

HOUSE No. 1133

The Commonwealth of Massachusetts

PRESENTED BY:

Patrick Joseph Kearney

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 modernizing private flood insurance.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|-------------------------------|-----------------------|------------------|
| <i>Patrick Joseph Kearney</i> | <i>4th Plymouth</i> | <i>2/16/2021</i> |
| <i>Maria Duaine Robinson</i> | <i>6th Middlesex</i> | <i>2/25/2021</i> |
| <i>Timothy R. Whelan</i> | <i>1st Barnstable</i> | <i>2/26/2021</i> |
| <i>Mathew J. Muratore</i> | <i>1st Plymouth</i> | <i>2/26/2021</i> |
| <i>Susan Williams Gifford</i> | <i>2nd Plymouth</i> | <i>2/26/2021</i> |
| <i>Steven S. Howitt</i> | <i>4th Bristol</i> | <i>2/26/2021</i> |
| <i>David Allen Robertson</i> | <i>19th Middlesex</i> | <i>2/26/2021</i> |
| <i>Steven G. Xiarhos</i> | <i>5th Barnstable</i> | <i>2/26/2021</i> |
| <i>Jessica Ann Giannino</i> | <i>16th Suffolk</i> | <i>2/26/2021</i> |
| <i>Lindsay N. Sabadosa</i> | <i>1st Hampshire</i> | <i>2/26/2021</i> |

HOUSE No. 1133

By Mr. Kearney of Scituate, a petition (accompanied by bill, House, No. 1133) of Patrick Joseph Kearney and others relative to modernizing private flood insurance. Financial Services.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to modernizing private flood insurance.

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. This act is known and may be cited as the “Massachusetts Private Flood
2 Insurance Act”.

3 SECTION 2. The Massachusetts general laws, as so appearing, are hereby amended by
4 adding the following new chapter:-

5 “CHAPTER 183

6 Massachusetts Private Flood Insurance Act

7 Section 1. It is the intent of this chapter to foster innovative flood insurance coverages
8 providing insurers the ability to test products in the market and consumers greater choice for
9 flood insurance coverage. It is also the intent of this chapter to instruct the Commissioner to
10 track and report the participation of private flood insurers in the State of Massachusetts through
11 the count of private flood policies from both domestic, foreign and alien, admitted and surplus
12 lines, on a calendar year basis.

13 Section 2. For the purposes of this section:

14 (1) 'Flood' means:

15 (a) a general and temporary condition of partial or complete inundation of two or more
16 acres of normally dry land area or of two or more properties, at least one of which is the
17 policyholder's property, from:

18 (i) overflow of inland or tidal waters;

19 (ii) unusual and rapid accumulation or runoff of surface waters from any source; or

20 (iii) mudflow; or

21 (b) collapse or subsidence of land along the shore of a lake or similar body of water as a
22 result of erosion or undermining caused by waves or currents of water exceeding anticipated
23 cyclical levels that result in a flood as defined in this section.

24 (2) 'Mudflow' means a river of liquid and flowing mud on the surfaces of normally dry
25 land areas, as when earth is carried by a current of water. Other earth movements, such as
26 landslide, slope failure, or a saturated soil mass moving by liquidity down a slope, are not
27 mudflows.

28 (3) 'Private flood insurance' means personal lines or commercial flood insurance policies
29 or endorsements providing coverage for the peril of flood issued directly by insurers.

30 Section 3. An insurer may issue an insurance policy, contract, or endorsement providing
31 commercial lines or personal lines coverage for the peril of flood or excess coverage for the peril

32 of flood on any structure, on the contents of commercial or personal property contained
33 therein, or to insure against indirect losses from the peril of flood subject to the requirements of
34 this chapter. Any reference to policy in this chapter also includes endorsements that provide
35 private flood insurance coverage.

36 Section 4. (A) Private flood insurance policies issued pursuant to this chapter include:

37 (1) ‘Standard flood insurance’, which means a private flood insurance policy which
38 covers only losses from the peril of flood at least equivalent, when taken as a whole, to that
39 provided under a standard flood insurance policy under the National Flood Insurance Program
40 (NFIP) including deductibles, exclusions, and other terms and conditions offered by the insurer.

