



AN ACT CREATING THE PROPERTY AND CASUALTY ACTUARIAL OPINION ACT; REQUIRING CASUALTY AND PROPERTY INSURERS TO ANNUALLY SUBMIT AN ACTUARIAL OPINION SUMMARY; PROVIDING THAT THE STATEMENT OF ACTUARIAL OPINION IS A PUBLIC DOCUMENT; PROVIDING THAT ACTUARIAL REPORTS, WORK PAPERS, AND ACTUARIAL OPINION SUMMARIES RETAINED BY THE COMMISSIONER ARE TRADE SECRETS AND ARE PRIVILEGED AND MUST BE GIVEN CONFIDENTIAL TREATMENT; AND PROVIDING A DELAYED EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. [Sections 1 through 3] may be cited as the "Property and Casualty Actuarial Opinion Act".

Section 2. Actuarial opinion of reserves and supporting documentation. (1) Every property and casualty insurer doing business in this state, unless otherwise exempted by its domiciliary commissioner, shall annually submit the opinion of an appointed actuary entitled "Statement of Actuarial Opinion". The insurer shall file this opinion in accordance with the appropriate NAIC property and casualty annual statement instructions.

(2) (a) Every property and casualty resident domestic insurer that is required to submit a statement of actuarial opinion shall annually submit an actuarial opinion summary written by the insurer's appointed actuary. This actuarial opinion summary must be filed in accordance with the appropriate NAIC property and casualty annual statement instructions and is considered to be a document supporting the actuarial opinion required in subsection (1).

(b) A foreign or alien authorized insurer shall provide to the commissioner the actuarial opinion summary upon request.

(3) (a) An actuarial report and its 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 the insurer fails to provide a supporting actuarial report or work papers at the request of the

commissioner or the commissioner determines that the supporting actuarial report or work papers provided by the insurer are otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the insurer to review the opinion and basis for the opinion and prepare a supporting actuarial report or work papers.

(4) The appointed actuary is not liable for damages to any person, other than the insurer 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.

(5) For the purposes of [sections 1 through 3], "actuarial report" means a document or presentation prepared as a formal means of conveying the actuary's professional conclusions and recommendations and communicating the methods and procedures used to reach the conclusions and recommendations, including any supporting documents.

Section 3. Confidentiality. (1) The statement of actuarial opinion must be provided with the annual statement in accordance with the appropriate NAIC property and casualty annual statement instructions and is a public writing, within the meaning of 2-6-101.

(2) (a) Actuarial reports, work papers, and actuarial opinion summaries retained by the commissioner are trade secrets and are privileged. The materials must be given confidential treatment, are not subject to subpoena, and are not subject to discovery, and the materials are not admissible in evidence in any private civil litigation.

(b) Subsection (2)(a) does not limit the commissioner's authority to release the documents to the actuarial board for counseling and discipline if the material is required for the board's professional disciplinary proceedings and if the board establishes procedures satisfactory to the commissioner to preserve the confidentiality of the documents.

(3) This section does not limit the commissioner's authority to use the actuarial reports, work papers, actuarial opinion summaries, or other information in furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(4) The commissioner and any person who receives actuarial reports, work papers, actuarial opinion summaries, or other information while acting under the authority of the commissioner may not testify in any private civil action concerning the documents or information subject to the provisions of subsection (2).

(5) To assist in the performance of the commissioner's duties, the commissioner may provide and receive documents and information pursuant to 33-1-311.

(6) A waiver of privilege or claim of confidentiality in the actuarial reports, work papers, or actuarial opinion summaries does not result from disclosure to the commissioner under this section or result from the exchange of documents and information authorized in subsections (2)(b) and (5).

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 33, chapter 1, and the provisions of Title 33, chapter 1, apply to [sections 1 through 3].

Section 5. Effective date. [This act] is effective January 1, 2010.

- END -

I hereby certify that the within bill,
HB 0159, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2009.

President of the Senate

Signed this _____ day
of _____, 2009.

HOUSE BILL NO. 159
INTRODUCED BY S. AUGARE
BY REQUEST OF THE STATE AUDITOR

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