

HOUSE No. 1853

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to the competitive determination of workers' compensation insurance rates..

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 152 of the General Laws is hereby amended by striking out
2 section 53A, as appearing in the 2006 Official Edition, and inserting in place thereof the
3 following section:-

4 Section 53A. (a) As used in this section, the following terms shall, unless the context
5 clearly requires otherwise, have the following meanings:-

6 “Commissioner”, the commissioner of insurance established under chapter 26.

7 “Division”, the division of insurance.

8 "Loss cost modifier (“LCM”)", shall mean that provision within the rates proposed or
9 approved for any insurer or pool writing workers' compensation and employers' liability
10 insurance, intended to account for such company's or pool's (i) projected expenses, other than
11 allocated loss adjustment expense; (ii) profit and contingency allowance; and (iii) expected
12 difference in loss experience or allocated loss adjustment expense from that of the loss and
13 allocated loss adjustment experience of the industry as a whole. Except for any expense constant

14 component, LCMs shall be expressed as decimals to be applied equally and uniformly to the
15 prospective loss costs approved by the commissioner for use by the filer across all hazard and
16 industry groups. The LCM shall not include any provision to account for assessments collected
17 on behalf of the residual market or to support any trust funds created pursuant to section 65.

18 "Pool", shall mean the reinsurance pool established pursuant to section 65C.

19 "Prospective loss cost", shall mean that portion of a workers' compensation and
20 employers' liability rate that does not include provisions for expenses (other than allocated loss
21 adjustment expenses), profit and contingency, or variations in company loss and allocated loss
22 adjustment expense experience as compared with the experience of the industry as a whole.
23 Such loss costs shall be based on historical aggregate losses and allocated loss adjustment
24 expenses, both reasonably adjusted through development to their ultimate value and projected
25 through trending to a future point in time.

26 "Rate", shall mean the cost of workers' compensation and employers' liability
27 insurance per exposure unit, which shall be derived from a prospective loss cost for such
28 exposure adjusted by a filed LCM.

29 (b) Any insurance company authorized to transact business in this commonwealth
30 under subclause (b) or (e) of clause Sixth of section 47 of chapter 175 may, except as provided in
31 clause (c) of section 54 of said chapter 175, insure the payment of the compensation provided for
32 by this chapter, and when any such company insures such payment, it shall file with the
33 commissioner, or, if it is a member of or subscriber to a rating organization under section 52C,
34 authorize such rating organization to file with the commissioner on its behalf, its classification of
35 risks and projected loss costs relating thereto.

36 (c)(1) The commissioner shall designate a rating organization, duly qualified under
37 said section 52C, to file with the commissioner proposed loss costs and classifications of risks
38 associated with writing workers' compensation and employers' liability insurance in the
39 commonwealth, for use in both the voluntary market and the pool. Said rating organization shall
40 annually file, on or before November 1 of the year such filing is made, industry-wide
41 classifications of risks, prospective loss costs, and minimum premium determination rules for use
42 throughout the entire market. Prospective loss costs and classifications of risk shall be
43 developed for the entire insured workers' compensation market utilizing loss experience without
44 regard to whether such experience came from the voluntary market or the pool. In any instance
45 in which the most recent aggregated 3 years of calendar-accident year data of the loss-plus-all
46 expense ratios of the top 15 insurers in voluntary and pool market share, with all the companies
47 smaller than the fourteenth largest combined to make the fifteenth "company" in such list,
48 contain any companies whose loss-plus-all expense ratios exceed 150% of the median combined
49 ratio of such companies, the commissioner shall, when considering the appropriateness of filed
50 loss costs at the next prospective loss cost proceeding, exclude the voluntary and residual market
51 premiums, payrolls, losses and allocated loss adjustment expenses of such high-ratio companies.

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53 The designated rating organization shall also file all necessary parameters, rating and
54 statistical reporting rules, and forms to be used by any company wishing to write retrospectively
55 rated or large deductible policies. The designated rating organization may also file any desired
56 changes to existing rating plans and other adjustments requested to be applied to the rates and
57 classifications within the voluntary market or pool. Prospective loss costs and any additional
58 requests made within prospective loss cost filings shall be approved by the commissioner only if

59 it is determined after a hearing that their use will not, given reasonable LCMs, produce
60 premiums that are inadequate, excessive, or unfairly discriminatory.

