

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2007

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Legislative Document

No. 1262

H.P. 890

House of Representatives, March 8, 2007

### **An Act Regarding Property and Casualty Insurance Actuarial Opinion of Reserves**

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Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative CROCKETT of Augusta.  
Cosponsored by Senator SULLIVAN of York and  
Representatives: CANAVAN of Waterville, PRIEST of Brunswick, TREAT of Farmingdale.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 24-A MRSA c. 11, sub-c. 2-A,** as amended, is repealed.

3 **Sec. 2. 24-A MRSA c. 11, sub-c. 5** is enacted to read:

4 **SUBCHAPTER 5**

5 **PROPERTY AND CASUALTY ACTUARIAL OPINION**

6 **§991. Short title**

7 This Act may be known and cited as "the Property and Casualty Actuarial Opinion  
8 Act."

9 **§992. Definitions**

10 As used in this subchapter, unless the context otherwise indicates, the following  
11 terms have the following meanings.

12 **1. Covered kinds of insurance.** "Covered kinds of insurance" include:

13 A. Casualty insurance as defined in section 707; and

14 B. Property insurance as defined in section 705. Property insurance written by  
15 domestic mutual assessment insurers pursuant to chapter 51 is not subject to the  
16 requirements of this subchapter.

17 **2. NAIC.** "NAIC" means the National Association of Insurance Commissioners.

18 **3. Qualified actuary.** "Qualified actuary" means a person who is a member of the  
19 American Academy of Actuaries who has obtained a designation either as a fellow or an  
20 associate in the Casualty Actuarial Society and, if an associate, has at least 5 years'  
21 experience in actuarial practice obtained in the covered kinds of insurance.

22 **§993. Actuarial opinion of reserves and supporting documentation**

23 **1. Statement of actuarial opinion.** Every property and casualty insurance company  
24 doing business for covered kinds of insurance in this State, unless otherwise exempted by  
25 the domiciliary commissioner, shall annually submit the opinion of an appointed qualified  
26 actuary entitled "Statement of Actuarial Opinion." This opinion must be filed in accordance  
27 with the appropriate NAIC property and casualty annual statement instructions.

28 **2. Actuarial opinion summary.** An actuarial opinion summary is required pursuant  
29 to this subsection.

30 A. Every property and casualty insurance company domiciled in this State that is  
31 required to submit a statement of actuarial opinion shall annually submit an actuarial  
32 opinion summary, written by the company's appointed qualified actuary. This  
33 actuarial opinion summary must be filed in accordance with the appropriate NAIC

1 property and casualty annual statement instructions and must be considered as a  
2 document supporting the actuarial opinion required in subsection 1.

3 B. A property and casualty insurance company licensed but not domiciled in this  
4 State shall provide an actuarial opinion summary upon request of the superintendent.

5 **3. Actuarial report and work papers.** An actuarial report is required pursuant to  
6 this subsection.

7 A. An actuarial report and underlying work papers as required by the appropriate  
8 NAIC property and casualty annual statement instructions must be prepared to  
9 support each actuarial opinion.

10 B. If a property and casualty insurance company fails to provide a supporting  
11 actuarial report or work papers at the request of the superintendent or the  
12 superintendent determines that the supporting actuarial report or work papers  
13 provided by the company are otherwise unacceptable to the superintendent, the  
14 superintendent may engage a qualified actuary at the expense of the company to  
15 review the opinion and the basis for the opinion and prepare the supporting actuarial  
16 report or work papers.

17 **4. Liability.** The appointed qualified actuary is not liable for damages to any person,  
18 other than the property and casualty insurance company and the superintendent, for any  
19 act, error, omission, decision or conduct with respect to the actuary's opinion, except in  
20 cases of fraud or willful misconduct on the part of the actuary.

21 **§994. Confidentiality**

22 **1. Statement of actuarial opinion.** The statement of actuarial opinion under section  
23 993 must be provided with the annual statement under section 993 in accordance with the  
24 appropriate NAIC property and casualty annual statement instructions and must be  
25 treated as a public document.

26 **2. Documents in possession of bureau.** The confidentiality of documents in the  
27 possession of the bureau is governed by this subsection.

28 A. Documents, materials or other information in the possession or control of the  
29 bureau that are considered an actuarial report, work papers or actuarial opinion  
30 summary provided in support of the opinion, as described in section 993, and any  
31 other material provided by the property and casualty insurance company to the  
32 superintendent in connection with the actuarial report, work papers or actuarial  
33 opinion summary are confidential by law and privileged, are not subject to freedom  
34 of access, are not subject to subpoena and are not subject to discovery or admissible  
35 in evidence in any private civil action.

36 B. This subsection may not be construed to limit the superintendent's authority to  
37 release documents to the Actuarial Board for Counseling and Discipline or successor  
38 organization as long as the material is required for the purpose of professional  
39 disciplinary proceedings and the Actuarial Board for Counseling and Discipline  
40 establishes procedures satisfactory to the superintendent for preserving the  
41 confidentiality of the documents. This section may not be construed to limit the

1 superintendent's authority to use the documents, materials or other information in  
2 furtherance of any regulatory or legal action brought as part of the superintendent's  
3 official duties.

4 **3. Testimony.** Neither the superintendent nor any person who received documents,  
5 materials or other information while acting under the authority of the superintendent is  
6 permitted or required to testify in any private civil action concerning any confidential  
7 documents, materials or information subject to subsection 2.

8 **4. Sharing of documents.** In order to assist in the performance of the  
9 superintendent's duties, the superintendent may:

10 A. Share documents, materials or other information, including confidential and  
11 privileged documents, materials or information subject to subsection 2, with other  
12 state, federal and international regulatory agencies, with the NAIC and its affiliates  
13 and subsidiaries and with state, federal and international law enforcement authorities,  
14 as long as the recipient agrees to maintain the confidentiality and privileged status of  
15 the document, material or other information and has the legal authority to maintain  
16 confidentiality;

17 B. Receive documents, materials or information, including otherwise confidential  
18 and privileged documents, materials or information, from the NAIC and its affiliates  
19 and subsidiaries and from regulatory and law enforcement officials of other foreign  
20 or domestic jurisdictions. The superintendent shall maintain as confidential or  
21 privileged any document, material or information received with notice or the  
22 understanding that it is confidential or privileged under the laws of the jurisdiction  
23 that is the source of the document, material or information; and

24 C. Enter into agreements governing sharing and use of information consistent with  
25 this subsection and subsections 2 and 3.

26 **5. Waiver.** No waiver of an applicable privilege or claim of confidentiality in the  
27 documents, materials or information may occur as a result of disclosure to the  
28 superintendent under this section or as a result of sharing as authorized in subsection 4.

29 **Sec. 3. Effective date.** This Act takes effect January 1, 2009.

30 **SUMMARY**

31 This bill amends the Maine Insurance Code by replacing the current provisions  
32 regarding property and casualty actuarial opinions on insurer reserves with the model  
33 legislation adopted by the National Association of Insurance Commissioners. The bill  
34 requires the filing of the statement of actuarial opinion, the actuarial report supporting the  
35 opinion and the actuarial opinion summary by domestic insurers, excluding domestic  
36 mutual property insurers.