

**AN ACT TO AMEND THE CODE OF LAWS OF MASSACHUSETTS TO ENACT THE “MASSACHUSETTS PRIVATE FLOOD INSURANCE ACT” BY ADDING CHAPTER 183 TO TITLE XXII SO AS TO ADVANCE DIFFERENT FLOOD INSURANCE COVERAGES.**

Be it enacted by the General Assembly of the State of Massachusetts:

**Citation**

SECTION 1. This act is known and may be cited as the “Massachusetts Private Flood Insurance Act”.

**Massachusetts Private Flood Insurance Act**

SECTION 2. TITLE XXII is amended by adding:

“CHAPTER 183”

Massachusetts Private Flood Insurance Act

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

Section 2. For the purposes of this section:

(1) ‘Flood’ means:

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

(i) overflow of inland or tidal waters;

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

(iii) mudflow; or

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

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

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

Section 3. An insurer may issue an insurance policy, contract, or endorsement providing commercial lines or personal lines coverage for the peril of flood or excess coverage for the peril of flood on any structure, on the contents of commercial or personal property contained therein, or to insure against indirect losses from the peril of flood subject to the requirements of this chapter. Any reference to policy in this chapter also includes endorsements that provide private flood insurance coverage.

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

(1) 'Standard flood insurance', which means a private flood insurance policy which covers only losses from the peril of flood at least equivalent, when taken as a whole, to that provided under a standard flood insurance policy under the National Flood Insurance Program (NFIP) including deductibles, exclusions, and other terms and conditions offered by the insurer. The policy form also must include:

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

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

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

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

(2) 'Nonstandard flood insurance', which may, but is not required to, provide coverage designed to supplement a flood policy obtained from the NFIP or from an insurer issuing standard flood insurance pursuant to this section. This includes any other policy issued for the coverage of flood that does not meet the definition of a standard flood insurance policy as defined above. Nonstandard flood insurance also includes policies that have a broader definition of flood than that provided for in Section 2(1) and discretionary acceptance private flood insurance as provided for in 12 C.F.R. Part 208.25.

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

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

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

~~(2) Commercial lines private flood insurance rates are subject to Regulation 69-64.~~

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

(B)(1) A rating or advisory organization may file prospective loss cost and supplementary rate information on behalf of insurers. The loss cost and supplementary rate information are subject to the 'use and file' provisions of this section, regardless of whether they are for commercial lines or personal lines private flood insurance.

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

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

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

Section 6. (A) Every admitted insurer writing personal lines or commercial lines private flood insurance pursuant to this chapter shall file with the Commissioner all forms and all changes and amendments

made by it for use in this State no later than ninety days after becoming effective. This form filing is considered a 'use and file' filing.

(B) The Commissioner may at any time review a form, the pertinent records of the insurer, and market conditions. The Commissioner may at any time disapprove a form and shall notify the insurer. In reviewing the forms filed, the department may require the insurer to provide, at the insurer's expense, all information necessary to evaluate the filing. Upon notification, the insurer shall, within sixty days, file with the department all information which, in the belief of the insurer, establishes that the form is in compliance with this chapter and other applicable law. The insurer may appeal the final determination of the Commissioner or his designee to the to the appropriate appeals authority. The insurer shall carry the burden of proof by a preponderance of the evidence to show that the form complies with applicable Massachusetts law.

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

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

#### AGENT DILIGENT EFFORT SECTION

[ Section 7. A surplus lines broker may place a policy or endorsement providing flood insurance coverage to an eligible surplus lines insurer without making a diligent effort to seek such coverage from one or more admitted insurers required pursuant to Sub part iii, Part b, Section 168 of Chapter 175 of the General Law. Additionally, the disclosure notices outlined in part C, Section 168 of Chapter 175 may be located on the mandatory waiver found in Section 38-101-90 or in another way as deemed appropriate by the Commissioner]

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

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

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

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

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

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

#### WAIVER OF AGENT RESPONSIBILITY SECTION

[ Section 9. (A) Before placing a personal lines private flood insurance policy with an admitted or surplus lines insurer, an insurance producer, broker, or the insurer shall provide a written notice to the applicant advising that if the applicant discontinues coverage under the NFIP, which is provided at a subsidized rate, the full risk rate for flood insurance may apply to the property if the applicant later seeks to reinstate coverage under the program.

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

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

Section 11. (A) An admitted insurer offering flood insurance may certify that a policy, contract, or endorsement provides coverage for the peril of flood which equals or exceeds the flood coverage offered by the NFIP. To be eligible for certification, the policy, contract, or

endorsement must contain a provision stating that it meets the private flood insurance requirements specified in 42 U.S.C. Section 4012a(b) and may not contain provisions that, when taken as a whole, are not in compliance with 42 U.S.C. Section 4012a(b).

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

(C) An insurer or agency who knowingly:

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

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

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

(1) the insured; and

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

(B) The notice must:

(1) be filed with the Commissioner or his designee subject to the 'use and file' requirements as set forth in Section 38-101-60;

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

(3) inform the insured of its right to request a review by the South Carolina Department of Insurance.

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

(a) age;

(b) sex;

(c) race;

(d) color;

(e) creed;

(f) national origin;

(g) ancestry;

(h) marital status;

(i) income level; or  
(j) lawful occupation, including the military service of the person seeking the coverage.

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

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

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

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

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

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

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

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

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

(E) If the insurer fails to furnish the renewal terms and statement of premium or estimated premium due in the manner required by this section, the insured may elect to cancel the renewal policy within the forty-five-day period following receipt of the renewal terms and statement of premium or estimated premium due. Earned premium for any period of coverage must be calculated pro rata based upon the

premium applicable to the original policy and not the premium applicable to the renewal policy.

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

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

#### **Time effective**

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