

PROPERTY AND CASUALTY ACTUARIAL OPINION MODEL LAW

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Section 1. Title

This Act shall be known as the Property and Casualty Actuarial Opinion Law.

Section 2. Actuarial Opinion of Reserves and Supporting Documentation

This section shall become operative at the end of the first full calendar year following the year of enactment.

A. Statement of Actuarial Opinion

Every property and casualty insurance company doing business in this state, unless otherwise exempted by the domiciliary commissioner, shall annually submit the opinion of an Appointed Actuary entitled “Statement of Actuarial Opinion.” This opinion shall be filed in accordance with the appropriate NAIC Property and Casualty Annual Statement Instructions.

B. Actuarial Opinion Summary

- (1) Every property and casualty insurance company domiciled in this state that is required to submit a Statement of Actuarial Opinion shall annually submit an Actuarial Opinion Summary, written by the company’s Appointed Actuary. This Actuarial Opinion Summary shall be filed in accordance with the appropriate NAIC Property and Casualty Annual Statement Instructions and shall be considered as a document supporting the Actuarial Opinion required in Subsection A.
- (2) A company licensed but not domiciled in this state shall provide the Actuarial Opinion Summary upon request.

C. Actuarial Report and Workpapers

- (1) An Actuarial Report and underlying workpapers as required by the appropriate NAIC Property and Casualty Annual Statement Instructions shall be prepared to support each Actuarial Opinion.
- (2) If the insurance company fails to provide a supporting Actuarial Report and/or workpapers at the request of the commissioner or the commissioner determines that the supporting Actuarial Report or workpapers provided by the insurance company is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting Actuarial Report or workpapers.

Drafting Note: Even though the regulator as part of an exam or target exam usually has the authority to do this; this section reinforces the authority of the commissioner. The commissioner can also fine or require the company to have the workpapers redone with proper documentation.

- D. The Appointed Actuary shall not be liable for damages to any person (other than the insurance company and the commissioner) for any act, error, omission, decision or conduct with respect to the actuary’s opinion, except in cases of fraud or willful misconduct on the part of the Appointed Actuary.

Section 3. Confidentiality

- A. The Statement of Actuarial Opinion shall be provided with the Annual Statement in accordance with the appropriate NAIC Property and Casualty Annual Statement Instructions and shall be treated as a public document.

- B. (1) Documents, materials or other information in the possession or control of the Department of Insurance that are considered an Actuarial Report, workpapers or Actuarial Opinion Summary provided in support of the opinion, and any other material provided by the company to the commissioner in connection with the Actuarial Report, workpapers or Actuarial Opinion Summary, shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.
- (2) This provision shall not be construed to limit the commissioner's authority to release the documents to the Actuarial Board for Counseling and Discipline (ABCD) so long as the material is required for the purpose of professional disciplinary proceedings and that the ABCD establishes procedures satisfactory to the commissioner for preserving the confidentiality of the documents, nor shall this section be construed to limit the commissioner's authority to use the documents, materials or other information in furtherance of any regulatory or legal action brought as part of the commissioner's official duties.
- C. Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to Subsection B.
- D. In order to assist in the performance of the commissioner's duties, the commissioner:
- (1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Subsection B with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information and has the legal authority to maintain confidentiality;
- (2) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and
- (3) [Optional provision] May enter into agreements governing sharing and use of information consistent with Subsections B to D.
- E. No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in Subsection D.

Section 4. Effective Date

This Act shall take effect [insert date].

Chronological Summary of Actions (All references are to the Proceedings of the NAIC).

2003 Proc. 2nd Quarter 323, 347-348, 349-351 (adopted by parent committee).

2003 Proc. 3rd Quarter 14 (adopted by Plenary).