

HOUSE No. 4323

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, July 21, 2014.

The committee on Ways and Means, to whom was referred the Bill relative to the property and casualty actuarial opinion act (House, No. 878), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4323).

For the committee,

BRIAN S. DEMPSEY.

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

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. (a) As used in this section, the following words, unless the context otherwise
4 requires or a different meaning is specifically prescribed, shall have the following meanings:-

5 “Actuarial opinion”, the opinion of an appointed actuary regarding the adequacy of the
6 reserves and related actuarial items prepared in accordance with the latest applicable form of the
7 NAIC’s Property and Casualty Annual Statement Instructions.

8 “Appointed actuary”, a qualified actuary who is appointed or retained by a company to
9 provide the actuarial opinion and supporting actuarial report and workpapers as required by this
10 section in accordance with the requirements set forth in the latest applicable form of the NAIC’s
11 Property and Casualty Annual Statement Instructions.

12 “Actuarial opinion summary”, a summary of the actuarial opinion prepared in accordance
13 with the latest applicable form of the NAIC’s Property and Casualty Annual Statement
14 Instructions.

15 “Actuarial report”, a document or other presentation, prepared as a formal means of
16 conveying to the commissioner and the board of directors, or its equivalent, the actuary’s
17 professional conclusions and recommendations, of recording and communicating the methods
18 and procedures, of assuring that the parties addressed are aware of the significance of the
19 actuary’s opinion or findings and that documents the analysis underlying the opinion. The
20 content of the report shall be prepared in accordance with the requirements of the latest
21 applicable form of the NAIC’s Property and Casualty Annual Statement Instructions.

22 “Annual statement”, the statement required by section 25 to be annually filed by the
23 company with the commissioner.

24 “Company”, any company authorized to write property and casualty insurance in the
25 commonwealth.

26 “NAIC”, National Association of Insurance Commissioners or its successor organization.

27 “Qualified actuary”, a person who meets the basic education, experience and continuing
28 education requirements of the Specific Qualification Standard for Statements of Actuarial
29 Opinion, NAIC Property and Casualty Annual Statement, as set forth in the Qualification
30 Standards for Actuaries Issuing Statements of Actuarial Opinion in the United States,
31 promulgated by the American Academy of Actuaries, and is either:

32 (i) A member in good standing of the Casualty Actuarial Society, or

33 (ii) A member in good standing of the American Academy of Actuaries who has been
34 approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council
35 of the American Academy of Actuaries.

36 (b) (1) Every company doing business in the commonwealth, unless otherwise exempted
37 by its domiciliary commissioner, superintendent, director, administrator or other agency head,
38 shall annually submit the opinion of an appointed actuary entitled “Statement of Actuarial
39 Opinion.” This opinion shall be filed in accordance with section 25 and with the latest
40 applicable form of the NAIC’s Property and Casualty Annual Statement Instructions.

41 (2) (i) Every company domiciled in the commonwealth that is required to submit a
42 statement of actuarial opinion shall annually submit an actuarial opinion summary, written by the
43 company’s appointed actuary. The actuarial opinion summary shall be filed in accordance with
44 the latest applicable form of the NAIC’s Property and Casualty Annual Statement Instructions
45 and shall be considered as a document supporting the actuarial opinion required in paragraph (1).

46 (ii) A company licensed but not domiciled in the commonwealth shall provide the
47 actuarial opinion summary upon request to the commissioner.

48 (3) (i) An actuarial report and underlying workpapers as required by the latest applicable
49 form of the NAIC Property and Casualty Annual Statement Instructions shall be prepared to
50 support each actuarial opinion.

51 (ii) If a company fails to provide a supporting actuarial report or workpapers at the
52 request of the commissioner, or if the commissioner determines that the supporting actuarial
53 report or workpapers provided by the company fails to meet the standards prescribed by the
54 latest applicable form of the NAIC Property and Casualty Annual Statement Instructions or is
55 otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary

56 at the expense of the company to review the actuarial opinion and the basis for the actuarial
57 opinion and prepare the supporting actuarial report or workpapers. The commissioner also may
58 require that the company have the workpapers redone with proper documentation.

59 (4) The appointed actuary shall not be liable for damages to any person, other than the
60 company and the commissioner, for any act, error, omission, decision or conduct with respect to
61 the appointed actuary's opinion, except in cases of fraud or willful misconduct on the part of the
62 appointed actuary.

63 (c)(1) The statement of actuarial opinion shall be provided with the annual statement in
64 accordance with section 25 and with the latest applicable form of the NAIC Property and
65 Casualty Annual Statement Instructions, and shall be a public document.

66 (2) (i) Notwithstanding any other provision of the General Laws, including clause
67 Twenty-sixth of section 7 of chapter 4 and chapter 66, documents, materials or other information
68 in the possession or control of the commissioner provided to the commissioner in connection
69 with the actuarial report, workpapers or actuarial opinion summary in support of the actuarial
70 opinion, shall be confidential by law and privileged, shall not be subject to subpoena, and shall
71 not be subject to discovery or admissible in evidence in any private civil action.

72 (ii) This provision shall not be construed to limit the commissioner's authority to release
73 the documents to the Actuarial Board for Counseling and Discipline ("ABCD") so long as the
74 material is required for the purpose of professional disciplinary proceedings and the ABCD
75 establishes procedures satisfactory to the commissioner for preserving the confidentiality of the
76 documents, nor shall this section be construed to limit the commissioner's authority to use the
77 documents, materials or other information in furtherance of any regulatory or legal action
78 brought as part of the commissioner's official duties.

79 (3) Neither the Commissioner nor any person who received documents, materials or other
80 information while acting under the authority of the commissioner shall be permitted or required
81 to testify in any private civil action concerning any confidential or privileged documents,
82 materials or information subject to clause (i) of paragraph (2).

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

84 (i) May share documents, materials or other information, including the confidential and
85 privileged documents, with other state, federal and international regulatory agencies, with the
86 NAIC and its affiliates and subsidiaries, and with state, federal and international law
87 enforcement authorities, provided that the recipient agrees to maintain the confidentiality and
88 privileged status of the document, material or other information and has the legal authority to
89 maintain confidentiality; and

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

96 (5) No waiver of any applicable privilege or claim of confidentiality in the documents,
97 materials or information shall occur as a result of disclosure to the commissioner under this
98 section or as a result of sharing as authorized in paragraph (4), herein.

99 (d) (1) A company neglecting to submit with its annual statement an actuarial opinion in
100 accordance with this section and within the time provided by section 25 shall be fined \$100 for
101 each day during which such neglect continues, and, upon notice by the commissioner, its
102 authority to do new business shall cease while such default continues without any proceedings
103 under sections 5, 6 or 180C.

104 (2) The commissioner may notify the Actuarial Board for Counseling and Discipline of
105 any violation of this section by a qualified actuary.

106 (e) The commissioner may promulgate any rules and regulations necessary to carry out
107 the purposes of this section.