

**HOUSE . . . . . No.**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**John W. Scibak**

*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 passage of the accompanying bill:

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

PETITION OF:

NAME:

John W. Scibak

DISTRICT/ADDRESS:

2nd Hampshire

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 4590 OF 2007-2008.]

## The Commonwealth of Massachusetts

—————  
In the Year Two Thousand and 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 section 53A,  
2 as appearing in the 2006 Official Edition, and inserting in place thereof the following section:-

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

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

6           “Division”, the division of insurance.

7           "Loss cost modifier (“LCM”)", shall mean that provision within the rates proposed or approved  
8 for any insurer or pool writing workers' compensation and employers' liability insurance, intended to  
9 account for such company's or pool's (i) projected expenses, other than allocated loss adjustment  
10 expense; (ii) profit and contingency allowance; and (iii) expected difference in loss experience or  
11 allocated loss adjustment expense from that of the loss and allocated loss adjustment experience of the  
12 industry as a whole. Except for any expense constant component, LCMs shall be expressed as decimals  
13 to be applied equally and uniformly to the prospective loss costs approved by the commissioner for use by  
14 the filer across all hazard and industry groups. The LCM shall not include any provision to account for

15 assessments collected on behalf of the residual market or to support any trust funds created pursuant to  
16 section 65.

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

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

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

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

33 (c)(1) The commissioner shall designate a rating organization, duly qualified under said section  
34 52C, to file with the commissioner proposed loss costs and classifications of risks associated with writing  
35 workers' compensation and employers' liability insurance in the commonwealth, for use in both the  
36 voluntary market and the pool. Said rating organization shall annually file, on or before November 1 of  
37 the year such filing is made, industry-wide classifications of risks, prospective loss costs, and minimum  
38 premium determination rules for use throughout the entire market. Prospective loss costs and  
39 classifications of risk shall be developed for the entire insured workers' compensation market utilizing  
40 loss experience without regard to whether such experience came from the voluntary market or the pool.  
41 In any instance in which the most recent aggregated 3 years of calendar-accident year data of the loss-  
42 plus-all expense ratios of the top 15 insurers in voluntary and pool market share, with all the companies  
43 smaller than the fourteenth largest combined to make the fifteenth "company" in such list, contain any  
44 companies whose loss-plus-all expense ratios exceed 150% of the median combined ratio of such  
45 companies, the commissioner shall, when considering the appropriateness of filed loss costs at the next

46 prospective loss cost proceeding, exclude the voluntary and residual market premiums, payrolls, losses  
47 and allocated loss adjustment expenses of such high-ratio companies.

48 The designated rating organization shall also file all necessary parameters, rating and statistical  
49 reporting rules, and forms to be used by any company wishing to write retrospectively rated or large  
50 deductible policies. The designated rating organization may also file any desired changes to existing  
51 rating plans and other adjustments requested to be applied to the rates and classifications within the  
52 voluntary market or pool. Prospective loss costs and any additional requests made within prospective loss  
53 cost filings shall be approved by the commissioner only if it is determined after a hearing that their use  
54 will not, given reasonable LCMs, produce premiums that are inadequate, excessive, or unfairly  
55 discriminatory.

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

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

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

73 (d) When a filing is not accompanied by the information upon which the insurer supports such  
74 filing, and the commissioner does not have sufficient information to determine whether such filing meets  
75 the requirements of this section, the commissioner may require such insurer to furnish the information  
76 upon which it supports such filing. Any filing may be supported by the experience or judgment of the

77 insurer or rating organization making the filing, the experience of other insurers or rating organizations,  
78 and any other factors which the insurer or rating organization deems relevant.

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

88 In reviewing the appropriateness of the rating organization's filed multipliers for expense and for  
89 profit and contingency, the commissioner shall be guided by a review of the most recent company LCM  
90 filings and shall endeavor to place such pool components within the voluntary market range. The pool  
91 profit and contingency component shall reflect any data that indicates that the risk of covering randomly  
92 assigned exposures may be slightly higher than that of covering similar risks freely chosen by an insurer  
93 as well as any changes in the economic and company expense environments since the voluntary market  
94 LCMs reviewed were last placed on file. The commissioner may find a pool profit and contingency  
95 multiplier unreasonable if such multiplier is deemed likely to contribute to the creation or sustainability of  
96 a pool size that reflects unhealthy market conditions. Each industry-wide loss cost filing and pool LCM  
97 filing shall, if not disapproved, be effective as of July 1 following completion of the hearing on  
98 prospective loss costs. Decisions disapproving pool LCMs shall indicate what changes are deemed  
99 necessary to make such LCMs acceptable to the division.

