

SENATE No. 412

The Commonwealth of Massachusetts

PRESENTED BY:

Sonia Chang-Diaz, (BY REQUEST)

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 adoption of the accompanying bill:

An Act relative to homeowners' insurance coverage and toxic drywall..

PETITION OF:

NAME:

Dianne Van der Meer

DISTRICT/ADDRESS:

6 Weld Avenue Roxbury, MA 02119

SENATE No. 412

By Ms. Chang-Diaz (by request), a petition (accompanied by bill, Senate, No. 412) of Dianne Van der Meer for legislation relative to homeowners insurance coverage and toxic drywall. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 2572 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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
2 inserting after section 4D the following 3 sections:-

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

5 “Association”, the joint underwriting association formed pursuant to chapter
6 175C.

7 “Division”, the division of insurance.

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

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

12 Section 4F. Notwithstanding any general or special law or regulation to the
13 contrary, no insurer licensed to write and engaged in the writing of homeowners’ insurance, nor
14 the association, shall cancel or void any homeowners’ insurance policy in effect on or before
15 January 1, 2012, based upon the presence of toxic drywall in such policy holder’s residential
16 property. If such an insurer or the association receives a claim, timely filed, for damage related
17 to the presence of toxic drywall in a residential policy holder’s property, such claim shall be paid
18 in accordance with regulations adopted by the division for such claims.

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

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

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

29 (b) As a precondition to issuing the coverage required under subsection (a),
30 an insurer or the association may require that the results of a toxic drywall assessment, conducted

31 in accordance with regulations of the division relative to such inspections, shall be paid by the
32 homeowner. If the assessment reveals the presence of toxic drywall, the homeowner shall be
33 provided opportunity to seek redress against the contractor that installed the toxic drywall or the
34 supplier of the toxic drywall before a decision relative to coverage pursuant to this section is
35 rendered.

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

40 (d) For the purposes of this section, first-party property coverage shall
41 include response action costs incurred to assess and remediate the presence of toxic drywall in
42 the insured's property and the reimbursement of any associated personal property damage or
43 bodily injury. Third-party liability coverage shall defend and indemnify the insured against any
44 third-party claims and shall include response action costs incurred to address conditions in the
45 insured's property arising from the presence of toxic drywall in the insured's property that has
46 impacted or is likely to impact a third party. First-party and third-party liability coverage shall
47 apply simultaneously and, in addition to, one another when both coverages are applicable.
48 Insurers may charge reasonable premiums for such coverage.

49 SECTION 2. The division of insurance shall adopt regulations to carry out
50 sections 4E to 4G, inclusive of chapter 175 of the General Laws, on or before December 1, 2011;
51 provided, however that such regulations shall include, but not be limited to, a requirement that
52 each insurer licensed to write and engaged in the writing of homeowners' insurance in the

53 commonwealth and the joint underwriting association formed pursuant to chapter 175C of the
54 General Laws, shall provide payment for valid claims for damage related to the presence of toxic
55 drywall in residential policy holders' property, subject to such monetary limits and within such
56 time limitations for the filing of such claims as the division deems reasonable for damage caused
57 by toxic drywall between January 1, 2000 and December 31, 2011; and, provided further, that
58 such regulations shall provide for: a list of contractors, certified to conduct toxic drywall
59 assessments consistent with the purposes of this act; the method of conducting such an
60 assessment in order to reveal the presence of toxic drywall and any damage caused thereby, or
61 potential damage, to the structure or inhabitants thereof due to such drywall; and recording of
62 the assessment results on a form to be prescribed by the commissioner of said division.

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

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

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

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

73 (c) Whoever holds himself out to be a contractor, whether or not a holder of
74 a license therefore, and wantonly or recklessly installs toxic drywall in any residential structure

75 for another, or permits his agent to do so, shall be strictly liable to the owner of such structure for
76 any civil damages caused thereby.

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

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

81 SECTION 6. Section 4G of chapter 175 of the General Laws, inserted by
82 section 1, shall take effect on January 1, 2012.

83 SECTION 7. Section 5 shall take effect on January 1, 2012.