

HOUSE No. 878

The Commonwealth of Massachusetts

PRESENTED BY:

Michael A. Costello

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the property and casualty actuarial opinion act.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|----------------------------|-------------------|------------------|
| <i>Michael A. Costello</i> | <i>1st Essex</i> | <i>1/16/2013</i> |

HOUSE No. 878

By Mr. Costello of Newburyport, a petition (accompanied by bill, House, No. 878) of Michael A. Costello relative to further regulating companies domiciled in the Commonwealth that are required to submit statements of actuarial opinion. Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to the property and casualty actuarial opinion act.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1: Chapter 175 of the General Laws is hereby amended by inserting after
2 Section 225, the following section:

3 Section 226, which is to be known as “The Property and Casualty Actuarial Opinion
4 Act.”

5 (a) Definitions

6 The following words, as used in this section 226, unless the context otherwise requires or
7 a different meaning is specifically prescribed, shall have the following meanings:

8 “Actuarial Opinion” means the opinion of an Appointed Actuary regarding the adequacy
9 of the reserves and related actuarial items prepared in accordance with the latest applicable form
10 of the NAIC’s Property and Casualty Annual Statement Instructions.

11 “Appointed Actuary” means any Qualified Actuary who is appointed or retained by a
12 Company to provide the Actuarial Opinion and supporting Actuarial Report and workpapers as
13 required by this section in accordance with the requirements set forth in the latest applicable
14 form of the NAIC’s Property and Casualty Annual Statement Instructions.

15 “Actuarial Opinion Summary” means a summary of the Actuarial Opinion prepared in
16 accordance with the latest applicable form of the NAIC’s Property and Casualty Annual
17 Statement Instructions.

18 “Actuarial Report” means a document or other presentation, prepared as a formal means
19 of conveying to the Commissioner and the Board of Directors, or its equivalent, the actuary’s
20 professional conclusions and

21 recommendations, of recording and communicating the methods and procedures, of
22 assuring that the parties addressed are aware of the significance of the actuary’s opinion or
23 findings and that documents the analysis underlying the opinion. The content of the report should
24 be prepared in accordance with the requirements of the latest applicable form of the NAIC’s
25 Property and Casualty Annual Statement Instructions.

26 “Annual Statement” means that statement required by section 25 of this Chapter to be
27 filed by the Company with the Commissioner annually.

28 “Company” means any company authorized to write property and casualty insurance in
29 the Commonwealth and thereby subject to the requirements of this section.

30
31 “NAIC” means National Association of Insurance Commissioners.

32 “Qualified Actuary” is a person who meets the basic education, experience and
33 continuing education requirements of the Specific Qualification Standard for Statements of
34 Actuarial Opinion, NAIC Property and Casualty Annual Statement, as set forth in the
35 Qualification Standards for Actuaries Issuing Statements of Actuarial Opinion in the United
36 States, promulgated by the American Academy of Actuaries, and is either:

37 (i) A member in good standing of the Casualty Actuarial Society, or
38 (ii) A member in good standing of the American Academy of Actuaries who has been
39 approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council
40 of the American Academy of Actuaries.

41 (b) Actuarial Opinion of Reserves and Supporting Documentation

42 (1) Statement of Actuarial Opinion

43 Every Company doing business in the Commonwealth, unless otherwise exempted by its
44 domiciliary commissioner, superintendant, director, administrator or other agency head, shall
45 annually submit the opinion of an Appointed Actuary entitled “Statement of Actuarial Opinion.”
46 This opinion shall be filed in accordance with section 25 of this Chapter and with the latest
47 applicable form of the NAIC’s Property and Casualty Annual Statement Instructions.

48 (2) Actuarial Opinion Summary

(i) Every Company domiciled in the Commonwealth 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 latest applicable form of the NAIC's Property and Casualty Annual Statement Instructions and shall be considered as a document supporting the Actuarial Opinion required in Paragraph (b)(1).

(ii) A Company licensed but not domiciled in the Commonwealth shall provide the Actuarial Opinion Summary upon request to the Commissioner.

(3) Actuarial Report and Workpapers

(i) An Actuarial Report and underlying workpapers as required by the latest applicable form of the NAIC Property and Casualty Annual Statement Instructions shall be prepared to support each Actuarial Opinion.

(ii) If a Company fails to provide a supporting Actuarial Report and/or workpapers at the request of the Commissioner, or if the Commissioner determines that the supporting Actuarial Report or workpapers provided by the Company fails to meet the standards prescribed by the latest applicable form of the NAIC Property and Casualty Annual Statement Instructions or is otherwise unacceptable to the Commissioner, the Commissioner may engage a qualified actuary at the expense of the Company to review the Actuarial Opinion and the basis for the Actuarial Opinion and prepare the supporting Actuarial Report and/or workpapers. The Commissioner also may require that the Company have the workpapers redone with proper documentation.

(4) The Appointed Actuary shall not be liable for damages to any person (other than the Company and the Commissioner) for any act, error, omission, decision or conduct with respect to the Appointed Actuary's opinion, except in cases of fraud or willful misconduct on the part of the Appointed Actuary.

(c) Confidentiality

(1) The Statement of Actuarial Opinion shall be provided with the Annual Statement in accordance with section 25 of this Chapter and with the latest applicable form of the NAIC Property and Casualty Annual Statement Instructions, and shall be a public document.

(2) (i) Notwithstanding any other provision of the General Laws, including clause Twenty-sixth of section seven of chapter four and chapter sixty-six, documents, materials or other information in the possession or control of the Commissioner provided to the Commissioner in connection with the Actuarial Report, workpapers or Actuarial Opinion Summary in support of the Actuarial Opinion, shall be confidential by law and privileged, shall

not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

(ii) 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 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) 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 or privileged documents, materials or information subject to Paragraph (c)(2)(i).

(4) In order to assist in the performance of the Commissioner's duties, the Commissioner:

(i) May share documents, materials or other information, including the confidential and privileged documents, with other state, federal and international regulatory agencies, with 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; and

(ii) May 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.

(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 Paragraph (c)(4), herein.

(d) Penalties

(1) A Company neglecting to submit with its annual statement an Actuarial Opinion in accordance with this section and within the time provided by section 25 of this Chapter shall forfeit \$100.00 for each day during which such neglect continues, and, upon notice by the

117 Commissioner, its authority to do new business shall cease while such default continues without
118 any proceedings under sections 5, 6 or 180C of this Chapter.

119 (2) The Commissioner may notify the Actuarial Board for Counseling and Discipline
120 of any violation of this section by a Qualified Actuary.

121 (e) Rules and Regulations

122 The Commissioner may promulgate any rules and regulations necessary to carry out the
123 purposes of this section.