61 (2) Non-rating organization members making individual company prospective loss
62 cost filings must utilize only such classifications of risk and rating plans as are consistent with
63 those filed by the designated rating organization as set forth herein and approved by the
64 commissioner.

65 (3) Within 30 days after the prospective loss cost filing under this section the
66 commissioner shall initiate a hearing to ensure that the proposed classifications are reasonable
67 and equitable and the proposed loss costs fall within a range of reasonableness and are not
68 excessive, inadequate, or unfairly discriminatory for the risks to which they apply.

69 Any hearing on projected industry loss costs shall be completed within 45 days of its
70 commencement and a written decision thereon shall be issued within 30 days of the close of such
71 hearing. If, after said hearing, the commissioner disapproves any part of the filing, the reasons
72 for such disapproval shall be specified in the decision which shall also indicate what changes
73 would be necessary to make any refiling approvable. Any projected loss cost filing shall be
74 deemed approved if the commissioner does not commence the hearing within 30 days of receipt
75 of the filing, complete the hearing within 45 days of its commencement, or issue a written
76 decision within 30 days of its completion. The rating organization, non-member company that
77 has made an individual prospective loss cost filing, or other aggrieved party to a proceeding may
78 seek review of the commissioner's decision before the supreme judicial court.

79 (d) When a filing is not accompanied by the information upon which the insurer
80 supports such filing, and the commissioner does not have sufficient information to determine

81 whether such filing meets the requirements of this section, the commissioner may require such
82 insurer to furnish the information upon which it supports such filing. Any filing may be
83 supported by the experience or judgment of the insurer or rating organization making the filing,
84 the experience of other insurers or rating organizations, and any other factors which the insurer
85 or rating organization deems relevant.

86 (e)(1) Simultaneous with its annual filing of prospective industry-wide loss costs, the
87 rating organization designated by the commissioner to administer the pool pursuant to section
88 65C shall separately file LCMs to be used in the pool as of the effective date of such new loss
89 costs. Such LCMs shall be approved as adequate, not-excessive and not unfairly discriminatory
90 if and only if they reflect the following factors: (i) a loss and allocated loss adjustment expense
91 multiplier of 1.0; (ii) a multiplier reflecting a reasonable estimate of the general and unallocated
92 loss adjustment expenses in the overall workers' compensation market; (iii) any appropriate loss
93 and expense constants; (iv) a reasonable profit-and-contingency multiplier; and (v) such tables
94 and parameters as are necessary for member companies to write retrospectively rated or
95 deductible policies.

96 In reviewing the appropriateness of the rating organization's filed multipliers for
97 expense and for profit and contingency, the commissioner shall be guided by a review of the
98 most recent company LCM filings and shall endeavor to place such pool components within the
99 voluntary market range. The pool profit and contingency component shall reflect any data that
100 indicates that the risk of covering randomly assigned exposures may be slightly higher than that
101 of covering similar risks freely chosen by an insurer as well as any changes in the economic and
102 company expense environments since the voluntary market LCMs reviewed were last placed on
103 file. The commissioner may find a pool profit and contingency multiplier unreasonable if such

104 multiplier is deemed likely to contribute to the creation or sustainability of a pool size that
105 reflects unhealthy market conditions. Each industry-wide loss cost filing and pool LCM filing
106 shall, if not disapproved, be effective as of July 1 following completion of the hearing on
107 prospective loss costs. Decisions disapproving pool LCMs shall indicate what changes are
108 deemed necessary to make such LCMs acceptable to the division.

109 (2) Except as provided below with respect to filings already on file that continue to be
110 in compliance with this section, each company that is a member of the bureau duly designated by
111 the commissioner to make such filings shall, subsequent to the annual approval of an industry-
112 wide prospective loss cost filing and the placing on file of a pool LCM, submit to the division of
113 insurance an LCM filing upon which it desires its rates to be based. Individual companies not
114 belonging to said rating bureau must also make separate filings of their LCMs subsequent to
115 approval of their estimate of prospective company loss costs. In making individual company
116 loss cost and LCM filings, due consideration shall be given by an insurer to its past and
117 prospective loss and allocated loss adjustment expense experience within and outside the
118 commonwealth, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and
119 contingencies, to past and prospective expense both countrywide and those specially applicable
120 to the commonwealth, and to all other relevant factors within and outside the commonwealth,
121 including the experience or judgment of the insurer.

