

HOUSE BILL No. 2688

AN ACT concerning insurance; relating to the property and casualty actuarial opinion letter law.

Be it enacted by the Legislature of the State of Kansas:

Section 1. Sections 1 through 3, and amendments thereto, shall be known and may be cited as the property and casualty actuarial opinion letter law.

Sec. 2. (a) Unless otherwise exempted by the commissioner, every property and casualty insurance company doing business in this state shall annually submit to the commissioner the opinion of an appointed actuary entitled "Statement of Actuarial Opinion." Such opinion shall be filed in accordance with the appropriate NAIC property and casualty annual statement instructions.

(b) (1) 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 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 (a).

(2) A property and casualty insurance company licensed but not domiciled in this state shall provide the actuarial opinion summary to the commissioner upon request.

(c) (1) An actuarial report, including all underlying work papers as required by the appropriate NAIC property and casualty annual statement instructions, shall be prepared to support each actuarial opinion.

(2) 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 work papers if:

(A) The property and casualty insurance company fails to provide a supporting actuarial report or work papers, or both, at the request of the commissioner; or

(B) the commissioner determines that the supporting actuarial report or work papers provided by the insurance company is otherwise unacceptable to the commissioner.

(d) The property and casualty insurance company's 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.

(e) This section shall take effect on January 1, 2009.

Sec. 3. (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) Any document, material or other information, in the control or possession of the department that is furnished to the commissioner pursuant to this act or obtained by the commissioner in an investigation pursuant to this section shall be kept confidential by the commissioner. Such information shall not be made public or subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner pursuant to this act or any other provision of the insurance laws of this state.

(2) (A) This subsection shall not be construed to limit the commissioner's authority to release the documents to the actuarial board for counseling and discipline so long as the material is required for the purpose of professional disciplinary proceedings and that the actuarial board for counseling and discipline establishes procedures satisfactory to the commissioner for preserving the confidentiality of the documents.

(B) This subsection shall not 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.

(3) Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner shall be required to testify in any private civil action concerning any confidential documents, materials or information subject to paragraph (1).

(4) The commissioner may share or exchange any documents, materials or other information, including confidential and privileged documents referred to in paragraph (1), received in the performance of the commissioner’s duties under this act, with:

- (A) The NAIC and its affiliates and subsidiaries;
- (B) the actuarial board for counseling and discipline or any other entity which regulates actuaries;
- (C) other state, federal or international regulatory agencies; and
- (D) other state, federal or international law enforcement authorities.

(5) (A) The sharing or exchanging of documents, materials or other information under this subsection shall be conditioned upon the recipient’s authority and agreement to maintain the confidential and privileged status, if any, of the documents, materials or other information being shared or exchanged.

(B) No waiver of an existing 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 such documents, materials or information as authorized by this subsection.

(6) The commissioner of insurance is hereby authorized to adopt such rules and regulations establishing protocols governing the exchange of information as may be necessary to implement and carry out the provisions of this act.

(c) The provisions of paragraph (2) of subsection (b) shall expire on July 1, 2013, unless the legislature acts to reenact such provision. The provisions of paragraph (2) of subsection (b) shall be reviewed by the legislature prior to July 1, 2013.

(d) For the purposes of this section: (1) “Commissioner” shall mean the commissioner of insurance.

(2) “NAIC” shall mean the national association of insurance commissioners.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.