

## **CHAPTER 26.1-35 STANDARD VALUATION LAW**

**26.1-35-01. Commissioner to annually value liabilities for life policies and annuities.** The commissioner shall annually value, or cause to be valued, the reserve liabilities, in this chapter referred to as reserves, for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state, and may certify the amount of the reserves, specifying the mortality table or tables, rate or rates of interest, and methods, net level premium method or other, used in the calculation of the reserves. In calculating the reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves of any foreign or alien company, the commissioner may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction where the valuation complies with the minimum standards provided in this chapter, if the official of that state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when the certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

**26.1-35-01.1. Actuarial opinion of reserves.** This section becomes operative at the end of the first full calendar year following the year of enactment.

1. Every life insurance company doing business in this state shall annually submit 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 the commissioner by rule 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 commissioner by rule shall define the specifics of this opinion and add any other items deemed to be necessary to its scope.
2. Actuarial analysis of reserves and assets supporting such reserves.
  - a. Every life insurance company, except as exempted by or pursuant to rule, shall also annually include in the opinion required by subsection 1, 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 the commissioner by regulation, 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 expenses associated with the policies and contracts.
  - b. The commissioner may provide by rule for a transition period for establishing any higher reserves which the qualified actuary may deem necessary in order to render the opinion required by this section.
3. Requirement for opinion under subsection 2. Each opinion required by subsection 2 must be governed by the following provisions:
  - a. A memorandum, in form and substance acceptable to the commissioner as specified by rule, must be prepared to support each actuarial opinion.
  - b. If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by rule or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by rule or is otherwise unacceptable to the commissioner, the commissioner may engage a

qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the commissioner.

4. Requirement for all opinions. Every opinion must be governed by the following provisions:
  - a. The opinion must be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after December 31, 1994.
  - b. The opinion must apply to all business in force, including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by rule.
  - c. The opinion must be based on standards adopted from time to time by the actuarial standards board and on such additional standards as the commissioner may by rule prescribe.
  - d. In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.
  - e. For the purposes of this section, "qualified actuary" means a member in good standing of the American academy of actuaries who meets the requirements set forth in such regulations.
  - f. Except in cases of fraud or willful misconduct, the qualified actuary is not liable for damages to any person, other than the insurance company and the commissioner, for any act, error, omission, decision, or conduct with respect to the actuary's opinion.
  - g. Disciplinary action by the commissioner against the company or the qualified actuary must be defined in rules by the commissioner.
  - h. Any memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection therewith, must be kept confidential by the commissioner and may not be made public and is not subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by rules adopted hereunder; provided, however, that the memorandum or other material may otherwise be released by the commissioner with the written consent of the company or to the American academy of actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited by the company in its marketing or is cited before any governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum are no longer confidential.

**26.1-35-02. Minimum standards of valuation for life or accident insurance.** The minimum standards for the valuation of all life or accident insurance policies issued prior to July 1, 1977, are those provided by sections 26-03-33, 26-03-34, and 26-10-01 as they existed on June 30, 1977. Except as otherwise provided in sections 26.1-35-03 and 26.1-35-04, the minimum standard for the valuation of all life or accident insurance policies and contracts issued after June 30, 1977, is the commissioners' reserve valuation methods defined in sections

26.1-35-05, 26.1-35-06, and 26.1-35-09; five and one-half percent interest for single premium life insurance policies and four and one-half percent interest for all other such policies and contracts, other than annuity and pure endowment contracts, and the following tables:

