

SENATE No. 962

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to Promote Business Continuity and Recovery After a Disaster.

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. Notwithstanding the provisions of any other general or special law to the
2 contrary, for the purposes of the act, the following terms shall have the following meanings:

3 “Business Continuity Plan (BCP)” is defined as: A document containing the recovery
4 timeline methodology, test-validated documentation, procedures, and action instructions
5 developed specifically for use in restoring organization operations in the event of a declared
6 disaster. To be effective, most Business Continuity Plans also require testing, skilled personnel,
7 access to vital records, and alternate recovery resources including facilities.

8 “Disaster” or “emergency” is defined as an occurrence such as a hurricane, tornado,
9 flood, earthquake, explosion, hazardous materials accident, war, transportation accident, act of
10 terrorism, mass shooting, fire, famine, or epidemic that causes human suffering or creates human
11 need that the victim cannot alleviate without assistance.

12 Section 2. Chapter 63 of the general laws, as appearing in the 2006 Official Edition, is
13 hereby amended by adding at the end thereof the following new section:

14 Section 3SQ. Business Continuity Tax Deduction. (a) In determining the net income
15 subject to tax under this chapter a domestic or foreign business corporation, at its election, may
16 deduct an amount equal to one half of the expenditures paid or incurred during the taxable year
17 for the purchase of business continuity or business interruption insurance for business operations
18 within the Commonwealth, but in no case shall the deduction exceed the minimum corporate tax
19 payment due.

20 Such deduction shall be allowed only if the insurance remained in full force and effect
21 throughout the taxable year and the corporation maintained a current business continuity or
22 interruption plan on file with the municipal government where the business is located. For
23 purposes of this section, a business continuity or interruption plan is a practiced logistical plan
24 for how an organization will recover and restore partially or completely interrupted critical
25 functions within a specified time after a disaster or extended disruption.

26 Section 3. Section 6 of chapter 64H of the general laws, as appearing in the 2006 Official
27 Edition, is hereby amended by adding after subsection (ww), the following new subsection:

28 (xx) Sale of office equipment and supplies, machinery, vehicles or other equipment to be
29 used by a business that has been substantially destroyed as a result of an emergency.

30 For the purposes of this subsection, the term “emergency” shall mean any situation
31 caused by unforeseen circumstances which render currently used real property unusable or
32 unavailable for the purposes intended and which creates an immediate need for other real
33 property to preserve the health or safety of persons or property.

34 Section 4. Chapter 43D of the general laws, as appearing in the 2006 Official Edition, is
35 hereby amended by adding at the end thereof, the following new section:

36 Section 17. Emergency Permitting.

37 Any municipality which accepts the provisions of this chapter may establish emergency
38 permit granting procedures for the permanent or temporary relocation or rebuilding of property,
39 including commercial entities, in any situation caused by unforeseen circumstances which render
40 currently used real property unusable or unavailable for the purposes intended and which creates
41 an immediate need for other real property to preserve the health or safety of persons or property.

42 Section 5. Small Business Insurance Commission

43 Notwithstanding any general or special law to the contrary, the Small Business Insurance
44 Commission is established to examine the need for guidelines for small business insurance,
45 including, but not limited to, a requirement that the insured have and maintain a continuity of
46 business plan, and a requirement that the business be registered with the local emergency
47 management office.

48 The Commission shall consist of the following: The Commissioner of Insurance, two
49 appointees of the Senate President, 2 appointees of the Speaker of the House, 1 appointee of the
50 Senate Minority Leader, 1 appointee of the House Minority Leader, 1 appointee of the Governor,
51 1 appointee of Associated Industries of Massachusetts, 1 appointee of the Massachusetts
52 Chamber of Commerce and one appointee of the National Federation of Independent Business
53 and 1 appointee from the insurance industry with expertise in small business. The Commissioner
54 of Insurance shall be the chair of the committee but shall have no vote except in case of a tie.

55 The Commission shall be responsible for studying the need for insurance guidelines for
56 small business and issue a report of its findings no later than December 31, 2009.

