TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 41A
PROPERTY AND CASUALTY ACTUARIAL OPINION

Section.

114-41A-1. General.

114-41A-2. Actuarial Opinion of Reserves and Supporting Documentation.

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§114-41A-1. General.

1.1. Scope. -- This rule applies to all property and casualty insurance companies and fraternal benefit societies doing business in this State and to all property and casualty insurance companies and fraternal benefit societies that are authorized to reinsure property and casualty businesses in this State. This rule is based on the "Property and Casualty Actuarial Opinion Model Law (Model 745)," as adopted by the National Association of Insurance Commissioners (NAIC) in 2003 and amended in 2009.

1.2. Authority. -- W.Va. Code §33-2-10

1.3. Filing Date. --

1.4. Effective Date. --

§114-41A-2. Actuarial Opinion of Reserves and Supporting Documentation.

2.1. This section shall become operative with respect to reporting years ending on or after December 31, 2011.

2.2. Statement of Actuarial Opinion. Every property and casualty insurance company doing business in this state, unless otherwise exempted by the Insurance Commissioner of this state or the commissioner in the state where the company is domiciled, shall annually submit 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.

2.3. Actuarial Opinion Summary.

2.3.a. 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 2.1 of this rule.

2.3.b. A company licensed but not domiciled in this state shall provide the Actuarial Opinion Summary upon request.

2.4. Actuarial Report and Workpapers

2.4.a. 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.

2.4.b. 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.

2.5. The Appointed Actuary shall not be liable for damages to any person (other than to 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.

§114-41A-3. Confidentiality.

3.1. 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.

3.2. a. Documents, materials or other information in the possession or control of the Commissioner 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, shall not be subject to W.Va. Code §§29B-1-1 *et seq.*, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

3.2.b. 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.

3.3. 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 3.2 of this rule.

3.4. In order to assist in the performance of the Commissioner's duties, he or she may:

3.4.a. Share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection 3.2 of this rule, with other states, federal and international regulatory agencies, the NAIC 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 document, material or other information and has the legal authority to maintain confidentiality;

3.4.b. Receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the NAIC 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 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; and

3.4.c. Enter into agreements governing sharing and use of information consistent with subsections 3.2 and 3.4 of this rule.

3.5. 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 3.4 of this rule.