

**DELAWARE STATE SENATE
145TH GENERAL ASSEMBLY**

SENATE BILL NO.

**AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE
REQUIRING PROPERTY AND CASUALTY INSURERS TO
ANNUALLY SUBMIT A STATEMENT OF ACTUARIAL OPINION.
BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE
OF DELAWARE**

1 Section 1. Amend Title 18, of the Delaware Code Chapter 11 by adding Subchapter V.

2 to read as follows:

3 Subchapter V. Property and Casualty Actuarial Opinion Law

4 §1119. Title

5 This Act shall be known as the Property and Casualty Actuarial Opinion Law of 2010.

6 §1120. Actuarial Opinion of Reserves and Supporting Documentation

7 (a) This section shall become operative at the end of the first full calendar year following
8 the year of enactment.

9 (b) Every property and casualty insurance company doing business in Delaware,
10 unless otherwise exempted by the Commissioner, shall annually
11 submit to the Department of Insurance the opinion of an appointed actuary entitled
12 “Statement of Actuarial Opinion.” This opinion shall be filed in accordance with the
13 appropriate NAIC Property and Casualty Annual Statement Instructions.

14 (c) Every property and casualty insurance company domiciled in Delaware
15 that is required to submit a Statement of Actuarial Opinion shall annually
16 submit an Actuarial Opinion Summary, written by the company’s
17 Appointed Actuary. This Actuarial Opinion Summary shall be filed in

18 accordance with the appropriate NAIC Property and Casualty Annual
19 Statement Instructions and shall be considered as a document supporting
20 the Actuarial Opinion required in Subsection (b).

21 (d) A company licensed but not domiciled in Delaware shall provide the
22 Actuarial Opinion Summary upon request.

23 (e) An Actuarial Report and underlying workpapers as required by the
24 appropriate NAIC Property and Casualty Annual Statement Instructions
25 shall be prepared to support each Actuarial Opinion.

26 (f) If the insurance company fails to provide a supporting Actuarial Report
27 and/or workpapers at the request of the commissioner or the Commissioner
28 determines that the supporting Actuarial Report or workpapers provided
29 by the insurance company is otherwise unacceptable to the Commissioner,
30 the Commissioner may engage a qualified actuary at the expense of the
31 company to review the opinion and the basis for the opinion and prepare
32 the supporting Actuarial Report or workpapers.

33 (g) The Appointed Actuary shall not be liable for damages to any person (other than the
34 insurance company and the Commissioner) for any act, error, omission,
35 decision or conduct with respect to the actuary's opinion, except in cases of fraud
36 or willful misconduct on the part of the Appointed Actuary.

37 §1121. Confidentiality

38 (a). The Statement of Actuarial Opinion shall be provided with the Annual Statement in
39 accordance with the appropriate NAIC Property and Casualty Annual
40 Statement Instructions and shall be treated as a public document.

41 (b)(1) Documents, materials or other information in the possession or control of
42 the Department of Insurance that are considered an Actuarial Report,
43 workpapers or Actuarial Opinion Summary provided in support of the
44 opinion, and any other material provided by the company to the
45 Commissioner in connection with the Actuarial Report, workpapers or
46 Actuarial Opinion Summary, shall be confidential by law and privileged,
47 And, in accordance with 29 Del. C. §10002(g)(2) shall be deemed to not be public
48 records for purposes of the Delaware Freedom of Information Act, shall not be subject to
49 subpoena, and shall not be subject to discovery or admissible in evidence in any
50 private civil action.

51 (2) This provision shall not be construed to limit the Commissioner's authority
52 to release the documents to the Actuarial Board for Counseling and
53 Discipline (ABCD) so long as the material is required for the purpose of
54 professional disciplinary proceedings and that the ABCD establishes
55 procedures satisfactory to the commissioner for preserving the
56 confidentiality of the documents, nor shall this section be construed to
57 limit the commissioner's authority to use the documents, materials or
58 other information in furtherance of any regulatory or legal action brought
59 as part of the Commissioner's official duties.

60 (c) Neither the Commissioner nor any person who received documents, materials or other
61 information while acting under the authority of the Commissioner shall be
62 permitted or required to testify in any private civil action concerning any
63 confidential documents, materials or information subject to Subsection (b).

64 (d) In order to assist in the performance of the Commissioner's duties, the
65 Commissioner:

66 (1) May share documents, materials or other information, including the
67 confidential and privileged documents, materials or information subject to
68 Subsection (b) with other state, federal and international regulatory
69 agencies, with the National Association of Insurance Commissioners and
70 its affiliates and subsidiaries, and with state, federal and international law
71 enforcement authorities, provided that the recipient agrees to maintain the
72 confidentiality and privileged status of the document, material or other
73 information and has the legal authority to maintain confidentiality;

74 (2) May receive documents, materials or information, including otherwise
75 confidential and privileged documents, materials or information, from the National
76 Association of Insurance Commissioners and its affiliates and subsidiaries, and from
77 regulatory and law enforcement officials of other foreign or domestic jurisdictions, and
78 shall maintain as confidential or privileged any document, material or information
79 received with notice or the understanding that it is confidential or privileged under the
80 laws of the jurisdiction that is the source of the document, material or information;

81 and

82 (3) May enter into agreements governing sharing and use of information consistent with
83 Subsections (b) to (d).

84 (e) No waiver of any applicable privilege or claim of confidentiality in the
85 documents, materials or information shall occur as a result of disclosure to the
86 Commissioner under this section or as a result of sharing as authorized in

87 Subsection (d).

88

SYNOPSIS

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90 This Act is intended to require all property and casualty insurance companies
91 doing business in the State of Delaware to annually submit to the Department of
92 Insurance the opinion of an appointed actuary entitled "Statement of Actuarial Opinion."
93 along with other identified documentation.

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