value hereinafter specified; and

643 (ii) The present value of any existing paid-up additions less the amount of any  
644 indebtedness to the company under the policy.

645 The basic cash value shall be equal to the present value, on such anniversary, of the  
646 future guaranteed benefits which would have been provided for by the policy, excluding any  
647 existing paid-up additions and before deduction of any indebtedness to the company, if there had  
648 been no default, less the then present value of the nonforfeiture factors, as defined in this  
649 Section, corresponding to premiums which would have fallen due on and after the anniversary.  
650 Provided, however, that the effects on the basic cash value of supplemental life insurance or  
651 annuity benefits or of family coverage, as described in subsection (c), shall be the same as the  
652 effects specified in subsection (c), on the cash surrender values defined in that Section.

653 (2) The nonforfeiture factor for each policy year shall be an amount equal to a percentage  
654 of the adjusted premium for the policy year, as defined in subsection (e). Except as is required  
655 by the next succeeding sentence of this Section, the percentage:

656 (i) Must be the same percentage for each policy year between the second policy  
657 anniversary and the later of:

658 (A) The fifth policy anniversary; and

659 (B) The first policy anniversary at which there is available under the policy a cash  
660 surrender value in an amount, before including any paid-up additions and before deducting any  
661 indebtedness, of at least two tenths of one percent (.2%) of either the amount of insurance, if the  
662 insurance be uniform in amount, or the average amount of insurance at the beginning of each of  
663 the first ten (10) policy years; and

664 (ii) Must be such that no percentage after the later of the two policy anniversaries  
665 specified in paragraph (1) may apply to fewer than five (5) consecutive policy years.

666 No basic cash value may be less than the value which would be obtained if the adjusted  
667 premiums for the policy, as defined in subsection (e), were substituted for the nonforfeiture  
668 factors in the calculation of the basic cash value.

669 All adjusted premiums and present values referred to in this subsection shall for a  
670 particular policy be calculated on the same mortality and interest bases as are used in  
671 demonstrating the policy's compliance with the other subsections of this Section. The cash  
672 surrender values referred to in this section shall include any endowment benefits provided for by  
673 the policy.

674 Any cash surrender value available other than in the event of default in a premium  
675 payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit  
676 available under the policy in the event of default in a premium payment shall be determined in  
677 manners consistent with the manners specified for determining the analogous minimum amounts  
678 in subsections (b), (c), (d), (e) and (g). The amounts of any cash surrender values and of any  
679 paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed  
680 as subsection (g)(1) through (g)(6) shall conform with the principles of this section.

- 681 (i) This Section shall not apply to any of the following:
- 682 (1) Reinsurance;
- 683 (2) Group insurance;
- 684 (3) Pure endowment;
- 685 (4) Annuity or reversionary annuity contract;
- 686 (5) A term policy of uniform amount, which provides no guaranteed nonforfeiture or  
687 endowment benefits, or renewal thereof, of twenty (20) years or less expiring before age seventy-  
688 one (71), for which uniform premiums are payable during the entire term of the policy;
- 689 (6) A term policy of decreasing amount, which provides no guaranteed nonforfeiture or  
690 endowment benefits, on which each adjusted premium, calculated as specified in subsections (e),  
691 is less than the adjusted premium so calculated, on a term policy of uniform amount, or renewal  
692 thereof, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same  
693 age and for the same initial amount of insurance and for a term of twenty (20) years or less  
694 expiring before age seventy-one (71), for which uniform premiums are payable during the entire  
695 term of the policy;
- 696 (7) A policy, which provides no guaranteed nonforfeiture or endowment benefits, for  
697 which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at  
698 the beginning of any policy year, calculated as specified in subsections (c), (d) and (e), exceeds  
699 two and one-half percent (2 1/2%) of the amount of insurance at the beginning of the same  
700 policy year; nor

701 (8) a policy which shall be delivered outside this state through an agent or other  
702 representative of the company issuing the policy.

703 For purposes of determining the applicability of this Section, the age at expiry for a joint  
704 term life insurance policy shall be the age at expiry of the oldest life.

705 (j) The commissioner may, pursuant to Chapter 30A of the General Laws, upon notice  
706 and opportunity for all interested parties to be heard, issue such rules, regulations and orders as  
707 shall be necessary to carry out the provisions of this Section.

708 (k) If any provision of this Section, or the application thereof to any person or  
709 circumstance, is held invalid, such determination shall not affect the provisions or applications of  
710 this Section which can be given effect without the invalid provision or application, and to that  
711 end the provisions of this Section are severable.