



SPONSOR: Rep. B. Short & Sen. Blevins;
Sen. Ennis

HOUSE OF REPRESENTATIVES
145th GENERAL ASSEMBLY

HOUSE BILL NO. 473

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 a Subchapter V. to read as follows:

2 "Subchapter V. Property and Casualty Actuarial Opinion Law.

3 § 1119. Title.

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

5 § 1120. Actuarial Opinion of Reserves and Supporting Documentation.

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

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

13 (c) Every property and casualty insurance company domiciled in Delaware that is
14 required to submit a Statement of Actuarial Opinion shall annually submit an Actuarial Opinion
15 Summary written by the company's Appointed Actuary. This Actuarial Opinion Summary shall
16 be filed in accordance with the appropriate NAIC Property and Casualty Annual Statement
17 Instructions and shall be considered a document supporting the Actuarial Opinion required in
18 Subsection (b).

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

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

(f) If the insurance company fails to provide a supporting Actuarial Report and/or work papers at the request of the Commissioner, or the Commissioner determines that the supporting Actuarial Report or work papers 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 work papers.

(g) 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.

§ 1121. 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, work papers, 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, work papers, or Actuarial Opinion Summary, shall be confidential by law and privileged, and, in accordance with 29 Del. C. § 10002(g)(2), shall be deemed to not be public records for purposes of the Delaware Freedom of Information Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible into 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

55 required to testify in any private civil action concerning any confidential documents, materials,
56 or information subject to Subsection (b).

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

59 (1) May share documents, materials, or other information, including the
60 confidential and privileged documents, materials, or information subject to Subsection
61 (b) with other state, federal, and international regulatory agencies, with the National
62 Association of Insurance Commissioners and its affiliates and subsidiaries, and with
63 state, federal, and international law enforcement authorities, provided that the recipient
64 agrees to maintain the confidentiality and privileged status of the document, material, or
65 other information and has the legal authority to maintain confidentiality;

66 (2) May receive documents, materials, or information, including otherwise
67 confidential and privileged documents, materials, or information, from the National
68 Association of Insurance Commissioners and its affiliates and subsidiaries, and from
69 regulatory and law enforcement officials of other foreign or domestic jurisdictions, and
70 shall maintain as confidential or privileged any document, material, or information
71 received with notice or with the understanding that it is confidential or privileged under
72 the laws of the jurisdiction that is the source of the document, material, or information;
73 and

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

76 (e) No waiver of any applicable privilege or claim of confidentiality in the documents,
77 materials, or information shall occur as a result of disclosure to the Commissioner under this
78 section or as a result of sharing as authorized in Subsection (d).".

SYNOPSIS

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