

HOUSE No. 00311

By Ms. Sarah K. Peake of Provincetown, petition (accompanied by bill, House, No. 00311) of Cory Atkins and others relative to homeowners insurance rate filings that include a charges for expected hurricane losses or catastrophes . Joint Committee on Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to Massachusetts homeowners' insurance rate filings.

M.G.L.A. 174A § 5

Massachusetts General Laws Annotated Currentness
Part I. Administration of the Government (Ch. 1-182)

☞ Title XXII. Corporations (Ch. 155-182)

☞ Chapter 174A. Regulation of Rates for Fire, Marine and Inland Marine Insurance, and Rating Organizations (Refs & Annos)

☛ § 5. Rates; general provisions

(a) Rates shall be made in accordance with the following provisions:--

1. Manual, minimum, class rates, rating schedules or rating plans, shall be made and adopted, except in the case of specific inland marine rates on risks specially rated, and except in the case of special rates on other than inland marine risks where manual, minimum, class rates, rating schedules or rating plans are not readily available.

2. Rates shall not be excessive, inadequate or unfairly discriminatory.

3. Due consideration shall be given to past and prospective loss experience within and outside this commonwealth, to the conflagration and catastrophe hazards, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses both countrywide and those specially applicable to this commonwealth, and to all other relevant factors within and outside this commonwealth; and in the case of fire insurance rates consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent five-year period for which such experience is available. **SECTION 1** ~~In considering catastrophe hazards with respect to homeowners~~

~~insurance rates, the commissioner shall consider catastrophe reinsurance and factors relating thereto.~~

(b) Except to the extent necessary to meet the provisions of subdivision 2 of subsection (a) of this section, uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.

(c) Rates made in accordance with this section may be used subject to this chapter.

(d) Nothing in this chapter shall abridge or restrict the freedom of contract between insurers and agents or brokers with respect to commissions or between insurers and their employees with respect to compensation.

(e) Two or more insurers who by virtue of their business associations in the United States represent themselves to be or are customarily known as an "insurance company group", or similar insurance trade designation, shall have the right to make the same filings or to use the same rates for each such insurer subject to subdivisions 1, 2 and 3 of subsection (a) of this section; and nothing contained in this chapter shall be construed to prohibit an agreement to make the same filings or use the same rates and concerted action in connection with such filings or rates by such insurers. This subsection shall not apply to two or more insurers who are not under the same common executive or general management or control and who act in concert in underwriting groups or pools.

4. In any homeowners insurance rate filing that includes a charge for expected hurricane losses based on the output of a hurricane model (whether as a hurricane load or as a component of a reinsurance charge), the insurance company has the burden to demonstrate in the filing that (i) the frequency or incidence of hurricanes of each category 3, 4, and 5 respectively used for determining the filed hurricane losses in the model is no greater than the historical frequency or incidence of each such category of hurricane at the time of landfall in Massachusetts in the long-term HURDAT database, and (ii) the damage or vulnerability function in the model used for determining the filed hurricane losses in the model accurately reflects the damageability or vulnerability of homes in Massachusetts.

5. In any homeowners insurance rate filing that includes a charge in rates for the cost of reinsurance for expected hurricane or other catastrophe losses, the insurance company shall have the burden of showing in the filing the dollar amount of expected hurricane or other catastrophe losses covered by the reinsurance and the means by which such amount is determined. No amount of or charge for reinsurance shall be included in the calculation of homeowners rates that is more than 100% greater than the amount of the expected hurricane or other catastrophe losses covered by reinsurance.

6. In any homeowners insurance rate filing that includes a charge for expected hurricane losses, the insurance company shall include actuarially reasonable discounts, credits, or other rate differentials, or appropriate reductions in deductibles, for properties on which fixtures or construction techniques demonstrated to reduce the amount of loss in a windstorm have been installed or implemented. Such fixtures or construction techniques

shall include, but not be limited to, fixtures or construction techniques which enhance roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to foundation strength, opening protection, and window, door, and skylight strength.

CREDIT(S)

M.G.L.A. 174A § 7

Massachusetts General Laws Annotated Currentness
Part I. Administration of the Government (Ch. 1-182)

☞ Title XXII. Corporations (Ch. 155-182)

☞ Chapter 174A. Regulation of Rates for Fire, Marine and Inland Marine Insurance, and Rating Organizations (Refs & Annos)

➡ **§ 7. Defective filing; remedy of aggrieved persons**

(a) If at any time the commissioner finds that a filing does not meet the requirements of this chapter, **SECTION 2** ~~he~~ **or upon motion of the Attorney General, the Commissioner** (*perhaps the word, "he" should go back in here*) shall, after a hearing held upon not less than ten days' written notice, specifying the matters to be considered at such hearing, to every insurer and rating organization which made such filing, issue an order specifying in what respects he finds that such filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of said order shall be sent to every such insurer and rating organization. **In a hearing under this section, any party may obtain discovery of all materials, including models and calculations, pertinent to the filing.**

(b) Any person or organization aggrieved with respect to any filing which is in effect may make written application to the commissioner for a hearing thereon; provided, that the insurer or rating organization that made the filing shall not be authorized to proceed under this subsection. Such application shall specify the grounds to be relied upon by the applicant. If the commissioner shall find that the application is made in good faith, that the applicant would be so aggrieved if his grounds are established, and that such grounds otherwise justify holding such a hearing, he shall, within thirty days after receipt of such application, hold a hearing upon not less than ten days' written notice to the applicant and to every insurer and rating organization which made such filing.

