

HOUSE No. 1746

The Commonwealth of Massachusetts

PRESENTED BY:

Paul McMurtry

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 workers' compensation prospective loss cost.

PETITION OF:

NAME:

Paul McMurtry

DISTRICT/ADDRESS:

11th Norfolk

HOUSE No. 1746

By Mr. McMurtry of Dedham, a petition (accompanied by bill, House, No. 1746) of Paul McMurtry for legislation relative to workers' compensation prospective loss cost. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 888 OF 2013-2014.]

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act relative to workers' compensation prospective loss cost.

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. Section 53A of Chapter 152 is hereby amended by adding the following
2 language immediately preceding subsection (1):

3 Section 53A. For the purposes of this section, the following words shall have the
4 following meanings:

5 "Rate" shall mean the cost of insurance per exposure unit, whether expressed as a single
6 number or as a prospective loss cost multiplied by a loss cost multiplier to account for the
7 treatment of expected expenses (other than loss adjustment expense), profit and variations in
8 company loss experience as compared with the experience of the industry as a whole, prior to

9 any application of individual risk variations based on loss or expense considerations, and does
10 not include minimum premiums.

11 "Prospective loss cost" shall mean that portion of a rate that does not include provisions
12 for expenses (other than loss adjustment expenses), profit or variations in company loss
13 experience as compared with the experience of the industry as a whole; and that is based on
14 historical aggregate losses and loss adjustment expenses adjusted through development to their
15 ultimate value and projected through trending to a future point in time.

16 "Loss cost multiplier ("LCM")" shall mean that provision in rates, as determined by any
17 particular company or as calculated for the reinsurance pool, for such company's or pool's (i)
18 projected expenses, other than loss adjustment expense; (ii) profits; and (iii) variations in loss
19 experience or loss adjustment expense as compared with the loss experience of the industry as a
20 whole, that are associated with writing workers' compensation and employers' liability
21 insurance. LCMs shall be expressed as decimals to be applied equally and uniformly to the
22 prospective loss costs approved by the Commissioner for use by the filer across all hazard and
23 industry groups. The LCM does not include assessments collected on behalf of the residual
24 market or to support any trust funds created pursuant to section sixty-five.

25 SECTION 2. Section 53A of Chapter 152 is hereby further amended by striking out
26 subsection (1), and inserting in place thereof the following:-

27 (1) Any insurance company authorized to transact business in this commonwealth under
28 subclause (b) and (e) of clause Sixth of section forty-seven of chapter one hundred and seventy-
29 five may, except as provided in clause (c) of section fifty-four of said chapter one hundred and
30 seventy-five, insure the payment of the compensation provided for by this chapter, and when any

31 such company insures such payment, it shall file with the commissioner of insurance, or, if it is a
32 member of or subscriber to a rating organization under section fifty-two C, authorize such rating
33 organization to file with the commissioner on its behalf its classification of risks and projected
34 loss costs relating thereto.

35 (2) The commissioner shall designate a rating organization, duly qualified under section
36 fifty-two C, to file with the Commissioner proposed loss costs and classifications of risks
37 associated with writing workers' compensation and employers' liability insurance in the
38 commonwealth, both in the voluntary market and in the reinsurance pool established pursuant to
39 section sixty-five C. Said rating organization shall annually file industry-wide classifications of
40 risks, prospective loss costs, minimum premium determination rules, and an LCM for the Pool,
41 on or before July 31 of the year the filing is made. Prospective loss costs and classifications of
42 risk shall be developed for the entire insured workers' compensation market without regard to
43 whether individual risks are insured voluntarily or are assigned risks. The designated rating
44 organization may also file any desired changes to rating plans or other adjustments that may be
45 applied to the rates and classifications within the voluntary market or reinsurance pool. Non-
46 rating organization members making individual company prospective loss cost filings under this
47 section may restrict their data, analyses and projections to one or more subsets of the
48 Massachusetts market only so long as the data submitted are uniformly credible and the proposed
49 classifications are consistent with that used by the designating rating organization as set forth
50 below.

51 Within thirty days after any filing under this Section the commissioner shall initiate a
52 hearing to ensure that (i) the proposed classifications are reasonable and equitable, and (ii) the

53 proposed loss costs fall within a range of reasonableness and are not excessive, inadequate or
54 unfairly discriminatory for the risks to which they apply.

55 In the case of a bureau filing, the commissioner shall also ensure that the proposed LCMs
56 for the reinsurance pool have been appropriately calculated.

57 The classification of risks and prospective loss costs approved by the commissioner shall
58 be used by insurers who are members or subscribers of the designated rating organization and
59 shall also be applicable to risks within the reinsurance pool. The classification system approved
60 for the industry as a whole in accordance with this section shall be the uniform classification
61 system and shall be adopted by every insurer. Each industry-wide loss cost filing and
62 reinsurance pool LCM filing will, if approved, be effective as of January first of the year
63 following completion of the hearing.

