

CHAPTER 57
FORMERLY
SENATE BILL NO. 54
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO INSURANCE AND 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:

Section 1. Amend Chapter 11, Title 18 of the Delaware Code, by adding Subchapter V to read as follows:

“Subchapter V. Property and Casualty Actuarial Opinion Law

§1119. Title

This Act shall be known as the Property and Casualty Actuarial Opinion Law of 2011.

§1120. Actuarial Opinion of Reserves and Supporting Documentation

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

(b) Every property and casualty insurance company doing business in Delaware,

unless otherwise exempted by the Commissioner, shall annually submit to the Department of Insurance 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.

(c) Every property and casualty insurance company domiciled in Delaware 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 (b).

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

(e) 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.

(f) 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 are 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.

(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, 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, 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 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 documents, 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 documents, 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 documents, material or information; and

(3) 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).”

Approved June 23, 2011