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Senate Bill 901 (as introduced 10-14-09)

Sponsor: Senator Alan Sanborn

Committee: Economic Development and Regulatory Reform

Date Completed: 10-27-09

## **CONTENT**

#### The bill would amend 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.
- -- 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 were maintained.

The bill would take effect on July 1, 2010.

#### Statement of Actuarial Opinion

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

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

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

An actuarial report and underlying work papers would have to be prepared to support each statement of actuarial opinion. If the insurer failed to provide the report or work papers at

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the Commissioner's request, the Commissioner could 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**

Documents, materials, or other information in OFIR's possession or control that were 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, would be confidential and privileged and would not be subject to the Freedom of Information Act, subpoena, or discovery, or admissible in evidence in any private civil action. These restrictions would 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 were satisfied that the confidentiality of the documents would 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.

Neither the Commissioner nor any person who received comments, materials, or other information while acting under the Commissioner's authority would be permitted or 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 could share documents, materials, or other information, including those that were 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 agreed to maintain the confidentiality and privileged status of the documents, materials, or other information and had the legal authority to maintain confidentiality. The Commissioner also could receive documents, materials, or information, including those that otherwise were 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 would have to maintain as confidential or privileged any document, material, or information received with notice or the understanding that it was confidential or privileged under the laws of the jurisdiction that was the source of the document, material, or information.

Any applicable privilege or claim of confidentiality would not be waived by the disclosure or sharing of documents, materials, or information as allowed by the bill.

Proposed MCL 500.1006

### Legislative Analyst: Patrick Affholter

# **FISCAL IMPACT**

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

Fiscal Analyst: Elizabeth Pratt

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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.