If the Commissioner determines that any already effective premium is excessive, he shall order a specific decrease in that premium to be effective six months from the date of the filing under consideration. He shall order a specific decrease irrespective of whether any insurance company or rating organization has filed for a decrease in any premium rate.

If, after such hearing, the commissioner finds that the filing does not meet the requirements of this chapter, he shall issue an order specifying in what respects he finds that such filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter,

such filing shall be deemed no longer effective. Copies of said order shall be sent to the applicant and to every such insurer and rating organization.

(c) The commissioner may also call a hearing at any time prior to the proposed effective date of any filing or any later effective date called for by order made pursuant to this chapter. If after such hearing the commissioner finds that any such filing will not meet the requirements of this chapter, said filing shall not take effect.

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M.G.L.A. 175C § 5

Massachusetts General Laws Annotated [Currentness](#)

Part I. Administration of the Government (Ch. 1-182)

▣ [Title XXII](#). Corporations (Ch. 155-182)

▣ [Chapter 175C](#). Urban Area Insurance Placement ([Refs & Annos](#))

▣ **§ 5. Powers of commissioner**

(a) The operation of the association shall be subject to the supervision and regulation of the commissioner. The commissioner or any person designated to act for the commissioner shall have the power to examine and investigate the operation of the association and shall have access to all the books, records, files, papers and documents that relate to its operations, may summon and qualify witnesses under oath, and may examine directors, officers, agents or employees or any other person having knowledge of the operations for the purpose of determining if the purposes of this chapter are being fulfilled.

(b) The association may make rate filings in accordance with chapter 174A and chapter 175A; provided, however, that the filing shall be subject to the prior approval of the commissioner, after proper notice and hearing, subject to the adjudicatory procedures of chapter 30A; and provided, further, that in reviewing the rates for the association, the commissioner shall give consideration, in addition to all other relevant factors, to the loss experience of insurers in the voluntary market, as well as the experience of the association and to the intent of this chapter to make basic property insurance available at reasonable cost to eligible applicants in large share territories **SECTION 4** and provided, further, that if the commissioner determines that any already effective premium is excessive, he shall order a specific decrease in that premium to be effective six months from the date of the filing under consideration. He shall order a specific decrease irrespective of whether any insurance company or rating organization has filed for a decrease in any premium rate.

(c) The commissioner shall approve all rates for the association for homeowners insurance in territories other than large share territories if the commissioner finds that the proposed rates for the territories comply with the requirements of the General Laws; but, the commissioner may disapprove the rate upon a finding that it exceeds a rate equal to the ninetieth percentile of the rates then in use in the territory by the 10 insurers with the largest market shares of homeowners insurance written in the commonwealth on a statewide basis. The commissioner shall approve all rates for the association for homeowners insurance in large share territories only if the commissioner finds that: (1) the proposed rates for the association for the territories comply with the requirements of the General Laws; and (2) no rate for the territory in any calendar year increases over the lowest rate for that product charged by the association during

the prior calendar year in the territory by more than the overall statewide average percentage increase in rates charged from December 31 of the year preceding the prior calendar year to December 31 of that prior calendar year for homeowners insurance by the 10 insurers with the largest market shares of such insurance written in the commonwealth on a statewide basis. Notwithstanding clause (2), the commissioner shall consider the effects of predicted hurricane losses and the cost of catastrophe reinsurance on the rates charged by voluntary market insurers and the cost of catastrophe reinsurance and the predicted hurricane losses on the association approving rates for homeowners insurance in all territories **provided that (1) the association shall have the burden to demonstrate in the filing that (i) the frequency or incidence of hurricanes of each category 3, 4, and 5 respectively used for determining the filed hurricane losses in the model is no greater than the historical frequency or incidence of each such category of hurricane at the time of landfall in Massachusetts in the long-term HURDAT database, and (ii) the damage or vulnerability function in the model used for determining the filed hurricane losses in the model accurately reflects the damageability or vulnerability of homes in Massachusetts, (2) the association shall have the burden of showing in the filing the dollar amount of expected hurricane or other catastrophe losses covered by the reinsurance and the means by which such amount is determined, and no amount of or charge for reinsurance shall be included in the calculation of homeowners rates that is more than 100% greater than the amount of the expected hurricane or other catastrophe losses covered by reinsurance, and (3) the association shall include actuarially reasonable discounts, credits, or other rate differentials, or appropriate reductions in deductibles, for properties on which fixtures or construction techniques demonstrated to reduce the amount of loss in a windstorm have been installed or implemented. Such fixtures or construction techniques shall include, but not be limited to, fixtures or construction techniques which enhance roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to foundation strength, opening protection, and window, door, and skylight strength. In a hearing under this section, any party may obtain discovery of all materials, including models and calculations, pertinent to the filing.** Whenever the average market share of the association during the most recent 3 years shall reach a level which newly qualifies a territory as a large share territory, the association shall analyze the rates of companies in that territory and shall file a report with the commissioner who shall, in turn, either re-certify the current rate or approve a revised rate for the territory filed by the association which bears a relationship to the rates in the voluntary market in the territory which is consistent with the average relationship between the rates charged by the association in all territories in which it has a similar market share and the rates in the voluntary market in those territories. As used in this subsection, the term "homeowners insurance" shall apply only to the types of products sold by the association on the effective date of this section. All other types of homeowners products subsequently sold by the association shall have a rate based on a factor approved by the commissioner that reflects the relative value of the coverage provided by the types of products to those for which rates have been approved by the commissioner.

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