

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 passage of the accompanying bill:

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

PETITION OF:

NAME:

Michael A. Costello

DISTRICT/ADDRESS:

1st Essex

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

49 (i) Every Company domiciled in the Commonwealth that is required to submit a
50 Statement of Actuarial Opinion shall annually submit an Actuarial Opinion Summary, written by
51 the company's Appointed Actuary. This Actuarial Opinion Summary shall be filed in accordance
52 with the latest applicable form of the NAIC's Property and Casualty Annual Statement
53 Instructions and shall be considered as a document supporting the Actuarial Opinion required in
54 Paragraph (b)(1).

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

57 (3) Actuarial Report and Workpapers

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

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

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

74 (c) Confidentiality

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

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

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

85 (ii) This provision shall not be construed to limit the Commissioner's authority to
86 release the documents to the Actuarial Board for Counseling and Discipline ("ABCD") so long
87 as the material is required for the purpose of professional disciplinary proceedings and the
88 ABCD establishes procedures satisfactory to the Commissioner for preserving the confidentiality
89 of the documents, nor shall this section be construed to limit the Commissioner's authority to use
90 the documents, materials or other information in furtherance of any regulatory or legal action
91 brought as part of the Commissioner's official duties.

92 (3) Neither the Commissioner nor any person who received documents, materials or
93 other information while acting under the authority of the Commissioner shall be permitted or
94 required to testify in any private civil action concerning any confidential or privileged
95 documents, materials or information subject to Paragraph (c)(2)(i).

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

98 (i) May share documents, materials or other information, including the confidential
99 and privileged documents, with other state, federal and international regulatory agencies, with
100 the NAIC and its affiliates and subsidiaries, and with state, federal and international law
101 enforcement authorities, provided that the recipient agrees to maintain the confidentiality and
102 privileged status of the document, material or other information and has the legal authority to
103 maintain confidentiality; and

104 (ii) May receive documents, materials or information, including otherwise
105 confidential and privileged documents, materials or information, from the NAIC and its affiliates
106 and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic
107 jurisdictions, and shall maintain as confidential or privileged any document, material or
108 information received with notice or the understanding that it is confidential or privileged under
109 the laws of the jurisdiction that is the source of the document, material or information.

110 (5) No waiver of any applicable privilege or claim of confidentiality in the
111 documents, materials or information shall occur as a result of disclosure to the Commissioner
112 under this Section or as a result of sharing as authorized in Paragraph (c)(4), herein.

113 (d) Penalties

114 (1) A Company neglecting to submit with its annual statement an Actuarial Opinion
115 in accordance with this section and within the time provided by section 25 of this Chapter shall
116 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.