41 The policy form also must include:

42 (a) information about the availability of flood insurance coverage under the NFIP;

43 (b) a mortgage interest clause substantially similar to the clause contained in a standard
44 flood insurance policy under the NFIP;

45 (c) a provision requiring an insured to file suit no later than one year after the date of a
46 written denial of all or part of a claim under the policy; and

47 (d) cancellation provisions that are as restrictive as the provisions contained in a standard
48 flood insurance policy under the NFIP.

49 (2) ‘Nonstandard flood insurance’, which may, but is not required to, provide coverage
50 designed to supplement a flood policy obtained from the NFIP or from an insurer issuing
51 standard flood insurance pursuant to this section. This includes any other policy issued for the

52 coverage of flood that does not meet the definition of a standard flood insurance policy as
53 defined above. Nonstandard flood insurance also includes policies that have a broader definition
54 of flood than that provided for in Section 2(1) and discretionary acceptance private flood
55 insurance as provided for in 12 C.F.R. Part 208.25.

56 (B) Flood insurance deductibles and policy limits must be prominently noted on the
57 policy declarations page or face page of the policy at issuance and renewal in at least ten point
58 font.

59 (3) All flood insurance policies, regardless of whether they are considered ‘standard’ or
60 ‘nonstandard’, must contain a statement somewhere on the policy to clearly state that the policy
61 is not a policy from the NFIP.

62 Section 5. (A)(1) Every admitted insurer writing personal lines private flood insurance
63 pursuant to this chapter shall file with the Commissioner all rates and supplementary rate
64 information and all changes and amendments made by it for use in this State no later than ninety
65 days after the effective date and such filing shall be considered a ‘use and file’ filing. These
66 filings are for informational purposes only.

67 (2) Insurers shall establish rates based on actuarial data, methodologies, and standards
68 and guidelines relating to flood insurance that produce rates that are not excessive, inadequate, or
69 unfairly discriminatory.

70 (B)(1) A rating or advisory organization may file prospective loss cost and supplementary
71 rate information on behalf of insurers. The loss cost and supplementary rate information are
72 subject to the ‘use and file’ provisions of this section, regardless of whether they are for

73 commercial lines or personal lines private flood insurance.

74 (2) Each personal lines private flood insurer shall file its multiplier for expenses,
75 assessments, profits, and contingencies to be applied to the loss cost and any information relied
76 upon by the insurer to support the multiplier and any modifications to loss costs subject to the
77 use and file provisions of this section.

78 (3) Licensees shall establish loss costs and multipliers for expenses based on actuarial
79 data, methodologies, and standards and guidelines relating to flood insurance that produce rates
80 that are not excessive, inadequate, or unfairly discriminatory. Filings pursuant to this subsection
81 are for informational purposes only.

82 (C) All rate filings are confidential until final disposition by the Commissioner. Final
83 disposition of rates and the filings are subject to public inspection in accordance with the
84 provisions of the Massachusetts Freedom of Information Act.

85 Section 6. (A) Every admitted insurer writing personal lines or commercial lines private
86 flood insurance pursuant to this chapter shall file with the Commissioner all forms and all
87 changes and amendments made by it for use in this State no later than ninety days after
88 becoming effective. This form filing is considered a 'use and file' filing.

89 (B) The Commissioner may at any time review a form, the pertinent records of the
90 insurer, and market conditions. The Commissioner may at any time disapprove a form and shall
91 notify the insurer. In reviewing the forms filed, the department may require the insurer to
92 provide, at the insurer's expense, all information necessary to evaluate the filing. Upon
93 notification, the insurer shall, within sixty days, file with the department all information which,

94 in the belief of the insurer, establishes that the form is in compliance with this chapter
95 and other applicable law. The insurer may appeal the final determination of the Commissioner or
96 his designee to the to the appropriate appeals authority. The insurer shall carry the burden of
97 proof by a preponderance of the evidence to show that the form complies with applicable
98 Massachusetts law.

99 (C) All form filings are confidential until final disposition by the Commissioner. Final
100 form filings are subject to public inspection in accordance with the provisions of the
101 Massachusetts Freedom of Information Act.

