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BILL



ANALYSIS

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Senate Bill 901 (as enacted)
Sponsor: Senator Alan Sanborn
Senate Committee: Economic Development and Regulatory Reform
House Committee: Insurance

PUBLIC ACT 198 of 2009

Date Completed: 5-4-10

CONTENT

The bill added Section 814a to the Insurance Code to do the following:

- **Require every property and casualty insurer doing business in Michigan to file an annual statement of actuarial opinion with the Commissioner of Financial and Insurance Regulation.**
- **Require Michigan-domiciled insurers also to file an actuarial opinion summary, and require out-of-State insurers to do so at the Commissioner's request.**
- **Require an actuarial report and underlying work papers to be prepared to support each statement of actuarial opinion.**
- **Require a statement of actuarial opinion to be filed with the insurer's required annual statement and be treated as a public document.**
- **Limit the disclosure of actuarial reports, work papers, actuarial opinion summaries, and supporting information in the possession of the Office of Financial and Insurance Regulation (OFIR).**
- **Allow the Commissioner to share confidential and privileged information with certain agencies under particular circumstances as long as the confidential and privileged status is maintained.**
- **Specify that, for purposes of Section 814a, the Michigan Automobile Insurance Placement Facility is not a property and casualty insurer.**

The bill took effect on January 1, 2010.

Statement of Actuarial Opinion

Under the bill, every property and casualty insurer doing business in Michigan annually must file with the Commissioner the opinion of an appointed actuary, unless exempted by the Commissioner. This opinion, entitled "statement of actuarial opinion", must be filed pursuant to the instructions issued by the Commissioner for filing annual statements. A statement of actuarial opinion must be filed with the insurer's annual statement and be treated as a public document.

Also, every property and casualty insurer domiciled in Michigan that is required to file a statement of actuarial opinion annually must file with the Commissioner an actuarial opinion summary, written by the insurer's appointed actuary. The summary must be filed pursuant to the Commissioner's instructions for filing annual statements, and will be considered as a document supporting the statement of actuarial opinion.

A property and casualty insurer not domiciled in Michigan that is required to file a statement of actuarial opinion must provide an actuarial opinion summary upon the Commissioner's request.

An actuarial report and underlying work papers must be prepared to support each statement of actuarial opinion. If the insurer fails to provide the report or work papers at the Commissioner's request, the

Commissioner may engage a qualified actuary, at the expense of the insurer, to review the statement of actuarial opinion and the basis for the opinion and prepare the actuarial report or work papers.

Document Confidentiality & Privilege

The bill states that documents, materials, or other information in OFIR's possession or control that are considered an actuarial report, work papers, or an actuarial opinion summary provided in support of a statement of actuarial opinion, and any other material provided by an insurer to the Commissioner in connection with them, are confidential and privileged and are not subject to the Freedom of Information Act, subpoena, or discovery, or admissible in evidence in any private civil action. These restrictions do not limit the Commissioner's authority to do either of the following:

- Release the documents for the purpose of professional disciplinary proceedings if the Commissioner is satisfied that the confidentiality of the documents will be preserved.
- Use the comments, materials, or other information in furtherance of any regulatory or legal action brought as part of his or her official duties.

The Commissioner or any person who receives comments, materials, or other information while acting under the Commissioner's authority is not permitted and may not be required to testify in any private civil action concerning any of the confidential documents, materials, or information.

In order to assist in the performance of his or her duties, the Commissioner may share documents, materials, and other information, including those that are confidential and privileged, with any other state, Federal, or international regulatory agency, with the National Association of Insurance Commissioners (NAIC) and its affiliates and subsidiaries, and with state, Federal, and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, or other information and has the legal authority to maintain confidentiality. The Commissioner also may receive documents, materials, and information, including those that otherwise

are confidential and privileged, from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions. The Commissioner must 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.

Any applicable privilege or claim of confidentiality is not waived by the disclosure or sharing of documents, materials, or information as allowed by Section 814a.

MCL 500.814a

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The requirement for property and casualty insurers to submit actuarial reports has existed in administrative rules; thus, the bill will have no fiscal impact. Staff from the Department of Energy, Labor, and Economic Growth indicated that the changes in the bill were necessary for the State to maintain its accreditation with the National Association of Insurance Commissioners.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.