100

101 (2) Except as provided below with respect to filings already on file that continue to be in  
102 compliance with this section, each company that is a member of the bureau duly designated by the  
103 commissioner to make such filings shall, subsequent to the annual approval of an industry-wide  
104 prospective loss cost filing and the placing on file of a pool LCM, submit to the division of insurance an  
105 LCM filing upon which it desires its rates to be based. Individual companies not belonging to said rating  
106 bureau must also make separate filings of their LCMs subsequent to approval of their estimate of  
107 prospective company loss costs. In making individual company loss cost and LCM filings, due  
108 consideration shall be given by an insurer to its past and prospective loss and allocated loss adjustment

109 expense experience within and outside the commonwealth, to catastrophe hazards, if any, to a reasonable  
110 margin for underwriting profit and contingencies, to past and prospective expense both countrywide and  
111 those specially applicable to the commonwealth, and to all other relevant factors within and outside the  
112 commonwealth, including the experience or judgment of the insurer.

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

115 (i) A multiplier which shall reflect the filer's estimate of its loss and allocated loss adjustment  
116 expenses. Each such factor to be applied to the industry loss and allocated loss adjustment expense costs  
117 approved by the commissioner shall be at least .75, but no greater than 1.25. The commissioner may  
118 approve a filing that includes different multipliers for different industrial classes under this paragraph but  
119 only if such differential multipliers are actuarially supported by the filer and are not violative of  
120 subsection (f).

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

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

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

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

136 (4) Both the pool and individual company insurers' final rates shall be determined by applying  
137 filed loss cost modifiers to the most recently approved loss and allocated loss adjustment expense costs  
138 for the industry as a whole. Rating plans for retrospectively rated or deductible policies written by an

139 insurer shall be consistent with and derivable from parameters approved in the industry-wide loss cost  
140 filing. Companies shall use the rates, rules, or amounts approved for the pool for minimum premium  
141 determinations and for per capita and other non-payroll based class rates. The classification and  
142 experience rating systems approved for the industry as a whole, in accordance with this section, shall be  
143 adopted by every insurer without modification.

144 (5) Except where company solvency or continuation is an issue, or where there has been a change  
145 in the law affecting company costs, individual company LCM filings shall be effective no earlier than 30  
146 days following their receipt by the division of insurance. No pool or individual company filed LCM shall  
147 become effective if, within 21 days of its receipt by the division, the state rating bureau asserts in writing  
148 to the filing company or bureau and the commissioner that there are one or more defects in the form or  
149 manner of any such filing, explaining the nature of such alleged defects and recommending an acceptable  
150 manner of their removal. In such instances the company or pool may not use its filed LCM and may  
151 either revise its filing in the manner recommended by the state rating bureau or request a hearing to  
152 review the prohibition of its use. The state rating bureau shall disapprove an individual company's LCMs  
153 as defective only for the following reasons: (i) such filing contains one or more LCM components that are  
154 violative of this section; (ii) such filing would tend to impair or threaten the solvency of the filer; (iii)  
155 such filing would likely create a monopoly in the market; or (iv) such filing is expected to produce one or  
156 more rates, classifications or premiums that are in any respect unfairly discriminatory. If the company or  
157 the pool chooses to revise the filing based on the state rating bureau's objections, the earliest date upon  
158 which the filing may be used, if no earlier date is agreed upon by the company and the division, shall be  
159 65 days from the division's receipt of the original filing.

160 The commissioner shall commence any hearing pursuant to this subsection within 21 days of the  
161 division's receipt of the filer's request for a review of the state rating bureau's written reasons for  
162 disapproval of the filing. In the case of an individual company filing, the commissioner shall, by written  
163 decision, disapprove the filed LCM after the hearing if, and only if, it is found that the filed LCM contains  
164 one or more of the substantive or formal failures set forth in the disapproval by the state rating bureau.  
165 Decisions on LCM hearings shall be issued no later than 21 days following commencement of such  
166 hearings. In any instance in which either the hearing is not commenced within 21 days of receipt of the  
167 filer's request or the decision is not issued within 21 days of the hearing's commencement, the LCM  
168 filing shall be deemed approved and become effective no sooner than 65 days from the division's receipt  
169 of the company's request for a hearing or the effective date proposed by such company, whichever is the  
170 later date.

