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An Act Regarding Property and Casualty Insurance Actuarial Opinion of Reserves

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 24-A MRSA c. 11, sub-c. 2-A, as amended, is repealed.

Sec. 2. 24-A MRSA c. 11, sub-c. 5 is enacted to read:

SUBCHAPTER 5

PROPERTY AND CASUALTY ACTUARIAL OPINION

§ 991. Short title

This Act may be known and cited as "the Property and Casualty Actuarial Opinion Act."

§ 992. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Covered kinds of insurance. "Covered kinds of insurance" include:

A. Casualty insurance as defined in section 707; and

B. Property insurance as defined in section 705. Property insurance written by domestic mutual assessment insurers pursuant to chapter 51 is not subject to the requirements of this subchapter.

2. NAIC. "NAIC" means the National Association of Insurance Commissioners.

3. Qualified actuary. "Qualified actuary" means a person who is a member of the American Academy of Actuaries who has obtained a designation either as a fellow or an associate in the Casualty Actuarial Society and, if an associate, has at least 5 years' experience in actuarial practice obtained in the covered kinds of insurance.

§ 993. Actuarial opinion of reserves and supporting documentation

1. Statement of actuarial opinion. Every property and casualty insurance company doing business for covered kinds of insurance in this State, unless otherwise exempted by the domiciliary commissioner, shall annually submit the opinion of an appointed qualified actuary entitled "Statement of Actuarial Opinion." This opinion must be filed in accordance with the appropriate NAIC property and casualty annual statement instructions.

2. Actuarial opinion summary. An actuarial opinion summary is required pursuant to this subsection.

A. 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 qualified actuary. This actuarial opinion summary must be filed in accordance with the appropriate NAIC property and casualty annual statement instructions and must be considered as a document supporting the actuarial opinion required in subsection 1.

B. A property and casualty insurance company licensed but not domiciled in this State shall provide an actuarial opinion summary upon request of the superintendent.

3. Actuarial report and work papers. An actuarial report is required pursuant to this subsection.

A. An actuarial report and underlying work papers as required by the appropriate NAIC property and casualty annual statement instructions must be prepared to support each actuarial opinion.

B. If a property and casualty insurance company fails to provide a supporting actuarial report or work papers at the request of the superintendent or the superintendent determines that the supporting actuarial report or work papers provided by the company are otherwise unacceptable to the superintendent, the superintendent 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.

4. Liability. The appointed qualified actuary is not liable for damages to any person, other than the property and casualty insurance company and the superintendent, 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 actuary.

§ 994. Confidentiality

1. Statement of actuarial opinion. The statement of actuarial opinion under section 993 must be provided with the annual statement under section 993 in accordance with the appropriate NAIC property and casualty annual statement instructions and must be treated as a public document.

2. Documents in possession of bureau. The confidentiality of documents in the possession of the bureau is governed by this subsection.

A. Documents, materials or other information in the possession or control of the bureau that are considered an actuarial report, work papers or actuarial opinion summary provided in support of the opinion, as described in section 993, and any other material provided by the property and casualty insurance company to the superintendent in connection with the actuarial report, work papers or actuarial opinion summary are confidential by law and privileged, are not subject to freedom of access, are not subject to subpoena and are not subject to discovery or admissible in evidence in any private civil action.

B. This subsection may not be construed to limit the superintendent's authority to release documents to the Actuarial Board for Counseling and Discipline or successor organization as long as the material is required for the purpose of professional disciplinary proceedings and the Actuarial Board for Counseling and Discipline establishes procedures satisfactory to the superintendent for preserving the confidentiality of the documents. This section may not be construed to limit the superintendent's authority to use the documents, materials or other information in furtherance of any regulatory or legal action brought as part of the superintendent's official duties.

3. Testimony. Neither the superintendent nor any person who received documents, materials or other information while acting under the authority of the superintendent is permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to subsection 2.

4. Sharing of documents. In order to assist in the performance of the superintendent's duties, the superintendent may:

A. Share documents, materials or other information, including confidential and privileged documents, materials or information subject to subsection 2, with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries and with state, federal and international law enforcement authorities, as long as 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;

B. Receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions. The superintendent 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

C. Enter into agreements governing sharing and use of information consistent with this subsection and subsections 2 and 3.

5. Waiver. No waiver of an applicable privilege or claim of confidentiality in the documents, materials or information may occur as a result of disclosure to the superintendent under this section or as a result of sharing as authorized in subsection 4.

Sec. 3. Effective date. This Act takes effect January 1, 2009.

SUMMARY

This bill amends the Maine Insurance Code by replacing the current provisions regarding property and casualty actuarial opinions on insurer reserves with the model legislation adopted by the National Association of Insurance Commissioners. The bill requires the filing of the statement of actuarial opinion,

the actuarial report supporting the opinion and the actuarial opinion summary by domestic insurers, excluding domestic mutual property insurers.