

HOUSE No. 985

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

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,
2 is hereby amended by inserting after section 4C the following section:-

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

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

12 Section 99D. (a) In all instances where an insurance company licensed to write
13 property insurance in the commonwealth offers or includes any deductible for wind related

14 damages and mitigation measures related to such deductible, the insurance company shall
15 provide prominent and clear notice to the insured that shall be included with the policy issuance
16 or renewal package, and shall fully disclose all details pertaining to any such deductible and
17 mitigation measure in a format approved by the commissioner of insurance.

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

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

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

29 (3) the deductible, whether a flat dollar amount or a percentage of insured value, shall be
30 presented in at least 2 examples that illustrate the application of the deductible to the insured.
31 Nothing herein shall prohibit the insurer from providing any additional information to the
32 insured to assist in the insured's understanding of the deductible to be applied to the insured's
33 policy.

34 (c) The commissioner, in consultation with the board of building and regulations
35 and standards, shall investigate mitigation measures designed to reduce losses from wind related

36 damages. Based so far as reasonably feasible on national standards for such measures and
37 practices in other comparable states, the commissioner shall adopt regulations describing
38 approved mitigation measures and the minimum corresponding benefits, such as credits, lower
39 deductibles, and reduced premiums that policyholders will receive from insurers upon
40 completion of said measures and either, at the insurers discretion, inspection of the property by
41 the insurer or submission of satisfactory proof of installation of the approved mitigation
42 measures by the insured.

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

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

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

56 Section 168A. (a) As used in this section "eligible alien unauthorized insurer" means a
57 company formed under the laws of any government or state other than the United States or one

58 of its states or its territories that has filed an application with the commissioner pursuant to
59 subsection (c)(4) of this section, which application has been approved by the commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

118 (3) A copy, certified by the trustee, of the United States trust agreement required by
119 subsection (c)(3) of this section prepared in accordance with the National Association of

120 Insurance Commissioner's Standard Form Trust Agreement for Alien Excess or Surplus Lines
121 Insurers;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

174 (f) The association shall be governed by a board of 18 directors, who shall serve
175 without compensation. Ten directors shall be elected annually by the members of the association
176 by cumulative voting; 2 directors of associations of insurance agents and brokers doing business
177 in the commonwealth appointed by the commissioner; 4 directors from the general public
178 appointed by the commissioner, one of whom shall reside in a coastal territory; and 2 directors
179 from the general public appointed by the attorney general, one of whom shall reside in a coastal
180 territory. The 6 directors appointed from the general public by the commissioner of insurance
181 and the attorney general shall serve 3-year terms, staggered in a manner to ensure the annual

182 expiration of the terms of 2 directors, and shall not serve as director for more than 3 consecutive
183 terms. The 6 directors appointed from the general public may not have affiliations with the
184 insurance industry. Cumulative voting by members shall be permitted at all such elections.

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

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

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

195 SECTION 10. Notwithstanding the provisions of section (7), the appointment of the 4
196 directors from the general public appointed by the commissioner of insurance shall be as follows:
197 2 directors shall be appointed for a term of 3 years, 1 director shall be appointed for a term of 2
198 years, and 1 director shall be appointed for a term of 1 year. The appointment of the 2 directors
199 from the general public appointed by the attorney general shall be as follows: 1 director shall be
200 appointed for a term of 2 years and 1 director shall be appointed for a term of 1 year. Upon
201 expiration of these appointments, all subsequent appointments of directors from the general
202 public shall be appointed for 3 year terms

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

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

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

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