171 (6) Whenever the commissioner disapproves an individual company LCM filing in accordance  
172 with this section, the commissioner may, by sole discretion, authorize the insurer to use either that LCM  
173 in effect for such entity prior to the disapproved filing or that LCM most recently placed on file for the  
174 pool. Effective LCMs, whether placed on file by the division as submitted or authorized for use by the  
175 commissioner pursuant to a hearing as set forth above, shall remain in effect at least until July 1 of the  
176 following year. Companies need not refile and may continue to use any effective LCMs subsequent to  
177 approved changes in prospective loss costs when all the components of such LCMs continue to comply  
178 with every provision of this section. The commissioner may at any time after any company's LCM has  
179 been in effect for a year, require such company to file a new LCM, indicating what changes are deemed to  
180 be required to make such LCM comply with this section.

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

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

191 Each company group having more than one company writing workers' compensation insurance  
192 within the commonwealth shall make a single filing containing all the LCMs such group proposes to  
193 employ within its entire group, and its filing shall provide objective and not unlawfully discriminatory  
194 criteria for placing risks in particular companies within such group. For purposes of this section, a  
195 company group's LCMs shall be considered unfairly discriminatory if (i) they include 1 or more LCMs  
196 that are deemed to violate any anti-discrimination statute; (ii) they include one or more LCMs that could  
197 produce rates that are not uniform within any classification of risk written within any company; or (iii)  
198 they could produce disparate rates within the same industrial classification as between 2 or more  
199 companies within the same company group, and such differences are not entirely a function of objective  
200 and not unlawfully discriminatory criteria filed along with such group's LCMs. Nothing in this paragraph  
201 shall be construed to prohibit companies from utilizing policyholder dividend plans that return diverse  
202 dividends within any class at the close of a policy period based on company or individual risk



203 performance; provided, however, that no specified dividend amounts may be promised or paid to  
204 policyholders in advance of annual declarations.

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

207

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

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

217 (i) The advisory council established pursuant to section 15 of chapter 23E may request loss data  
218 from any insurance company or rating organization. Any insurance company or rating organization that  
219 is the recipient of such a request may, if it believes that the request is unduly burdensome or  
220 unreasonable, file a motion to be heard by the commissioner concerning whether all or part of the request  
221 requires response. The commissioner may, if the commissioner finds the request is unduly burdensome  
222 or unreasonable, deny the request in whole or in part.

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

227 (j)(1) The commissioner shall make a finding on the basis of information submitted in any  
228 prospective loss cost filing made pursuant to this section that the insurer or insurers employ cost control  
229 programs and techniques acceptable to the commissioner which have had or are expected to have a  
230 substantial impact on fraudulent claim costs, unnecessary health care costs, and any other unreasonable  
231 loss costs, as well as on the efficient and adequate collection of the appropriate premium charges owed  
232 the insurer or insurers. If the commissioner does not find such cost control programs and techniques, the

233 commissioner may disapprove such filing. The commissioner shall also have authority to make findings,  
234 after a hearing on any prospective loss cost filing made pursuant to this section, that the proposed loss  
235 costs are excessive due to the failure of the insurer or insurers to utilize adequate programs to control loss  
236 costs or to collect the appropriate premium charges. If the commissioner so finds, the commissioner shall  
237 disapprove such a filing or, in the alternative, shall limit in any manner determined to be appropriate the  
238 amount of any adjustment in premium charges based upon changes in loss costs and premium  
239 collections. The commissioner may issue regulations designed to further achievement by insurers of  
240 adequate controls on loss costs and of adequate collection of the appropriate premium charges owed to the  
241 insurers.

