

HOUSE No. 00308

The Commonwealth of Massachusetts

PRESENTED BY:

Ronald Mariano

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 homeowners insurance.

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PETITION OF:

NAME:

Ronald Mariano

DISTRICT/ADDRESS:

3rd Norfolk

HOUSE No. 00308

By Mr. Ronald Mariano of Quincy, petition (accompanied by bill, House, No. 00308) of Ronald Mariano relative to the adoption of regulations for homeowners insurance by the Commissioner of Insurance. Joint Committee on Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ HOUSE
□ , NO. 985 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to homeowners 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 175 of the general laws, as appearing in the 2006 Official Edition, is
2 hereby amended by inserting after section 4C the following section:-

3 Section 4D. The commissioner shall adopt regulations to require all insurers licensed to
4 write and engaged in the writing of homeowners insurance in the commonwealth and the joint
5 underwriting association, established in chapter 175C, to produce a standard outline of coverage
6 written in language prescribed or approved by the commissioner that describe the features of the
7 coverage. Each insurer, including the joint underwriting association, shall be required to provide
8 this information to each policyholder upon the issuance or renewal of a policy.

9 SECTION 2. Said chapter 175, as so appearing, is hereby amended by inserting after section
10 99C the following section:-

11 Section 99D. (a) In all instances where an insurance company licensed to write property
12 insurance in the commonwealth offers or includes any deductible for wind related damages and
13 mitigation measures related to such deductible, the insurance company shall provide prominent
14 and clear notice to the insured that shall be included with the policy issuance or renewal package,
15 and shall fully disclose all details pertaining to any such deductible and mitigation measure in a
16 format approved by the commissioner of insurance.

17 (b) An insurer may only apply a deductible for wind related damages in personal lines of
18 insurance, where:

19 (1) the deductible is specifically approved by the commissioner and shall not exceed 3
20 per cent of the policy's coverage A amount; nothing herein shall prohibit the policyholder from
21 electing a higher deductible, not to exceed 5 per cent of the policy's coverage A amount, by
22 affirmative signature.

23 (2) the deductible shall be applicable to losses due to a named hurricane with wind velocities
24 exceeding 74 miles per hour, commencing with the issuance of a hurricane warning or hurricane
25 wind speed warning ,in the geographical area of the commonwealth where the damage occurs, by
26 the local National Weather Service office and concluding 12 hours after the storm has been
27 downgraded from a hurricane status by said office;

28 (3) the deductible, whether a flat dollar amount or a percentage of insured value, shall be
29 presented in at least 2 examples that illustrate the application of the deductible to the insured.

30 Nothing herein shall prohibit the insurer from providing any additional information to the

31 insured to assist in the insured's understanding of the deductible to be applied to the insured's
32 policy.

33 (c) The commissioner, in consultation with the board of building and regulations and
34 standards, shall investigate mitigation measures designed to reduce losses from wind related
35 damages. Based so far as reasonably feasible on national standards for such measures and
36 practices in other comparable states, the commissioner shall adopt regulations describing
37 approved mitigation measures and the minimum corresponding benefits, such as credits, lower
38 deductibles, and reduced premiums that policyholders will receive from insurers upon
39 completion of said measures and either, at the insurers discretion, inspection of the property by
40 the insurer or submission of satisfactory proof of installation of the approved mitigation
41 measures by the insured.

42 (d) The commissioner shall adopt regulations to implement this section.

43 SECTION 3. Section 168 of chapter 175 of the general laws, as so appearing, is hereby amended
44 by inserting after the sixth sentence, in line 37, the following two sentences - "Any insurance
45 policy procured pursuant to this section shall contain the following disclosure notice to the
46 policyholder: This policy is insured by a company which is not admitted to transact insurance in
47 the commonwealth, is not supervised by the commissioner of insurance, and, in the event of an
48 insolvency of such company, a loss shall not be paid by the Massachusetts Insurers Insolvency
49 Fund under chapter 175D. The commissioner may by regulation amend the foregoing disclosure
50 notice."; and further by striking in the eighth sentence, in line 61, the word "or"; and further by
51 inserting in line 65, after the word "20A", the following text - ", or (c) such company is an
52 eligible alien unauthorized insurer, as defined in section 168A of this chapter".

53 SECTION 4. Chapter 175 of the general laws, as so appearing, is hereby amended by inserting
54 after section 168 the following new section:-

55 Section 168A. (a) As used in this section "eligible alien unauthorized insurer" means a company
56 formed under the laws of any government or state other than the United States or one of its states
57 or its territories that has filed an application with the commissioner pursuant to subsection (c)(4)
58 of this section, which application has been approved by the commissioner.