57 Section 6. Section 71 of Chapter 59 of the General Laws, as appearing in the 2006
58 Official Edition, is hereby amended by adding after the word “bankruptcy,” the following words
59 -: “natural disaster”

60 Section 7. Abatement of Real Property Tax

61 Chapter 59 of the General Laws, as appearing in the 2006 Official Edition, is hereby
62 amended by adding the following new section:

63 Section 59B. Abatements for the purpose of natural disasters.

64 Municipalities may establish, relative to sites or portions of sites from or at which there
65 has been a natural disaster, an agreement between the city or town and any eligible person, as
66 defined in section 2 of chapter 21E, regarding the abatement of outstanding interest, penalties,
67 and payment of real estate tax obligations on said sites or portions of sites; provided, however,
68 that said sites or portions of sites are zoned for commercial or industrial uses by the municipality
69 in which said sites or portion of sites exist. Such agreement, for the purpose of continuing
70 cleanup on such sites and redevelopment in such communities, shall include, but shall not be
71 limited to, the amount outstanding, the per cent of interest to accrue if determined applicable by
72 the parties, the description of quantifiable monthly payments, the inception date of such
73 payments, the date of the final payment, late penalties, and any other contractual obligations
74 arranged between the parties. The terms of repayment shall be set at the discretion of the
75 municipality and shall be included in the agreement between the parties. A city or town that
76 accepts this section shall adopt an ordinance or by-law specifying the method for negotiating and
77 approving agreements under this section. Copies of each such agreement shall be signed by the
78 municipal officer required by the ordinance or by-law and by the owner of the property in

79 question, notarized, attested to by the city or town clerk, and provided to the department of
80 environmental protection, the federal Environmental Protection Agency, the commissioner, the
81 city council or board of selectmen, and the owners of the property in question. This section shall
82 take effect in any city or town only upon its acceptance by such city or town.

83 Section 8. Modification of the Payroll Tax

84 Notwithstanding any general or special law to the contrary, there shall be a modification
85 of the payroll tax for six months following the occurrence of a natural disaster for businesses
86 with less than fifty employees that are in the process of rebuilding.

87 Section 9. Transfer of Katrina Funds to Establish a Small Business Recovery Fund

88 Item 1599-2005 of section 2A of chapter 81 of the acts of 2005, as most recently
89 amended by section 28 of chapter 140 of the acts of 2007, is hereby further amended by inserting
90 after the words “responded to that emergency,” the following words:-; provided further, that any
91 unexpended balance shall be transferred to the Massachusetts Small Business Recovery Fund,
92 established pursuant to the provisions of this act.

93 Section 10. Chapter 10 of the general laws, as appearing in the 2006 Official Edition, is
94 hereby amended by adding at the end, thereof, the following new section:

95 Section 70. Disaster Relief and Recovery Fund.

96 There shall be established and set upon the books of the commonwealth a separate fund
97 to be known as the Massachusetts Disaster Relief and Recovery Fund. There shall be credited to
98 the fund such funds as may be transferred or appropriated by the General Court and any income
99 derived from repayment of loans from the fund and income derived from investment of amounts

100 credited to the fund. Amounts credited to the fund shall be received and held in trust for grants to
101 political subdivisions of the commonwealth and loan guarantees to banks for low interest loans
102 to small businesses for relief and recovery efforts following a disaster, provided, however that no
103 loan guarantee shall exceed fifty percent of the loan, and provided further that no interest rate on
104 such loan shall exceed four percent per annum, nor shall any repayment period exceed ten years.
105 Said grants or loans shall be made by the director of the Massachusetts Emergency Management
106 Agency with the approval of the secretary of the executive office of housing and economic
107 development. Revenues and expenditures of the fund shall be reported on the Massachusetts
108 management and accounting and reporting system and maintained by the state treasurer. The
109 Fund shall not exceed a maximum of \$5,000,000. For the purposes of this section a “disaster”
110 shall mean an emergency, other than a level one emergency, as defined by the Massachusetts
111 Comprehensive Emergency Management Plan.

112 A municipality may establish a program of emergency assistance grants of not more than
113 one thousand dollars per business entity to assist with relocation and start-up costs, provided that
114 businesses, to be eligible, must be adequately insured. Said grant shall be repaid when the
115 insurance settlement is finalized.

116 Section 11. Unemployment Compensation for Self-Employed Business Owners

117 Notwithstanding the provisions of any other general or special law to the contrary, the
118 secretary of the executive office of labor and workforce development is hereby authorized and
119 directed to develop an unemployment compensation program for self-employed individuals and
120 for small business owners who may be temporarily displaced as a result of a disaster as defined
121 in this act. Said program shall include recommendations for administration and funding of the

122 program. The secretary shall provide a report to the General Court, together with
123 recommendations for legislation not later than December 1, 2008.