102 (D) An advisory or rating organization may file forms on the behalf of insurers. These
103 filings are subject to the 'use and file' provisions of this section. If the Commissioner finds on a
104 preliminary basis that a form does not comply with this chapter or other applicable law, the
105 Commissioner shall disapprove the form and shall notify the rating or advisory organization.
106 Upon notification, the rating or advisory organization shall, within sixty days, file with the
107 department all information which, in the belief of the advisory or rating organization, establishes
108 the form complies with this chapter and other applicable law. The advisory or rating organization
109 may appeal the final determination of the Commissioner or his designee to the appropriate
110 appeals authority. The advisory or rating organization shall carry the burden of proof by a
111 preponderance of the evidence to show that the form complies with applicable Massachusetts
112 law.

113 Section 7. A surplus lines broker may place a policy or endorsement providing flood
114 insurance coverage to an eligible surplus lines insurer without making a diligent effort to seek

115 such coverage from one or more admitted insurers required pursuant to Sub part iii, Part
116 b, Section 168 of Chapter 175 of the General Laws.

117 Section 8. (A) In addition to any other applicable requirements pursuant to this title, any
118 admitted insurer providing private flood insurance coverage that is considered standard flood
119 insurance coverage in this State shall:

120 (1) notify the Commissioner or his designee at least thirty days before writing flood
121 insurance in this State; and

122 (2) file a plan of operation and financial projections or revisions to such plan, as
123 applicable, with the Commissioner or his designee.

124 (B) Admitted insurers writing private flood insurance shall comply with the requirements
125 of Chapter 174 and are subject to examination in accordance with Chapter 174. Brokers placing
126 flood insurance policies are subject to examination in accordance with Chapter 175 and all
127 related sections.

128 (C) Subsection (A) does not impose new requirements on any insurer currently writing
129 private flood insurance coverage at the time of enactment of this chapter.

130 (D) Admitted insurers exiting the private flood insurance market shall notify the
131 Commissioner or his designee within forty five days of the market exit.

132 Section 9. (A) Before placing a personal lines private flood insurance policy with an
133 admitted or surplus lines insurer, an insurance producer, broker, or the insurer shall provide a
134 written notice to the applicant advising that if the applicant discontinues coverage under the

135 NFIP, which is provided at a subsidized rate, the full risk rate for flood insurance may
136 apply to the property if the applicant later seeks to reinstate coverage under the program.

137 (B) This section only applies if the applicant lives in a special flood hazard area. The
138 producer, broker, or insurer shall retain this notice for three years. This section automatically
139 sunsets if there is federal legislation that allows the insured to switch between private flood
140 insurance and NFIP coverage without penalty.

141 Section 10. With respect to the regulation of private flood insurance written in this State
142 by authorized insurers, this title controls if there is a conflict between this title and any other
143 applicable state law.

144 Section 11. (A) An admitted insurer offering flood insurance may certify that a policy,
145 contract, or endorsement provides coverage for the peril of flood which equals or exceeds the
146 flood coverage offered by the NFIP. To be eligible for certification, the policy, contract, or
147 endorsement must contain a provision stating that it meets the private flood insurance
148 requirements specified in 42 U.S.C. Section 4012a(b) and may not contain provisions that, when
149 taken as a whole, are not in compliance with 42 U.S.C. Section 4012a(b).

150 (B) The admitted insurer or its agent may reference or include a certification pursuant to
151 subsection (A) in advertising or communications with an agent, a lending institution, an insured,
152 or a potential insured only for a policy, contract, or endorsement that is certified pursuant to this
153 section. The admitted insurer may include a statement that notifies an insured of the certification
154 on the declarations page or other policy documentation related to flood coverage certified
155 pursuant to this section.

156 (C) An insurer or agency who knowingly:

157 (1) misrepresents that a flood policy, contract, or endorsement is certified pursuant to this
158 chapter; or

159 (2) misrepresents the scope of the coverage of the flood insurance policy, contract, or
160 endorsement commits an unfair or deceptive act pursuant to Chapter 176D and is subject to the
161 penalties set forth in this chapter.

162 Section 12. (A) The insurer shall give written notice forty five days before cancellation or
163 nonrenewal of private flood insurance coverage to:

164 (1) the insured; and

165 (2) the federally supervised institution that made the designated loan secured by the
166 property covered by the private flood insurance, or the servicer acting on its behalf, if any.

