

HOUSE No. 1700

By Mr. O'Farrell of Malden, petition of George H. O'Farrell relative to the transfer to the Commissioner of Insurance of certain duties imposed upon the Department of Industrial Accidents under the workmen's compensation law. Labor and Industries.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty.

AN ACT RELATIVE TO THE TRANSFER OF CERTAIN DUTIES
IMPOSED UPON THE DEPARTMENT OF INDUSTRIAL ACCI-
DENTS UNDER THE WORKMEN'S COMPENSATION LAW
TO THE JURISDICTION OF THE COMMISSIONER OF
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. Chapter 152 of the General Laws,
2 as amended, is hereby further amended by striking
3 out sections 65A to section 65M, as inserted therein
4 by chapter 489 of the acts of 1939, and the caption
5 relating to said sections.

1 SECTION 2. Chapter 175 of the General Laws is
2 hereby amended by inserting at the end thereof the
3 following new caption and sections:—

4 ASSIGNMENT OF REJECTED WORKMEN'S COMPENSATION
5 RISKS, AND POOLING.

6 *Section 195.* Any employer who is required by
7 the provisions of chapter one hundred and fifty-two

8 of the General Laws to provide for the payment to
9 his employees of the compensation provided for by
10 said chapter or any employer not so required but
11 who desires to voluntarily so provide and whose
12 application for a policy of workmen's compensation
13 insurance has been rejected or not accepted within
14 five days by two insurance companies and who
15 shall not be in default of payment of any premium
16 for such insurance, may appeal to the commissioner
17 who shall designate an insurance company who
18 shall forthwith, upon the receipt of the payment
19 for the premium therefor, issue to such employer a
20 policy of insurance contracting to pay the com-
21 pensation provided for by chapter one hundred and
22 fifty-two of the General Laws. The commissioner
23 shall make equitable distribution of such risks among
24 insurers in such manner, so far as practicable, no
25 insurance company will be assigned a larger propor-
26 tion of premiums under assigned policies during any
27 calendar year than that which the total of work-
28 men's compensation premiums written in the com-
29 monwealth by such insurance company during the
30 previous calendar year bears to the total workmen's
31 compensation premiums written in the common-
32 wealth by all insurance companies during the previous
33 calendar year.

34 *Section 196.* If, after the issuance of a policy
35 under section one hundred and ninety-five, it shall
36 appear that the employer to whom the policy was
37 issued is not or has ceased to be entitled to such
38 insurance, the insurer, with the approval of the
39 commissioner may cancel such policy in the manner
40 prescribed by the commissioner under this chapter;
41 provided, that any insurer desiring to cancel such a

42 policy shall give notice in writing to the commis-
43 sioner and the insured of its desire to cancel the
44 same. The commissioner may approve such can-
45 cellation unless the employer shall within ten days
46 after the receipt of such notice by registered mail,
47 file with the commissioner objections thereto, and,
48 if such objections are filed, the commissioner or a
49 deputy whom he shall designate shall forthwith hear
50 the case and the commissioner shall make decision
51 thereon which shall be subject to review as provided
52 in section two hundred and eight.

53 *Section 197.* All losses incurred under policies
54 issued to employers under section one hundred and
55 ninety-five shall be equitably distributed as herein
56 provided among all insurers authorized to transact
57 and transacting workmen's compensation insurance
58 in the commonwealth. Such distributions of losses
59 shall be effected through two separate reinsurance
60 pools; one constituted by and comprised of all
61 insurers operating as non-stock companies, herein
62 called the "non-stock pool," and the other con-
63 stituted by and comprised of all insurers operating
64 as stock companies, herein called the "stock pool."
65 All losses incurred by members of the non-stock
66 pool shall be equitably distributed among all the
67 insurers which are members of such pool, and all
68 losses incurred by members of the stock pool shall
69 be equitably distributed among all insurers which are
70 members of such pool. The non-stock pool shall
71 distribute all losses incurred by its members during
72 each calendar year under policies issued to employers
73 pursuant to any provision of sections one hundred
74 and ninety-five to two hundred and seven, inclusive,
75 in such a manner that no member shall be required

76 to pay a larger proportion of such losses than the
77 volume of all workmen's compensation insurance
78 premiums written by such member in the common-
79 wealth during the previous calendar year bears to
80 the total volume of such insurance premiums written
81 in the commonwealth by all members of the non-
82 stock pool during such previous calendar year.
83 The stock pool shall distribute all losses incurred
84 by its members during each calendar year under
85 such policies in such a manner that no member
86 shall be required to pay a larger proportion of such
87 losses than the volume of all such insurance premiums
88 written by such member in the commonwealth during
89 the previous calendar year bears to the total volume
90 of such insurance premiums written in the common-
91 wealth by all members of the stock pool during
92 such calendar year. The words "premiums written"
93 as used in this section, shall mean gross premiums
94 charged on all policies less all premiums returned
95 to policy holders except dividends or savings re-
96 funded under participating policies. No insurer
97 shall be authorized to write or to continue to write
98 compensation insurance in this commonwealth unless
99 such insurer is a member of the pool herein designated
100 for such insurer.

