

**SENATE . . . . . No. 2572**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Ten**  
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An Act relative to homeowners’ insurance coverage and toxic drywall..

*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 is hereby amended by inserting after  
2 section 4D the following 3 sections:-

3 Section 4E. (a) As used in sections 4F and 4G, unless the context clearly requires  
4 otherwise, the following terms shall have the following meanings:-

5 “Association”, the joint underwriting association formed pursuant to chapter 175C.

6 “Division”, the division of insurance.

7 “Residential property”, a 1- to 4-unit dwelling used for living or sleeping.

8 “Toxic drywall”, drywall, wallboard or any other product used to construct walls, ceilings  
9 or other barriers in a residential property which emits a volatile sulfur compound and strontium  
10 sulfide.

11 Section 4F. Notwithstanding any general or special law or regulation to the contrary, no  
12 insurer licensed to write and engaged in the writing of homeowners’ insurance, nor the

13 association, shall cancel or void any homeowners' insurance policy in effect on or before  
14 January 1, 2011, based upon the presence of toxic drywall in such policy holder's residential  
15 property. If such an insurer or the association receives a claim, timely filed, for damage related  
16 to the presence of toxic drywall in a residential policy holder's property, such claim shall be paid  
17 in accordance with regulations adopted by the division for such claims.

18 Section 4G. (a) Notwithstanding any general or special law or regulation to the contrary,  
19 each insurer licensed to write and engaged in the writing of homeowners' insurance and the  
20 association, shall make the following coverage available to residential owners:

21 (1) first-party property coverage for removal and replacement of toxic drywall in a  
22 residential property built or rehabilitated during or between the years 2000 to 2011; and

23 (2) liability coverage for third-party claims arising out of the presence of toxic drywall in  
24 a residential property. Minimum coverage of \$10,000 per occurrence for first-party property,  
25 minimum coverage of \$10,000 per occurrence for third-party liability and for legal defense costs  
26 shall be made available, subject to a reasonable deductible not to exceed \$1,000 per claim.

27 (b) As a precondition to issuing the coverage required under subsection (a), an insurer or  
28 the association may require that the results of a toxic drywall assessment, conducted in  
29 accordance with regulations of the division relative to such inspections, shall be paid by the  
30 homeowner. If the assessment reveals the presence of toxic drywall, the homeowner shall be  
31 provided opportunity to seek redress against the contractor that installed the toxic drywall or the  
32 supplier of the toxic drywall before a decision relative to coverage pursuant to this section is  
33 rendered.

34 (c) If an assessment reveals the presence of toxic drywall and, after the homeowner has  
35 been provided opportunity to seek the redress described in subsection (b), an insurer or the  
36 association may reject an application for such coverage based upon the positive assessment.

37 (d) For the purposes of this section, first-party property coverage shall include response  
38 action costs incurred to assess and remediate the presence of toxic drywall in the insured's  
39 property and the reimbursement of any associated personal property damage or bodily injury.  
40 Third-party liability coverage shall defend and indemnify the insured against any third-party  
41 claims and shall include response action costs incurred to address conditions in the insured's  
42 property arising from the presence of toxic drywall in the insured's property that has impacted or  
43 is likely to impact a third party. First-party and third-party liability coverage shall apply  
44 simultaneously and, in addition to, one another when both coverages are applicable. Insurers may  
45 charge reasonable premiums for such coverage. SECTION 2. The division of insurance  
46 shall adopt regulations to carry out sections 4E to 4G, inclusive of chapter 175 of the General  
47 Laws, on or before December 1, 2010; provided, however that such regulations shall include, but  
48 not be limited to, a requirement that each insurer licensed to write and engaged in the writing of  
49 homeowners' insurance in the commonwealth and the joint underwriting association formed  
50 pursuant to chapter 175C of the General Laws, shall provide payment for valid claims for  
51 damage related to the presence of toxic drywall in residential policy holders' property, subject to  
52 such monetary limits and within such time limitations for the filing of such claims as the division  
53 deems reasonable for damage caused by toxic drywall between January 1, 2000 and December  
54 31, 2011; and, provided further, that such regulations shall provide for: a list of contractors,  
55 certified to conduct toxic drywall assessments consistent with the purposes of this act; the  
56 method of conducting such an assessment in order to reveal the presence of toxic drywall and

57 any damage caused thereby, or potential damage, to the structure or inhabitants thereof due to  
58 such drywall; and recording of the assessment results on a form to be prescribed by the  
59 commissioner of said division.

60 SECTION 3. Chapter 270 of the General Laws is hereby amended by adding the  
61 following section:-

62 Section 25. (a) For the purpose of this section, the term “toxic drywall” shall mean  
63 drywall, wallboard or any other product used to construct walls, ceilings or other barriers in a  
64 residential property and which emits a volatile sulfur compound and strontium sulfide.

65 (b) (1) Whoever distributes, sells or offers for sale toxic drywall or whoever installs or  
66 otherwise uses toxic drywall in the construction of any structure designed to inhabited or used by  
67 any person, shall be punished by a fine of \$10,000.

68 (2) A violation of paragraph (1) shall constitute an unfair or deceptive act or practice  
69 pursuant to chapter 93A.

70 (c) Whoever holds himself out to be a contractor, whether or not a holder of a license  
71 therefore, and wantonly or recklessly installs toxic drywall in any residential structure for  
72 another, or permits his agent to do so, shall be strictly liable to the owner of such structure for  
73 any civil damages caused thereby.

74 SECTION 4. Sections 4E and 4F of chapter 175 of the General Laws, inserted by  
75 section 1 shall take effect within 120 days of passage of this act.

76 SECTION 5. Section 4F of chapter 175 of the General Laws is hereby repealed.

77           SECTION 6. Section 4G of chapter 175 of the General Laws, inserted by section 1, shall  
78 take effect on January 1, 2011.

79           SECTION 7. Section 5 shall take effect on January 1, 2011.