122 (3) In addition to its final proposed modifier, each insurer's LCM filing shall set forth
123 the following components of such modifier:

124 (i) A multiplier which shall reflect the filer's estimate of its loss and allocated loss
125 adjustment expenses. Each such factor to be applied to the industry loss and allocated loss

126 adjustment expense costs approved by the commissioner shall be at least .75, but no greater than
127 1.25. The commissioner may approve a filing that includes different multipliers for different
128 industrial classes under this paragraph but only if such differential multipliers are actuarially
129 supported by the filer and are not violative of subsection (f).

130 (ii) A multiplier which shall reflect the filer's estimate of its general and unallocated
131 loss adjustment expense costs. Such factor to be applied to the industry loss and allocated loss
132 adjustment expense costs approved by the commissioner shall not be lower than 0.33 or higher
133 than 0.50.

134 (iii) A multiplier which shall reflect the filer's estimate of its profit and contingency
135 requirements. Such factor to be applied to the industry loss and allocated loss adjustment
136 expense costs approved by the commissioner shall be no less than the result of subtracting 1.025
137 from the average of 1.0 and the workers' compensation discount factor applicable to the earliest
138 tax year shown for countrywide flows on the most recent IRS publication regarding discount
139 factors for unpaid losses under Section 846, or any corresponding successor section of the
140 Internal Revenue Code, and shall be no greater than one thousand basis points (0.001) higher
141 than said result.

142 (iv) Any expense or loss constants the filer proposes to charge provided that no such
143 constants shall exceed those currently approved for use in the pool at the time of the company
144 LCM filing.

145 The factor to be multiplied by the approved loss and allocated loss adjustment expense
146 cost by class shall be the sum of the multipliers described above in (i), (ii), and (iii). The final
147 company modifier shall also include any constants described in (iv).

148 (4) Both the pool and individual company insurers' final rates shall be determined by
149 applying filed loss cost modifiers to the most recently approved loss and allocated loss
150 adjustment expense costs for the industry as a whole. Rating plans for retrospectively rated or
151 deductible policies written by an insurer shall be consistent with and derivable from parameters
152 approved in the industry-wide loss cost filing. Companies shall use the rates, rules, or amounts
153 approved for the pool for minimum premium determinations and for per capita and other non-
154 payroll based class rates. The classification and experience rating systems approved for the
155 industry as a whole, in accordance with this section, shall be adopted by every insurer without
156 modification.

157 (5) Except where company solvency or continuation is an issue, or where there has
158 been a change in the law affecting company costs, individual company LCM filings shall be
159 effective no earlier than 30 days following their receipt by the division of insurance. No pool or
160 individual company filed LCM shall become effective if, within 21 days of its receipt by the
161 division, the state rating bureau asserts in writing to the filing company or bureau and the
162 commissioner that there are one or more defects in the form or manner of any such filing,
163 explaining the nature of such alleged defects and recommending an acceptable manner of their
164 removal. In such instances the company or pool may not use its filed LCM and may either revise
165 its filing in the manner recommended by the state rating bureau or request a hearing to review
166 the prohibition of its use. The state rating bureau shall disapprove an individual company's
167 LCMs as defective only for the following reasons: (i) such filing contains one or more LCM
168 components that are violative of this section; (ii) such filing would tend to impair or threaten the
169 solvency of the filer; (iii) such filing would likely create a monopoly in the market; or (iv) such
170 filing is expected to produce one or more rates, classifications or premiums that are in any

171 respect unfairly discriminatory. If the company or the pool chooses to revise the filing based on
172 the state rating bureau's objections, the earliest date upon which the filing may be used, if no
173 earlier date is agreed upon by the company and the division, shall be 65 days from the division's
174 receipt of the original filing.