1. For all policies of ordinary life insurance issued on the standard basis, excluding any disability and accidental death benefits in the policies, the commissioners' 1958 standard ordinary mortality table for policies issued on or after the operative date of section 26.1-33-22 and prior to the earlier of a specified date filed by a company with the commissioner in a written notice of the company's election to comply with this chapter or January 1, 1989, provided that for any category of policies issued on female risks, all modified net premiums and present values referred to in this chapter may be calculated according to an age not more than six years younger than the actual age of the insured; and for policies issued on or after the earlier of a specified date filed by a company with the commissioner in a written notice of the company's election to comply with this chapter or January 1, 1989:
  - a. The commissioners' 1980 standard ordinary mortality table;
  - b. At the election of the company for any one or more specified plans of life insurance, the commissioners' 1980 standard ordinary mortality table with ten-year select mortality factors; or
  - c. Any ordinary mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for the policies.
2. For all policies of industrial life insurance issued on the standard basis, excluding any disability and accidental death benefits in the policies, the commissioners' 1961 standard industrial mortality table or any industrial mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for the policies.
3. For total and permanent disability benefits in or supplementary to policies or contracts, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates, adopted after 1980 by the national association of insurance commissioners, that are approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for the policies. The table must, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.
4. For accidental death benefits in or supplementary to policies or contracts, the 1959 accidental death benefits table or any accidental death benefits table, adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for the policies. The table must be combined with a mortality table permitted for calculating the reserves for life insurance policies.
5. For group life insurance, life insurance issued on the substandard basis and other special benefits, any tables that may be approved by the commissioner.

**26.1-35-03. Minimum standards of valuation for annuities.** Except as provided in section 26.1-35-04, the minimum standards for the valuation of all individual annuity and pure endowment contracts, and for all annuities and pure endowments purchased under group annuity and pure endowment contracts, must be the commissioners' reserve valuation methods defined in sections 26.1-35-05 and 26.1-35-06 and the following tables and interest rates:

1. For individual single premium immediate annuity contracts, excluding any disability and accidental death benefits in the contracts, the 1971 individual annuity mortality table or any individual annuity mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for the contracts, or any modification of these tables approved by the commissioner, and seven and one-half percent interest.
2. For individual annuity and pure endowment contracts, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in the contracts, the 1971 individual annuity mortality table or any individual annuity mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for the contracts, or any modification of these tables approved by the commissioner, and five and one-half percent interest for single premium deferred annuity and pure endowment contracts and four and one-half percent interest for all other individual annuity and pure endowment contracts.
3. For all annuities and pure endowments purchased under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under the contracts, the 1971 group annuity mortality table or any group annuity mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for the annuities and pure endowments, or any modification of these tables approved by the commissioner, and seven and one-half percent interest.

**26.1-35-04. Determination of standard for valuation - Interest rates.** The calendar year statutory valuation interest rates as defined in this section are:

1. The interest rates used in determining the minimum standard for the valuation of:
  - a. All life insurance policies issued in a particular calendar year, on or after the earlier of a specified date filed by a company with the commissioner in a written notice of the company's election to comply with this chapter or January 1, 1989.
  - b. All individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1984.
  - c. All annuities and pure endowments purchased in a particular calendar year on or after January 1, 1984, under group annuity and pure endowment contracts.
  - d. The net increase, if any, in a particular calendar year after January 1, 1984, in amounts held under guaranteed interest contracts.
2. The calendar year statutory valuation interest rates, I, must be determined as follows and the results rounded to the nearer one-quarter of one percent:
  - a. For life insurance:
 
$$I = .03 + W (R_1 - .03) + \frac{W}{2} (R_2 - .09)$$
  - b. For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options:
 
$$I = .03 + W (R - .03)$$

where  $R_1$  is the lesser of  $R$  and .09,  $R_2$  is the greater of  $R$  and .09,  $R$  is the reference interest rate defined in this section, and  $W$  is the weighting factor defined in this section.

- c. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in subdivision b, the formula for life insurance stated in subdivision a applies to annuities and guaranteed interest contracts with guarantee durations in excess of ten years and the formula for single premium immediate annuities stated in subdivision b applies to annuities and guaranteed interest contracts with guarantee duration of ten years or less.
- d. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in subdivision b applies.
- e. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in subdivision b applies.