101 *Section 198.* By arrangement between insurers
102 which are members of the same pool and all other
103 members of such pool, and with the approval of the
104 commissioner, an insurer referred to in section one
105 hundred and ninety-seven may issue a policy to an
106 employer who had been assigned by the commis-
107 sioner to another insurer, and such issuance of a
108 policy shall constitute a compliance with and be
109 subject to section one hundred and ninety-five and

110 shall not affect the allotment to the respective insurers
111 of assignments thereafter to be made by the com-
112 missioner.

113 *Section 199.* Any employer whose insurance has
114 been assigned under section one hundred and ninety-
115 five, if such insurance is later reassigned under said
116 section, shall be assigned to an insurer which is a
117 member of the same pool as the previously assigned
118 insurer.

119 *Section 200.* At the termination of any workmen's
120 compensation insurance policy issued to an employer
121 whose insurance has been assigned to an insurer
122 under section one hundred and ninety-five, any
123 insurer may voluntarily provide such insurance for
124 such employer on its own behalf, but such insurer
125 shall pay into the pool by which such policy or
126 policies of such employer were reinsured an amount
127 equal to any excess of losses incurred over the
128 premiums collected on account of such policy or
129 policies during the entire period of insurance as an
130 assigned employer.

131 *Section 201.* The words "losses incurred," as
132 used in sections one hundred and ninety-seven and
133 two hundred, shall mean, with respect to each policy,
134 the losses paid and estimated to be paid thereunder.
135 Any dispute as to the amounts to be paid under
136 sections one hundred and ninety-seven and two
137 hundred shall be resolved by the commissioner
138 upon hearing after reasonable notice to all interested
139 parties.

140 *Section 202.* Each reinsurance pool shall adopt,
141 and may alter and amend, rules and regulations
142 not inconsistent with law, which rules and regulations
143 shall be submitted for approval to the commissioner

144 and shall be binding upon all members of such pool
145 when approved by the commissioner. Provision
146 may be made under such rules and regulations for
147 the subsequent adjustment of payments originally
148 made on behalf of assigned risks on the basis of
149 estimated losses incurred.

150 *Section 203.* Nothing in sections one hundred
151 and ninety-five to two hundred and seven, inclusive,
152 shall be construed to affect, in any way, the primary
153 liability of the insurer to which the risk is assigned
154 to pay compensation benefits in accordance with
155 the provisions of chapter one hundred and fifty-two.

156 *Section 204.* At any time while a policy issued
157 pursuant to section one hundred and ninety-five is
158 in force, the insurer, upon its own initiative, may
159 make a careful inspection of the risk for the purpose
160 of measuring the hazards, making recommendations
161 for the health and safety of employees, and deter-
162 mining the rate or rates which will be adequate and
163 reasonable for its insurance. Every such inspection
164 shall be made and reported in accordance with such
165 rules as the department of labor and industries may
166 prescribe.

167 *Section 205.* Any employer to whom a policy is
168 issued pursuant to section one hundred and ninety-
169 five may appeal, within sixty days after the effective
170 date of such policy, to the commissioner on the
171 ground that the premium charged upon such policy
172 is not reasonable or is unfairly discriminatory, and
173 the commissioner may, in his discretion after a hearing
174 of which all interested parties shall have reasonable
175 notice, approve or disapprove the premium charged.
176 In the event the premium charged is disapproved
177 by the commissioner, he shall direct the insurer to

178 which the employer was assigned to issue a policy
179 or to adjust the premium thereof at a rate or rates
180 found by the commissioner to be adequate, reason-
181 able and not unfairly discriminatory, and the rate
182 or rates so determined shall be effective as of the
183 date of the policy, and be binding upon both the
184 insurer and the employer.

185 *Section 206.* If an insurer refuses or neglects to
186 comply with any provision of sections one hundred
187 and ninety-five to two hundred and five, inclusive,
188 or with any lawful order or ruling made by the
189 commissioner pursuant thereto, he shall issue an
190 order to such insurer to show cause why it should
191 not be proceeded against as hereinafter provided,
192 and after due notice and a hearing shall make a
193 finding thereon or order such insurer forthwith to
194 comply. If the insurer is found by the commissioner
195 to have refused or neglected to comply with any
196 provision of sections one hundred and ninety-five
197 to two hundred and five, inclusive, or with any
198 lawful order or ruling made thereunder by the com-
199 missioner, he shall, in the case of a foreign company,
200 revoke or suspend the license issued to it under sec-
201 tion one hundred and fifty-one of this chapter and
202 the licenses issued to all of its agents under section
203 one hundred and sixty-three of this chapter as pro-
204 vided, in and subject to all the provisions of section
205 five of this chapter, until it shall comply with such
206 order or ruling, and, in case of a domestic company,
207 he shall apply to the supreme judicial court for an
208 injunction and such court shall have jurisdiction to
209 restrain such company from further transaction of
210 its business until it shall comply with such order or
211 ruling.

212 *Section 207.* Any employer or insurer aggrieved
213 by any order or ruling of the commissioner under
214 any provisions of sections one hundred and ninety-
215 five to two hundred and six, inclusive, may, within
216 thirty days after notice thereof, and despite any
217 different limitation of time for filing petitions con-
218 tained in section five of this chapter, file a petition
219 in the superior court for a review thereof; but the
220 filing of such a petition shall not suspend such order
221 or ruling unless a stay thereof shall be allowed by a
222 justice of said court pending the final determination
223 of the review. The court shall summarily hear the
224 petition and make any appropriate order or decree.