

HOUSE No. 1057

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act To Increase Insurance Capacity in the Commonwealth..

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 168 of Chapter 175 of the General Laws, as appearing in the 2004
2 Official Edition, is hereby amended by inserting in Line 37 after the words "chapter 175D" the
3 following:-

4 Any insurance policy procured pursuant to this section shall contain the following
5 disclosure notice to the policyholder: This policy is insured by a company which is not admitted
6 to transact insurance in the commonwealth, is not supervised by the commissioner of insurance,
7 and, in the event of an insolvency of such company, a loss shall not be paid by the Massachusetts
8 Insurers Insolvency Fund under chapter 175D. The commissioner may by regulation amend the
9 foregoing disclosure notice.

10 SECTION 2. Section 168 of Chapter 175 of the General Laws, as appearing in the 2004
11 Official Edition, is hereby further amended by striking in Line 61 the word "or".

12 SECTION 3. Section 168 of Chapter 175 of the General Laws, as appearing in the 2004
13 Official Edition, is hereby further amended by inserting in Line 65 after the words "section 20A"

14 the following:- ; or (c) such company is an eligible alien unauthorized insurer, as defined in
15 section 168A of this chapter.

16 SECTION 4. Chapter 175 of the General Laws, as appearing in the 2004 Official Edition,
17 is hereby amended by inserting after section 168 the following new section:-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 (I) The liabilities are maintained in an irrevocable trust account in the United States in a
55 qualified financial institution, on behalf of United States policyholders consisting of cash,
56 securities, letters of credit or other investments of substantially the same character and quality as
57 those which are eligible investments pursuant to this chapter for the capital and statutory reserves
58 of admitted insurers to write like kinds of insurance in the commonwealth. The trust fund, which
59 shall be included in any calculation of capital and surplus or its equivalent, shall satisfy the
60 requirements of the Standard Form Trust Agreement required for listing with the International
61 Insurers Department of the National Association of Insurance Commissioners;

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

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

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

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

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

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

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

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

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

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

94 (7) Biographical affidavits, on forms promulgated by the National Association of
95 Insurance Commissioners or approved by the commissioner, for all executive officers, directors,
96 and senior management personnel of the alien unauthorized insurer, prepared no more than

97 twelve (12) months prior to the submission date of the application required by subsection (c)(4)
98 of this section; and

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

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

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

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

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

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

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

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

119 Is in unsound financial condition or has acted in an untrustworthy manner;

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

121 Has willfully violated the laws of the commonwealth; or

122 Does not conduct a proper claims practice.