242 (2) The commissioner shall promulgate rules and statistical plans, which may be modified from  
243 time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss  
244 and expense experience, in order that the experience of all insurers may be made available, at least  
245 annually, in such form and detail as may be necessary to aid the commissioner in the performance of the  
246 commissioner's duties. In promulgating such rules and plans, the commissioner shall give due  
247 consideration to the rating systems on file with the division and to the rules and to the form of the plans  
248 used for statistical reporting in other states. The commissioner may designate one or more rating  
249 organizations or other agencies to assist in gathering such experience and making compilations thereof.  
250 Such compilations shall be made available, subject to rules promulgated by the commissioner, to insurers  
251 and rating organizations. Any such statistical agent appointed by the commissioner pursuant to this  
252 section to assist in the gathering, compilation and dissemination of statistical data shall be authorized to  
253 assess reporting companies for the reasonable costs of such services, as approved by the commissioner.  
254 Every statistical agent and rating organization designated by the commissioner and every insurer that is  
255 not a member of any such rating organization shall share the information and experience necessary for the  
256 calculation of experience modifications and other derivable elements from approved rating plans with  
257 every other non-member insurer, approved statistical agent, and rating organization requiring such  
258 information and experience in order to estimate loss costs or LCMs for its own insureds or those of its  
259 members or subscribers. Any statistical plan promulgated by the commissioner pursuant to this section  
260 may include provisions for reasonable fines or other penalties for late or inaccurate reporting, and shall  
261 provide for a process by which insurers may appeal any such penalties. Failure to cooperate with the  
262 commissioner's statistical agent or to pay any penalties levied pursuant to this section may subject  
263 insurers to suspension, revocation, or other limitation of the right to offer insurance in the commonwealth,  
264 subject to the provisions of section 4 of chapter 175.

265

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

268 For purposes of making assessments pursuant to this section, each company's standard premium  
269 shall be put at pool level. "Standard premium" as used in this section, and as it is used as a basis for the  
270 equitable distribution of losses or other costs associated with the assigned risk pool under section 65C,  
271 shall be as defined by the Massachusetts workers' compensation statistical plan, approved by the  
272 commissioner; provided, however, that any such definition shall require that standard premium shall be  
273 subsequent to the application of experience modification and any credits applied under the Massachusetts  
274 construction credit program, but shall be prior to the application of any large deductible credits or all risk  
275 adjustment program charges.

276

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

279 Any employer whose application for voluntary workers' compensation insurance is rejected or  
280 not accepted by at least 2 company groups within 5 days may make application to the duly appointed  
281 assigned risk pool administrator for admission to the pool. In order for such an employer to be eligible  
282 for such admission, the employer shall have complied substantially with this section, as well as with all  
283 laws, orders, rules and regulations in force and effect relating to the welfare, health and safety of his  
284 employees and shall not be in default of payment of any premium for workers' compensation insurance.  
285 Upon receipt of a completed application accompanied by evidence of the company group declinations of  
286 coverage referenced above from an employer otherwise meeting the requirements of this section, said  
287 administrator shall designate an insurer who shall forthwith, upon receipt of payment for the premium  
288 therefor, issue to such employer a guaranteed cost policy of insurance at rates calculated in the manner set  
289 forth in section 53A to provide all compensation required by this chapter. Nothing in this chapter shall be  
290 construed to require any employer written through the pool to accept a voluntary offer of coverage at a  
291 cost in excess of the cost of continued or renewed residual market coverage or to require the pool to non-  
292 renew any pool risk that has received a voluntary offer at premiums that are either higher than those in the  
293 pool or that require the payment of premiums or loss-reimbursements that may be affected by losses  
294 occurring during the same policy period for which coverage is being offered. The commissioner may  
295 order occasional mandatory non-renewals of policies written through the pool, require new pool  
296 applicants to provide affirmations or other evidence of their inability to obtain voluntary market coverage,  
297 or undertake other such depopulation initiatives deemed to be appropriate. To assist both new businesses

328 seeking coverage in the voluntary market and currently insured employers seeking the lowest premiums  
329 available, the division shall annually post on its website the percentage differences between the pool rates  
330 and the rates at which workers' compensation is being sold pursuant to the most recently filed individual  
331 company LCMs.

332

333 SECTION 4. In August of any year in which either the Herfindahl-Hirschman Index of market  
334 concentration for the Massachusetts workers' compensation market rose above 1,500 during the prior  
335 year, or the commissioner, for any other reasons, believes either that competition may have been  
336 insufficient to protect consumer interests or may have been conducted in a manner that was either  
337 detrimental to a healthy competitive market or to quality workers' compensation insurance products being  
338 widely offered in a non-discriminatory manner at reasonable prices, may hold a hearing on the state of  
339 competition in the workers' compensation market. If the primary reason for the commissioner's belief  
340 that the workers' compensation market is insufficiently competitive is a function of either (i) the residual  
341 market pool's contribution to the Herfindahl-Hirschman Index of more than 30% or (ii) a significant  
342 change in the residual market load borne by voluntary market carriers, the commissioner may make an  
343 adjustment to the pool profit and contingency multiplier at the next loss cost proceeding without holding a  
344 hearing on the state of competition in the workers' compensation market.

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

357

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