175 The commissioner shall commence any hearing pursuant to this subsection within 21
176 days of the division's receipt of the filer's request for a review of the state rating bureau's written
177 reasons for disapproval of the filing. In the case of an individual company filing, the
178 commissioner shall, by written decision, disapprove the filed LCM after the hearing if, and only
179 if, it is found that the filed LCM contains one or more of the substantive or formal failures set
180 forth in the disapproval by the state rating bureau. Decisions on LCM hearings shall be issued
181 no later than 21 days following commencement of such hearings. In any instance in which either
182 the hearing is not commenced within 21 days of receipt of the filer's request or the decision is
183 not issued within 21 days of the hearing's commencement, the LCM filing shall be deemed
184 approved and become effective no sooner than 65 days from the division's receipt of the
185 company's request for a hearing or the effective date proposed by such company, whichever is
186 the later date.

187 (6) Whenever the commissioner disapproves an individual company LCM filing in
188 accordance with this section, the commissioner may, by sole discretion, authorize the insurer to
189 use either that LCM in effect for such entity prior to the disapproved filing or that LCM most
190 recently placed on file for the pool. Effective LCMs, whether placed on file by the division as
191 submitted or authorized for use by the commissioner pursuant to a hearing as set forth above,
192 shall remain in effect at least until July 1 of the following year. Companies need not refile and
193 may continue to use any effective LCMs subsequent to approved changes in prospective loss

194 costs when all the components of such LCMs continue to comply with every provision of this
195 section. The commissioner may at any time after any company's LCM has been in effect for a
196 year, require such company to file a new LCM, indicating what changes are deemed to be
197 required to make such LCM comply with this section.

198 (7) Both the pool and individual insurers shall have the right to appeal any decision of
199 the commissioner regarding LCMs pursuant to section 14 of chapter 30A, except that all such
200 appeals shall be filed with the Supreme Judicial Court.

201 (f) Insurers' LCM filings shall be in such form and manner as will enable the
202 commissioner to ensure that all filed LCM components are within the constraints provided by
203 subsection (e) and to determine both the filer's basis for its proposed LCM and the premiums
204 such insurer would charge its insureds if such filing were to be approved. When any filing is not
205 accompanied by the information upon which the insurer supports such filing, or the
206 commissioner does not have sufficient information to determine whether such filing meets the
207 requirements of this section, she may require the filer to furnish the information upon which it
208 supports such filing.

209 Each company group having more than one company writing workers' compensation
210 insurance within the commonwealth shall make a single filing containing all the LCMs such
211 group proposes to employ within its entire group, and its filing shall provide objective and not
212 unlawfully discriminatory criteria for placing risks in particular companies within such group.
213 For purposes of this section, a company group's LCMs shall be considered unfairly
214 discriminatory if (i) they include 1 or more LCMs that are deemed to violate any anti-
215 discrimination statute; (ii) they include one or more LCMs that could produce rates that are not

216 uniform within any classification of risk written within any company; or (iii) they could produce
217 disparate rates within the same industrial classification as between 2 or more companies within
218 the same company group, and such differences are not entirely a function of objective and not
219 unlawfully discriminatory criteria filed along with such group's LCMs. Nothing in this
220 paragraph shall be construed to prohibit companies from utilizing policyholder dividend plans
221 that return diverse dividends within any class at the close of a policy period based on company or
222 individual risk performance; provided, however, that no specified dividend amounts may be
223 promised or paid to policyholders in advance of annual declarations.

224 The commissioner may promulgate rules or regulations as deemed necessary to carry
225 out the provisions of this section.

226 (g) Where a claim against an insured that has affected the insured's experience rating
227 has been found non-compensable, or where an insurer recovers previously paid workers'
228 compensation benefits from a negligent third party, or where an insurer has been reimbursed by
229 the insured or the Workers' Compensation Trust Fund for payments made pursuant to subsection
230 2 of section 65, the insurer shall submit a revised statistical unit report to the appropriate rating
231 bureau within 65 days of such finding, recovery or reimbursement.

232 (h) The commissioner shall, by the use of experience rating credits, the institution of a
233 payroll cap on premium computation, or other method, provide for equitable distribution of
234 premiums among employers paying higher than average wages and those paying lower than
235 average wages.