167 (B) The notice must:

168 (1) be filed with the Commissioner or their designee;

169 (2) state the date no less than forty five days for any cancellation or nonrenewal; and

170 (3) inform the insured of its right to request a review by the division of insurance.

171 (C)(1) An insurer may cancel or refuse to issue or renew a private flood insurance policy,
172 except for the reasons set forth below:

173 (a) age;

174 (b) sex;

175 (c) race;

- 176 (d) color;
- 177 (e) creed;
- 178 (f) national origin;
- 179 (g) ancestry;
- 180 (h) marital status;
- 181 (i) income level; or
- 182 (j) lawful occupation, including the military service of the person seeking the coverage.

183 (2) Nothing in this section prohibits an insurer from limiting the issuance of private flood
184 insurance policies covered in this chapter only to persons engaging in or who have engaged in a
185 particular profession or occupation, or who are members of a particular religious sect.

186 (3) Nothing in this section prohibits an insurer from refusing to issue private flood
187 insurance policies due to the exposure of flood.

188 (4) Notwithstanding the provisions of item (1), an insurer only may cancel a standard
189 flood insurance policy in accordance with 42 U.S.C. Section 4012a(b).

190 Section 13. (A) If an insurer intends to renew a policy, the insurer shall furnish renewal
191 terms and a statement of the amount of premium or estimated premium due for the renewal
192 policy period in the manner required by this section.

193 (B) If the policy being renewed (original policy) is written for a term of one year or less,
194 the renewal terms and statement of premium or estimated premium due must be furnished to the
195 insured no less than forty five days prior to the expiration date of the original policy.

196 (C) If the original policy is written for a term of more than one year or for an indefinite
197 term, the renewal terms and statement of premium or estimated premium due must be furnished
198 to the insured no less than forty five days prior to the anniversary date of the original policy.

199 (D) The insurer may satisfy its obligation to furnish renewal terms and statement of
200 premium or estimated premium due by either of the following methods:

201 (1) mailing or delivering renewal terms and statement to the insured via electronic
202 delivery in accordance with Massachusetts law, at the address shown in the policy or, if not
203 reflected, at the last known address, no less than forty five days prior to expiration or
204 anniversary; or

205 (2) mailing or delivering renewal terms and statement to the producer or broker of record,
206 if any, no less than sixty days prior to expiration or anniversary, along with instructions that the
207 agent or broker furnish the renewal terms and statement to the insured no less than forty five
208 days prior to expiration or anniversary.

209 (E) If the insurer fails to furnish the renewal terms and statement of premium or
210 estimated premium due in the manner required by this section, the insured may elect to cancel
211 the renewal policy within the forty five day period following receipt of the renewal terms and

212 statement of premium or estimated premium due. Earned premium for any period of
213 coverage must be calculated pro rata based upon the premium applicable to the original policy
214 and not the premium applicable to the renewal policy.

215 Section 14. The department is authorized to promulgate by bulletin, order, or regulation
216 the requirements necessary to implement the requirements of this chapter.”

217 Section 15. The Insurance Commissioner shall, on an annual basis, report the number of
218 private flood policies in effect in the Commonwealth of Massachusetts. The Commissioner shall
219 obtain this information by requesting it from private flood insurance companies. Admitted
220 insurers shall be required to report to the Commissioner the number of private flood policies the
221 insurer has in force. For non-admitted insurers, the Commissioner shall strongly encourage the
222 insurers to participate in the count of the number of private flood policies in force in the State.
223 The count of policies, and the report from the Commissioner, shall not report any proprietary
224 rating information, insured information, insured address or other proprietary information. The
225 insurer may, at their option, report to the Commissioner the geographic location, region or any
226 other information. The only required information from the insurers to the Commissioner shall be
227 the number of policies in force in the current calendar year. The Commissioner shall publish the
228 report annually for the public to view.

229 SECTION 16. This act becomes effective sixty days following approval by the Governor.
230 Insurers that are writing private flood insurance at the time of enactment have an additional one
231 hundred twenty days to come into compliance with the requirements of this act.”