59 (b) Notwithstanding any general or specific law to the contrary, a special broker licensed by the
60 commissioner pursuant to section 168 of this chapter may procure insurance from any company
61 formed under the laws of any government or state other than the United States or one of its states
62 or its territories that is not authorized to transact business in this commonwealth if:

63 (1) such company has been determined by the commissioner to be an eligible alien unauthorized
64 insurer pursuant to subsection (c)(4) of this section;

65 (2) the special broker has executed and filed an affidavit with the commissioner within twenty
66 days after procuring such insurance stating that the full amount or type of insurance cannot be
67 obtained from among companies admitted to transact insurance in the commonwealth after a
68 diligent effort has been made to do so and that the amount of insurance procured in such
69 company is only the excess over the amount so procurable from admitted companies;

70 (3) the procured policy contains the disclosure notice required by section 168 of this chapter; and

71 (4) all other requirements of this section and of section 168 of this chapter that are not
72 inconsistent with this section have been met.

73 Insurance procured under this section shall be valid and enforceable as to all parties.

74 Nothing in this section shall be deemed to amend or modify any of the provisions of, or any of
75 the exemptions specified in, section 168 of this chapter that are not inconsistent with this section.

76 (c) No company shall be determined to be an eligible alien unauthorized insurer unless it:

77 (1) has provided satisfactory evidence to the commissioner of its good repute and financial
78 integrity;

79 (2) has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction in an
80 amount of at least \$20,000,000;

81 (3) has in force a United States trust fund of not less than the greater of:

82 (i) \$5,400,000; or

83 (ii) A percentage of its United States surplus lines gross liabilities arising from business written
84 on or after January 1, 1998, excluding aviation, wet marine, transportation insurance and direct
85 procurement placements, said percentage to equal the percentage, and be subject to any cap,
86 employed by the International Insurance Department of the National Association of Insurance
87 Commissioners, as of December 31 next preceding the date of determination, where:

88 (I) The liabilities are maintained in an irrevocable trust account in the United States in a qualified
89 financial institution, on behalf of United States policyholders consisting of cash, securities,
90 letters of credit or other investments of substantially the same character and quality as those
91 which are eligible investments pursuant to this chapter for the capital and statutory reserves of
92 admitted insurers to write like kinds of insurance in the commonwealth. The trust fund, which
93 shall be included in any calculation of capital and surplus or its equivalent, shall satisfy the

94 requirements of the Standard Form Trust Agreement required for listing with the International
95 Insurers Department of the National Association of Insurance Commissioners;

96 (II) The company may request approval from the commissioner to use the trust fund to pay valid
97 surplus lines claims; provided, however, that the balance of the trust fund is never less than the
98 minimum amount required by this subsection;

99 (III) In calculating the trust fund amount required by this subsection, credit shall be given for
100 surplus lines deposits separately required and maintained for a particular state or territory of the
101 United States, not to exceed the amount of the company's loss and loss adjustment reserves in
102 that particular state or territory; and

103 (4) has submitted to the commissioner an application evidencing the company's compliance with
104 the requirements of this section that has been approved by the commissioner.

105 (d) The application required by subsection (c)(4) of this section shall be on forms issued or
106 approved by the commissioner, and must include the following information regarding the alien
107 unauthorized insurer applicant:

108 (1) Evidence that the unauthorized alien insurer has been listed by the International Insurers
109 Department of the National Association of Insurance Commissioners;

110 (2) A certified audited financial statement of the alien unauthorized insurer reflecting
111 information as of a date no more that twelve (12) months prior to the submission of the
112 application evidencing compliance with the capital and surplus requirements of subsection (c)(2)
113 of this section and an actuarial opinion as to the adequacy of, and methodology used to
114 determine, the insurer's loss reserves;

115 (3) A copy, certified by the trustee, of the United States trust agreement required by subsection
116 (c)(3) of this section prepared in accordance with the National Association of Insurance
117 Commissioner's Standard Form Trust Agreement for Alien Excess or Surplus Lines Insurers;

118 (4) A copy, certified by the trustee, of the most recent quarterly statement of account or list of
119 assets in the trust account required by subsection (c)(3) of this section evidencing that the alien
120 unauthorized insurer has in force, as of the end of the most recent quarter, assets in the amounts
121 required by subsection (c)(3) of this section;

122 (5) A certified copy of the alien unauthorized insurer's current license or certificate of authority
123 issued by its domiciliary jurisdiction indicating such company is authorized to insure the types of
124 risks in its domiciliary jurisdiction that it proposes to insure in the commonwealth;

125 (6) A Certificate of Good Standing, or substantially similar documentation, issued by the alien
126 unauthorized insurer's jurisdiction of domicile;

127 (7) Biographical affidavits, on forms promulgated by the National Association of Insurance
128 Commissioners or approved by the commissioner, for all executive officers, directors, and senior
129 management personnel of the alien unauthorized insurer, prepared no more that twelve (12)
130 months prior to the submission date of the application required by subsection (c)(4) of this
131 section; and

132 (8) Such additional information as the commissioner may require in order to determine whether
133 the alien unauthorized insurer complies with the requirements of this section.