236 (i) The advisory council established pursuant to section 15 of chapter 23E may
237 request loss data from any insurance company or rating organization. Any insurance company or

238 rating organization that is the recipient of such a request may, if it believes that the request is
239 unduly burdensome or unreasonable, file a motion to be heard by the commissioner concerning
240 whether all or part of the request requires response. The commissioner may, if the commissioner
241 finds the request is unduly burdensome or unreasonable, deny the request in whole or in part.

242 At any prospective loss cost or pool LCM hearing conducted pursuant to this section,
243 the advisory council may present a written statement and oral testimony relating to any issues
244 that may arise during the course of such hearing. Said advisory council may not cross-examine
245 witnesses produced by other parties or appeal any decision of the commissioner.

246 (j)(1) The commissioner shall make a finding on the basis of information submitted in
247 any prospective loss cost filing made pursuant to this section that the insurer or insurers employ
248 cost control programs and techniques acceptable to the commissioner which have had or are
249 expected to have a substantial impact on fraudulent claim costs, unnecessary health care costs,
250 and any other unreasonable loss costs, as well as on the efficient and adequate collection of the
251 appropriate premium charges owed the insurer or insurers. If the commissioner does not find
252 such cost control programs and techniques, the commissioner may disapprove such filing. The
253 commissioner shall also have authority to make findings, after a hearing on any prospective loss
254 cost filing made pursuant to this section, that the proposed loss costs are excessive due to the
255 failure of the insurer or insurers to utilize adequate programs to control loss costs or to collect the
256 appropriate premium charges. If the commissioner so finds, the commissioner shall disapprove
257 such a filing or, in the alternative, shall limit in any manner determined to be appropriate the
258 amount of any adjustment in premium charges based upon changes in loss costs and premium
259 collections. The commissioner may issue regulations designed to further achievement by

260 insurers of adequate controls on loss costs and of adequate collection of the appropriate premium
261 charges owed to the insurers.

262 (2) The commissioner shall promulgate rules and statistical plans, which may be
263 modified from time to time and which shall be used thereafter by each insurer in the recording
264 and reporting of its loss and expense experience, in order that the experience of all insurers may
265 be made available, at least annually, in such form and detail as may be necessary to aid the
266 commissioner in the performance of the commissioner's duties. In promulgating such rules and
267 plans, the commissioner shall give due consideration to the rating systems on file with the
268 division and to the rules and to the form of the plans used for statistical reporting in other states.
269 The commissioner may designate one or more rating organizations or other agencies to assist in
270 gathering such experience and making compilations thereof. Such compilations shall be made
271 available, subject to rules promulgated by the commissioner, to insurers and rating
272 organizations. Any such statistical agent appointed by the commissioner pursuant to this section
273 to assist in the gathering, compilation and dissemination of statistical data shall be authorized to
274 assess reporting companies for the reasonable costs of such services, as approved by the
275 commissioner. Every statistical agent and rating organization designated by the commissioner
276 and every insurer that is not a member of any such rating organization shall share the information
277 and experience necessary for the calculation of experience modifications and other derivable
278 elements from approved rating plans with every other non-member insurer, approved statistical
279 agent, and rating organization requiring such information and experience in order to estimate loss
280 costs or LCMs for its own insureds or those of its members or subscribers. Any statistical plan
281 promulgated by the commissioner pursuant to this section may include provisions for reasonable
282 fines or other penalties for late or inaccurate reporting, and shall provide for a process by which

283 insurers may appeal any such penalties. Failure to cooperate with the commissioner’s statistical
284 agent or to pay any penalties levied pursuant to this section may subject insurers to suspension,
285 revocation, or other limitation of the right to offer insurance in the commonwealth, subject to the
286 provisions of section 4 of chapter 175.

287 SECTION 2. Subsection (5) of section 65 of chapter 152 of the General Laws, as
288 appearing in the 2006 Official Edition, is hereby amended by adding the following paragraph:-

289 For purposes of making assessments pursuant to this section, each company’s standard
290 premium shall be put at pool level. “Standard premium” as used in this section, and as it is used
291 as a basis for the equitable distribution of losses or other costs associated with the assigned risk
292 pool under section 65C, shall be as defined by the Massachusetts workers’ compensation
293 statistical plan, approved by the commissioner; provided, however, that any such definition shall
294 require that standard premium shall be subsequent to the application of experience modification
295 and any credits applied under the Massachusetts construction credit program, but shall be prior to
296 the application of any large deductible credits or all risk adjustment program charges.

