

# HOUSE . . . . . No. 1119

By Mr. Welch of West Springfield, petition of James T. Welch for legislation to authorize the procurement of insurance from certain companies not authorized to transact business in the Commonwealth. Financial Services.

## The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

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,  
2 as appearing in the 2004 Official Edition, is hereby amended by  
3 inserting in line 37 after the words “Chapter 175D” the  
4 following:—  
5 Any insurance policy procured pursuant to this section shall  
6 contain the following disclosure notice to the policyholder: This  
7 policy is insured by a company which is not admitted to transact  
8 insurance in the Commonwealth, is not supervised by the commis-  
9 sioner of insurance, and, in the event of an insolvency of such  
10 company, a loss shall not be paid by the Massachusetts Insurers  
11 Insolvency Fund under Chapter 175D. The commissioner may by  
12 regulation amend the foregoing disclosure notice.

1 SECTION 2. Section 168 of Chapter 175 of the General Laws,  
2 as appearing in the 2004 Official Edition, is hereby further  
3 amended by striking in line 61 the word “or”.

1 SECTION 3. Section 168 of Chapter 175 of the General Laws,  
2 as appearing in the 2004 Official Edition, is hereby further  
3 amended by inserting in line 65 after the words “Section 20A” the  
4 following:— ; or (c) such company is an eligible alien unautho-  
5 rized insurer, as defined in Section 168A of this chapter.

1 SECTION 4. Chapter 175 of the General Laws, as appearing in  
2 the 2004 Official Edition, is hereby amended by inserting after  
3 Section 168 the following new section:—

4 Section 168A. (a) As used in this section “eligible alien unau-  
5 thorized insurer” means a company formed under the laws of any  
6 government or state other than the United States or one of its  
7 states or its territories that has filed an application with the com-  
8 missioner pursuant to subsection (c)(4) of this section, which  
9 application has been approved by the commissioner.

10 (b) Notwithstanding any general or specific law to the contrary,  
11 a special broker licensed by the commissioner pursuant to Section  
12 168 of this chapter may procure insurance from any company  
13 formed under the laws of any government or state other than the  
14 United States or one of its states or its territories that is not autho-  
15 rized to transact business in this Commonwealth if:

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

19 (2) the special broker has executed and filed an affidavit with  
20 the commissioner within twenty days after procuring such insur-  
21 ance stating that the full amount or type of insurance cannot be  
22 obtained from among companies admitted to transact insurance in  
23 the Commonwealth after a diligent effort has been made to do so  
24 and that the amount of insurance procured in such company is  
25 only the excess over the amount so procurable from admitted  
26 companies;

27 (3) the procured policy contains the disclosure notice required  
28 by Section 168 of this chapter; and

29 (4) all other requirements of this section and of Section 168 of  
30 this chapter that are not inconsistent with this section have been  
31 met.

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

34 Nothing in this section shall be deemed to amend or modify any  
35 of the provisions of, or any of the exemptions specified in, Section  
36 168 of this chapter that are not inconsistent with this section.

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

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

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

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

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

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

54 where:

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

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

71 (III) In calculating the trust fund amount required by this sub-  
72 section, credit shall be given for surplus lines deposits separately  
73 required and maintained for a particular state or territory of the  
74 United States, not to exceed the amount of the company's loss and  
75 loss adjustment reserves in that particular state or territory; and

76 (4) has submitted to the commissioner an application evi-  
77 dencing the company's compliance with the requirements of this  
78 section that has been approved by the commissioner.

79 (d) The application required by subsection (c)(4) of this section  
80 shall be on forms issued or approved by the commissioner, and  
81 must include the following information regarding the alien unau-  
82 thorized insurer applicant:

83 (1) Evidence that the unauthorized alien insurer has been listed  
84 by the International Insurers Department of the National Associa-  
85 tion of Insurance Commissioners;

86 (2) A certified audited financial statement of the alien unautho-  
87 rized insurer reflecting information as of a date no more that  
88 twelve (12) months prior to the submission of the application evi-  
89 dencing compliance with the capital and surplus requirements of  
90 subsection (c)(2) of this section and an actuarial opinion as to the  
91 adequacy of, and methodology used to determine, the insurer's  
92 loss reserves;

93 (3) A copy, certified by the trustee, of the United States trust  
94 agreement required by subsection (c)(3) of this section prepared in  
95 accordance with the National Association of Insurance Commis-  
96 sioner's Standard Form Trust Agreement for Alien Excess or Sur-  
97 plus Lines Insurers;

98 (4) A copy, certified by the trustee, of the most recent quarterly  
99 statement of account or list of assets in the trust account required  
100 by subsection (c)(3) of this section evidencing that the alien unau-  
101 thorized insurer has in force, as of the end of the most recent  
102 quarter, assets in the amounts required by subsection (c)(3) of this  
103 section;

104 (5) A certified copy of the alien unauthorized insurer's current  
105 license or certificate of authority issued by its domiciliary juris-  
106 diction indicating such company is authorized to insure the types  
107 of risks in its domiciliary jurisdiction that it proposes to insure in  
108 the Commonwealth;

109 (6) A Certificate of Good Standing, or substantially similar  
110 documentation, issued by the alien unauthorized insurer's jurisdic-  
111 tion of domicile;

112 (7) Biographical affidavits, on forms promulgated by the  
113 National Association of Insurance Commissioners or approved by  
114 the commissioner, for all executive officers, directors, and senior  
115 management personnel of the alien unauthorized insurer, prepared  
116 no more that twelve (12) months prior to the submission date of  
117 the application required by subsection (c)(4) of this section; and

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

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

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

127 (2) The unavailability of the particular coverages from autho-  
128 rized insurers or unauthorized insurers meeting the requirements  
129 of this section and Section 168 of this chapter;

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

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

136 (5) The past and projected trend in the size of the company's  
137 capital and surplus considering such factors as premium growth,  
138 operating history, loss and expense ratios, or other appropriate cri-  
139 teria

140 (f) The commissioner may revoke a company's status as an eli-  
141 gible alien unauthorized insurer in accordance with the terms and  
142 conditions of Section 5 of this chapter if at any time the commis-  
143 sioner has determined that the insurer:

144 (1) Is in unsound financial condition or has acted in an untrust-  
145 worthy manner;

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

148 (3) Has willfully violated the laws of the Commonwealth; or

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