However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one percent, the calendar year statutory valuation interest rate for the policies must equal the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year must be determined for 1980 by using the reference interest rate defined for 1979, and must be determined for each subsequent calendar year regardless of when section 26.1-33-26 becomes operative.

3. The weighting factors referred to in the formulas in subsection 2 are given in the following tables:

a. The weighting factors for life insurance are:	
Guarantee	Weighting
Duration	Factors
10 years or less	.50
More than 10 years, but not	
more than 20 years	.45
More than 20 years	.35

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

- b. The weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options is eighty hundredths.
- c. The weighting factors for other annuities and for guaranteed interest contracts, except as stated in subdivision b, are as specified in paragraphs 1, 2, and 3, according to the requirements and definitions in paragraphs 4, 5, and 6:
  - (1) For annuities and guaranteed interest contracts valued on an issue year basis:

	Weighting Factor for Plan Type		
	A	B	C
Guarantee Duration			
5 years or less	.80	.60	.50
More than 5 years, but not more than 10 years	.75	.60	.50
More than 10 years, but not more than 20 years	.65	.50	.45
More than 20 years	.45	.35	.35
(2) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in paragraph 1 increased by	.15	.25	.05
(3) For annuities and guaranteed interest contracts valued on an issue year basis, other than those with no cash settlement options, which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than twelve months beyond the valuation date, the factors shown in paragraph 1 or derived in paragraph 2 increased by	.05	.05	.05
(4) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.			
(5) The plan type as used in the tables in this subsection is defined as follows:			
(a) Plan type A: At any time the policyholder may withdraw funds only with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company,			

without such adjustment but in installments over five years or more, as an immediate life annuity, or no withdrawal permitted.

- (b) Plan type B: Before expiration of the interest rate guarantee, the policyholder may withdraw funds only with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, without such adjustment but in installments over five years or more, or no withdrawal permitted. At the end of interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five years.
  - (c) Plan type C: The policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.
- (6) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. An issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract. A change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

4. The reference interest rate referred to in subsection 2 is defined as follows:

- a. For all life insurance, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June thirtieth of the calendar year next preceding the year of issue, of Moody's corporate bond yield average - monthly average corporates, as published by Moody's investors service, incorporated.
- b. For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve months, ending on June thirtieth of the calendar year of issue or year of purchase, of Moody's corporate bond yield average - monthly average corporates, as published by Moody's investors service, incorporated.
- c. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subdivision b with guarantee duration in excess of ten years, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June thirtieth of the calendar year of issue or purchase, of Moody's corporate bond yield average - monthly average corporates, as published by Moody's investors service, incorporated.

- d. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subdivision b with guaranteed duration of ten years or less, the average over a period of twelve months, ending on June thirtieth of the calendar year of issue or purchase, of Moody's corporate bond yield average - monthly average corporates, as published by Moody's investors service, incorporated.
  - e. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve months, ending on June thirtieth of the calendar year of issue or purchase, of Moody's corporate bond yield average - monthly average corporates, as published by Moody's investors service, incorporated.
  - f. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in subdivision b the average over a period of twelve months, ending on June thirtieth of the calendar year of the change in the fund, of Moody's corporate bond yield average - monthly average corporates, as published by Moody's investors service, incorporated.
5. If Moody's corporate bond yield average - monthly average corporates is no longer published by Moody's investors service, incorporated, or if the national association of insurance commissioners determines that Moody's corporate bond yield average - monthly average corporates as published by Moody's investors service, incorporated, is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the national association of insurance commissioners and approved by rule adopted by the commissioner, may be substituted.