134 (e) The commissioner may refuse to approve an application pursuant to this section if he is of the
135 opinion that such refusal will be in the public interest. In reviewing an application the
136 Commissioner may consider such factors as:

137 (1) The length of time the insurer has been authorized in its domiciliary jurisdiction and
138 elsewhere;

139 (2) The unavailability of the particular coverages from authorized insurers or unauthorized
140 insurers meeting the requirements of this section and section 168 of this chapter;

141 (3) The size of the company as measured by its assets, capital and surplus, reserves, premium
142 writings, insurance in force or other appropriate criteria;

143 (4) The kinds of business the company writes, its net exposure and the extent to which the
144 company's business is diversified among several lines of insurance and geographic locations; and

145 (5) The past and projected trend in the size of the company's capital and surplus considering such
146 factors as premium growth, operating history, loss and expense ratios, or other appropriate
147 criteria

148 (f) The commissioner may revoke a company's status as an eligible alien unauthorized insurer in
149 accordance with the terms and conditions of section 5 of this chapter if at any time the
150 commissioner has determined that the insurer:

151 (1) Is in unsound financial condition or has acted in an untrustworthy manner;

152 (2) No longer meets the standards set forth in subsection (c) of this section;

153 (3) Has willfully violated the laws of the commonwealth; or

154 (4) Does not conduct a proper claims practice.

155 SECTION 5. Clause (1) of subsection (A) of section 177O of said chapter 175, as so appearing,
156 is hereby amended by striking out, in line 7, the word “producer” and inserting in place there of
157 the words “reinsurance intermediary broker”

158 SECTION 6. Clause (1) of subsection D of said section 177O of said chapter 175, as so
159 appearing, is hereby amended by striking out the second sentence.

160 SECTION 7. Section 4 of Chapter 175C of the general laws, as so appearing, is hereby amended
161 by striking sub-section (b) and inserting in place thereof the following sub-section:-

162 (b) Such association shall be authorized to inspect properties, issue policies, collect
163 premiums and accept payment in installments under plans approved by the commissioner
164 consistent with plans offered by voluntary market insurers and reflecting options for at least 6
165 payments annually, adjust claims and pay losses on behalf of its members, employ officers,
166 agents and other employees, enter into contracts, sue and be sued in its own name and take all
167 other actions necessary or appropriate to carry out its functions.;

168 and further, by striking sub-section (f) and in place thereof the following sub-section:-

169 (f) The association shall be governed by a board of 18 directors, who shall serve without
170 compensation. Ten directors shall be elected annually by the members of the association by
171 cumulative voting; 2 directors of associations of insurance agents and brokers doing business in
172 the commonwealth appointed by the commissioner; 4 directors from the general public appointed
173 by the commissioner, one of whom shall reside in a coastal territory; and 2 directors from the
174 general public appointed by the attorney general, one of whom shall reside in a coastal territory.

175 The 6 directors appointed from the general public by the commissioner of insurance and the
176 attorney general shall serve 3-year terms, staggered in a manner to ensure the annual expiration
177 of the terms of 2 directors, and shall not serve as director for more than 3 consecutive terms. The
178 6 directors appointed from the general public may not have affiliations with the insurance
179 industry. Cumulative voting by members shall be permitted at all such elections.

180 SECTION 8. Subsection (c) of section 5 of said chapter 175C, as so appearing, is hereby
181 amended by inserting after the third sentence, the following sentence: “The commissioner shall
182 consider premium adjustments on owner’s policy forms for homeowners in large share territories
183 to keep costs reasonable for primary residents.”

184 SECTION 9. Said section 5 of said chapter 175C, as so appearing, is hereby further amended by
185 inserting the following subsection:-

186 (d) The commissioner shall promulgate regulations requiring insurers to educate consumers as
187 to the nature of and alternatives to the unlimited guaranteed replacement cost endorsement.
188 Consumers shall then be required to sign a waiver assuring their understanding of the unlimited
189 guaranteed replacement cost.

190 SECTION 10. Notwithstanding the provisions of section (7), the appointment of the 4 directors
191 from the general public appointed by the commissioner of insurance shall be as follows: 2
192 directors shall be appointed for a term of 3 years, 1 director shall be appointed for a term of 2
193 years, and 1 director shall be appointed for a term of 1 year. The appointment of the 2 directors
194 from the general public appointed by the attorney general shall be as follows: 1 director shall be
195 appointed for a term of 2 years and 1 director shall be appointed for a term of 1 year. Upon

196 expiration of these appointments, all subsequent appointments of directors from the general
197 public shall be appointed for 3 year terms

198 SECTION 11. The department of revenue, in consultation with the division of insurance, shall
199 make an investigation and study relative to the benefits and viability of a low interest loan
200 program to assist homeowners in the commonwealth with both the costs associated with the
201 purchase and installation of approved mitigation measures as described in section 2 and
202 homeowners insurance deductibles on damage associated with wind storms. The department
203 shall also study the potential utilization by homeowners as well as the funding required to
204 support such a loan program.

205 The department of revenue shall file a report of the results of its investigation, along with
206 any legislative and regulatory recommendations, with the joint committee on financial services
207 and the clerks of the senate and house of on or before January 15, 2010.

208 SECTION 12. Notwithstanding any general law to the contrary the Massachusetts Property
209 Insurance Underwriting Association shall not increase rates for the association homeowners
210 insurance policies in large scale territories before March 1, 2010.

211 SECTION 13. Section 99D of chapter 175 of the general laws shall apply to all policies issued
212 or renewed on or after June 30, 2010.