297 SECTION 3. Section 65A of chapter 152 of the General Laws, as so appearing, is
298 hereby amended by striking out the first two sentences and inserting in place thereof the
299 following:-

300 Any employer whose application for voluntary workers’ compensation insurance is
301 rejected or not accepted by at least 2 company groups within 5 days may make application to the
302 duly appointed assigned risk pool administrator for admission to the pool. In order for such an
303 employer to be eligible for such admission, the employer shall have complied substantially with
304 this section, as well as with all laws, orders, rules and regulations in force and effect relating to

305 the welfare, health and safety of his employees and shall not be in default of payment of any
306 premium for workers' compensation insurance. Upon receipt of a completed application
307 accompanied by evidence of the company group declinations of coverage referenced above from
308 an employer otherwise meeting the requirements of this section, said administrator shall
309 designate an insurer who shall forthwith, upon receipt of payment for the premium therefor, issue
310 to such employer a guaranteed cost policy of insurance at rates calculated in the manner set forth
311 in section 53A to provide all compensation required by this chapter. Nothing in this chapter
312 shall be construed to require any employer written through the pool to accept a voluntary offer of
313 coverage at a cost in excess of the cost of continued or renewed residual market coverage or to
314 require the pool to non-renew any pool risk that has received a voluntary offer at premiums that
315 are either higher than those in the pool or that require the payment of premiums or loss-
316 reimbursements that may be affected by losses occurring during the same policy period for
317 which coverage is being offered. The commissioner may order occasional mandatory non-
318 renewals of policies written through the pool, require new pool applicants to provide affirmations
319 or other evidence of their inability to obtain voluntary market coverage, or undertake other such
320 depopulation initiatives deemed to be appropriate. To assist both new businesses seeking
321 coverage in the voluntary market and currently insured employers seeking the lowest premiums
322 available, the division shall annually post on its website the percentage differences between the
323 pool rates and the rates at which workers' compensation is being sold pursuant to the most
324 recently filed individual company LCMs.

325 SECTION 4. In August of any year in which either the Herfindahl-Hirschman Index
326 of market concentration for the Massachusetts workers' compensation market rose above 1,500
327 during the prior year, or the commissioner, for any other reasons, believes either that competition

328 may have been insufficient to protect consumer interests or may have been conducted in a
329 manner that was either detrimental to a healthy competitive market or to quality workers'
330 compensation insurance products being widely offered in a non-discriminatory manner at
331 reasonable prices, may hold a hearing on the state of competition in the workers' compensation
332 market. If the primary reason for the commissioner's belief that the workers' compensation
333 market is insufficiently competitive is a function of either (i) the residual market pool's
334 contribution to the Herfindahl-Hirschman Index of more than 30% or (ii) a significant change in
335 the residual market load borne by voluntary market carriers, the commissioner may make an
336 adjustment to the pool profit and contingency multiplier at the next loss cost proceeding without
337 holding a hearing on the state of competition in the workers' compensation market.

338 Decisions on any market competition hearing held pursuant to this section shall be
339 issued no later than September 15th of the year in which such hearing is held. If the
340 commissioner finds, based on clear and convincing evidence produced at such hearing, that
341 competition as allowed by this section has not sufficiently protected either broad consumer or
342 industry interests during the prior year and administered pricing would better serve such
343 interests, the commissioner shall order the rating bureau designated to file industry loss costs
344 under this section to instead file overall rates on behalf of the entire industry on each of the next
345 2 filing dates. In such instances, all companies shall be required to utilize only approved
346 industry-wide rates during each of the next 2 rate years. The hearings on such bureau rate filings
347 shall be conducted within the same time frames as those set forth in this chapter for prospective
348 loss cost filings. After such 2 year period, prices shall again be determined through the use of
349 prospective loss cost filings and residual market and company LCMs as set forth herein. Market

350 competition hearings under this section shall not be held during any year following the issuance
351 of an industry-wide rate approval.

352 SECTION 5. This act shall take effect 90 days after enactment. Rates and
353 classifications in effect prior to that date shall remain in effect thereafter until new rates and
354 classifications become effective pursuant to the provisions of this act.