**26.1-35-05. Reserves by commissioners' reserve valuation method.**

1. Except as otherwise provided in sections 26.1-35-06 and 26.1-35-09, reserves according to the commissioners' reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, must be the excess, if any, of the present value, at the date of valuation, of the future guaranteed benefits provided by the policies, over the present value of any future modified net premiums for the policies. The modified net premiums must be the uniform percentage of the respective contract premiums for the benefits that the present value, at the date of issue of the policy, of all the modified net premiums equals the sum of the present value of the benefits provided by the policy and the excess of subdivision a over subdivision b as follows:
  - a. A net level annual premium equal to the present value, at the date of issue, of the benefits provided after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary of the policy on which a premium falls due; provided, however, that the net level annual premium may not exceed the net level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of the policy.
  - b. A net one-year term premium for the benefits provided in the first policy year.
2. For any life insurance policy issued after December 31, 1986, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for the excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than the excess premium, the reserve according to the

commissioners' reserve valuation method as of any policy anniversary occurring on or before the assumed ending date, which is defined as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than the excess premium, except as otherwise provided in section 26.1-35-09, must be the greater of the reserve as of such policy anniversary calculated as described in this section and the reserve as of such policy anniversary calculated as described in this section, but with the value defined in subdivision a of subsection 1 being reduced by fifteen percent of the amount of such excess first year premium; all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date; the policy being assumed to mature on such date as an endowment; and the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison, the mortality and interest bases stated in sections 26.1-35-02 and 26.1-35-04 must be used.

3. Reserves according to the commissioners' reserve valuation method for life insurance policies providing a varying amount of insurance or requiring the payment of varying premiums; group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership, limited liability company, or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the federal Internal Revenue Code, as amended; disability and accidental death benefits in all policies and contracts; and all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, must be calculated by a method consistent with the principles of this section.

**26.1-35-06. Reserves by commissioners' annuity reserve method.** This section applies to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the federal Internal Revenue Code of 1954, as amended.

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

**26.1-35-07. Minimum aggregate reserves for life policies issued after June 30, 1977.**

1. A company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued after June 30, 1977, may not be less than the aggregate reserves calculated in accordance with the methods set forth in sections 26.1-35-05, 26.1-35-06, and 26.1-35-09 and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for the policies.

2. In no event may the aggregate reserves for all policies, contracts, and benefits be less than the aggregate reserves determined by the qualified actuary to be necessary to render the opinion required by section 26.1-35-01.1.

**26.1-35-08. Calculation of minimum aggregate reserves by other standards.**

Reserves for all policies and contracts issued prior to July 1, 1977, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for the policies and contracts than the minimum reserves required by the laws in effect on June 30, 1977.

Reserves for any category of policies, contracts, or benefits, as established by the commissioner, issued on or after July 1, 1977, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for the category than those calculated according to the minimum standard provided in this chapter, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, may not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided in the policies and contracts. Any company that has adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided in this chapter may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum provided in this chapter; provided, however, that for the purposes of this section, the holding of additional reserves previously determined by a qualified actuary to be necessary to render the opinion required by section 26.1-35-01.1 may not be deemed to be the adoption of a higher standard of valuation.

**26.1-35-09. Minimum reserve if net premium exceeds gross premium.**

1. If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve on the policy or contract but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for the policy or contract is the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for the policy or contract, or the reserve calculated by the method actually used for the policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in sections 26.1-35-02 and 26.1-35-04.
2. For any life insurance policy issued after December 31, 1986, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for the excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than the excess premium, subsection 1 must be applied as if the method actually used in calculating the reserve for the policy was the method described in section 26.1-35-05, ignoring subsection 2 of that section. The minimum reserve at each policy anniversary must be the greater of the minimum reserve calculated in accordance with section 26.1-35-05, including subsection 2 of that section, and the minimum reserve calculated in accordance with this section.

**26.1-35-10. Future premium determination.** In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in sections 26.1-35-05, 26.1-35-06, and 26.1-35-09, the reserves which are held under the plan must be appropriate in relation to the benefits and the pattern of premiums for that plan, and must be computed by a method that is consistent with the principles of this chapter, as determined by rules adopted by the commissioner.