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

74 SECTION 4. Section 53A of Chapter 152 is hereby further amended by striking out
75 subsection (4), and inserting in place thereof the following:-

76 Subsequent to the approval of an industry-wide prospective loss cost filing, each
77 company that is a member of the bureau duly designated by the commissioner to make such
78 filings, shall submit to the division of insurance LCM filings upon which it desires its workers'
79 compensation rates to be based. Prospective loss cost filings must be made by individual
80 companies not belonging to said rating bureau and also must make separate filings of their
81 LCMs subsequent to approval of the use of such lost costs. In making LCM filings, due
82 consideration shall be given by an insurer to its past and prospective loss and loss adjustment
83 expense experience within and outside this commonwealth, to catastrophe hazards, if any, to a
84 reasonable margin for underwriting profit and contingencies, and to past and prospective expense
85 both countrywide and those specially applicable to this commonwealth, and to all other relevant
86 factors within and outside this commonwealth, including the experience or judgment of the
87 insurer.

88 In addition, any insurer wishing to write retrospectively rated or large deductible policies
89 must include a table of expense ratios—excluding taxes and including profit and
90 contingencies—by standard premium size, reflecting the premium discount used by the filer.

91 An insurer's final rates shall be determined by applying loss cost multipliers to approved
92 loss costs, and any retrospectively rated or large deductible policies written and derivable from
93 the LCM filing approved for such company. Loss cost multipliers shall be effective twenty-one
94 days after receipt by the Division of Insurance; provided, however, that if, within such twenty-
95 one day period, the state rating bureau asserts in writing to the company and the commissioner of

96 insurance that there is one or more defects in the form or manner of any such filing; that such
97 filing would tend to impair or threaten the solvency of the filer; would likely create a monopoly
98 in the market, or is expected to produce any rates, classifications or premiums that are in any
99 respect unfairly discriminatory, the company may not use its filed LCMs and may either revise
100 its filing or request a hearing to review the prohibition of its use. Upon receipt of any company
101 request for a hearing, the date upon which the filing may be used, if not disapproved after a
102 hearing, shall be extended an additional forty-five days.

103 The commissioner shall, by written decision, disapprove the filing after the hearing if and
104 only if she finds that such filing contains one or more of the substantive or formal failures set
105 forth above. Any such decision shall be issued no later than twenty-one days following the
106 commencement of the hearing. Whenever the commissioner of insurance disapproves an LCM
107 filing in accordance with this section, she may, in her sole discretion, authorize the insurer to use
108 either those LCMs in effect for such insurer prior to the disapproved filing or those LCMs in
109 effect for the reinsurance pool. Effective LCMs, whether placed on file by the division as
110 submitted or authorized by the commissioner pursuant to a hearing as set forth above shall
111 remain in effect for at least one year. Companies need not refile subsequent to approved changes
112 in prospective loss costs; provided, however, , the commissioner may at any time after any
113 particular company's LCMs have been in effect for a year, require such company to file new
114 LCMs, indicating what changes are deemed to be required.

115 Insurers shall have the right to appeal any decision of the commissioner of insurance
116 regarding LCMs pursuant to section fourteen of chapter thirty A, except that all such appeals
117 shall be filed with the appeals court of the commonwealth.

118 SECTION 5. Section 53A of Chapter 152 is hereby further amended by striking out
119 subsection (5), and inserting in place thereof the following:-

120 (5) Insurers' LCM filings shall be in such form and manner as will enable the
121 commissioner of insurance to ensure that all filed LCM components are within the constraints
122 provided by section 4 of this chapter.

123 For purposes of this section, a company's LCMs shall be considered unfairly
124 discriminatory if they would produce rates that are not uniform within any classification of risks
125 written by such company or if unequal rates within any classification as between two insurance
126 companies within the same company group are not in accordance with previously filed objective
127 and unbiased criteria for placing risks in particular companies within such group. Nothing in this
128 paragraph shall be construed to prohibit companies from utilizing policyholder dividend plans
129 that return diverse dividends within any class at the close of a policy period based on company or
130 individual risk performance; provided, however, that no specified dividend amounts may be
131 promised to policyholders in advance of annual declarations.

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

134 SECTION 6. In January of any year in which the Hirsch-Herfindahl Index of market
135 concentration index rose above 1,500 during the prior year, the Commissioner, may hold a
136 hearing on workers' compensation market competition. If, however, the primary determinant of
137 non-competitiveness is solely a function of either the residual market pool's contribution to the
138 Hirsch-Herfindahl Index of more than 30% or a significant change in the residual market load
139 borne by voluntary market carriers, the commissioner shall not be required to hold a market

140 competition hearing, but may instead address the matter through an adjustment to the Pool profit
141 and contingency multiplier at the next loss cost proceeding . Decisions following a market
142 competition hearing held pursuant to this section shall be issued no later than February 15th of
143 the year in which such hearing is held. If the commissioner finds based on clear and convincing
144 evidence produced at such hearing, both that competition as allowed by this section has not
145 sufficiently protected both broad industry and consumer interests during the prior year and that
146 administered pricing would better serve such interests, the commissioner shall order that the
147 rating bureau designated to file LCMs under this section to instead file overall rates on behalf of
148 the entire industry on the next filing date. In such instances, all companies shall be required to
149 utilize only approved industry-wide rates during that rate year. The hearings on such bureau rate
150 filings shall be conducted within the same time frames as those set forth for prospective loss cost
151 filings in this chapter. After such period, prices shall again be determined through the use of
152 prospective loss cost filings and company LCMs as set forth herein. Market competition
153 hearings under this section shall not be held during any year following the issuance of an
154 industry-wide rate approval.

155 This act shall apply to all new and renewal policies to be effective on or after January 1,
156 2014; provided, however, that rates and classifications in effect prior to that date shall remain in
157 effect thereafter until new rates and classifications become effective pursuant to the provisions of
158 this act.