



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND SEVEN

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, is
2 hereby amended by inserting after section 4C the following section:-
3 Section 4D. The commissioner shall promulgate regulations by which all insurers licensed to
4 write and engaged in the writing of homeowners insurance the commonwealth and the joint
5 underwriting association, formed pursuant to the provisions of chapter 175C, shall produce a
6 standard outline of coverage written in language prescribed or approved by the commissioner
7 that describes the features of the coverage. Each insurer, including the aforesaid joint
8 underwriting association, shall be required to provide this information to each policyholder
9 upon the issuance or renewal of a policy.
- 10 **SECTION 2.** Chapter 175 of the general laws, as so appearing, is hereby amended by inserting
11 after section 99C the following two sections: -

12 Section 99D. (a) In all instances where an insurance company licensed to write property
13 insurance in the commonwealth offers or includes any deductible for wind related damages and
14 mitigation measures related to such deductible, the insurance company shall provide prominent
15 and clear notice to the insured that shall be included with the policy issuance or renewal
16 package, and shall fully disclose all details pertaining to any such deductible and mitigation
17 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 lines of
19 insurance, where:

20 (i) the deductible is specifically approved by the commissioner and shall not exceed five percent
21 of the insured value of the dwelling;

22 (ii) the deductible shall be applicable to losses due to a hurricane during the period commencing
23 with the issuance of a hurricane warning or hurricane wind speed warning for any part of the
24 state by the National Hurricane Center and concluding twenty-four hours after the termination
25 of the last hurricane warning or hurricane wind speed warning for any part of the state;

26 (iii) the deductible, whether a flat dollar amount or a percentage of insured value, shall be
27 presented in at least two examples that illustrate the application of the deductible to the insured.

28 Nothing herein shall prohibit the insurer from providing any additional information to the
29 insured to assist in the insured's understanding of the deductible to be applied to the insured's
30 policy.

31 (c) The insurance commissioner, in consultation with the board of building and regulations and
32 standards, shall investigate mitigation measures designed to reduce losses from wind related
33 damages. Based so far as reasonably feasible on national standards for such measures and
34 practices in other comparable states, the commissioner shall promulgate regulations describing

35 approved mitigation measures and the minimum corresponding benefits, such as credits, lower
36 deductibles, and reduced premiums that policyholders will receive from insurers upon
37 completion of said measures and either inspection of the property by the insurer or submission
38 of satisfactory proof of installation of the approved mitigation measures by the insured.

39 (d) The commissioner of insurance shall have the authority to promulgate all regulations
40 necessary to implement the provisions of this section.

41 (e) The provisions of this section shall be applicable to policies issuing or renewing on or after
42 June 30, 2009.

43 Section 99E. (a) As used in this section the term “commission” shall refer to the Massachusetts
44 commission on hurricane loss projection methodology established pursuant to the provisions of
45 this section.

46 (b) There is hereby established a Massachusetts commission on hurricane loss projection
47 methodology. The commission shall be administratively housed within the executive office of
48 administration and finance, but it shall independently exercise the powers and duties specified
49 in this section. The commission shall consist of the following nine members directly appointed
50 by the governor, as follows: two experts specializing in atmospheric, oceanic and climate
51 sciences and employed by an academic institution located within the commonwealth; one expert
52 in meteorology who is a member of the American Meteorological Society; two actuaries who
53 are members of the Casualty Actuarial Society; one structural engineer who is a member of the
54 Structural Engineer Association of Massachusetts; one expert in insurance finance who has a
55 background in actuarial science; one expert in statistics who has a background in insurance; one
56 expert in computer system design. Eligibility for commission membership is prohibited for all
57 those employed by any company licensed to write property casualty lines in the commonwealth.

58 All members directly appointed by the governor shall serve for a term of three years, and may
59 be reappointed to the commission. All members may be removed by the governor prior to the
60 expiration of their term. Vacancies on the commission shall be filled in the same manner as the
61 original appointment.

62 The governor shall annually appoint one of the members of the commission to serve as chair.

63 The commission is authorized to hire staff of consultants to assist in the performance of its
64 duties.

65 (c) There shall be no liability on the part of, and no cause of action of any nature shall arise
66 against, any member of the commission for any action taken in the performance of their duties
67 under this section. In addition, the commission may, in writing, waive any potential cause of
68 action for negligence of a consultant, contractor, or contract employee engaged to assist the
69 commission.

70 (d) The commission shall consider any actuarial models, methods, principles, standards, or
71 output ranges that have the potential for improving the accuracy of or reliability of the hurricane
72 loss projections used in residential property insurance rate filings. The commission shall, from
73 time to time, adopt findings as to the accuracy or reliability of particular models, methods,
74 principles, standards, or output ranges. The commission shall have discretion to rely on the
75 review conducted by similar commissions or regulatory bodies and to focus on those aspects of
76 hurricane loss projection methodologies that are specific to Massachusetts.

77 The commission shall adopt revisions to previously adopted actuarial methods, principles,
78 standards, models, or output ranges from time to time.

79 (e) A trade secret used in designing and constructing a hurricane loss model, provided by a
80 person to the commission, is confidential and shall not be deemed a public record, as defined in

81 section 7 of chapter 4 of the Massachusetts general laws. The commission shall maintain
82 custody of any records made confidential by this paragraph using a secure location or website.
83 That portion of a meeting of the commission or of a rate proceeding on an insurer's rate filing at
84 which a trade secret made confidential and exempt by this paragraph is discussed shall be
85 deemed confidential and not open to disclosure pursuant to the open meetings act, but may be
86 discussed at a closed meeting as provided for in section 11A1/2 of chapter 30A of the
87 Massachusetts general laws. Members of the commission will be bound not to disclose
88 information made confidential.

89 (f) The Massachusetts commission is hereby authorized to form a multi-state commission with
90 the states of Rhode Island, Connecticut and any other interested state in furtherance of the goals
91 of this act.

92 (g) The commission shall submit to the secretary of administration and finance for approval by-
93 laws to govern the actions and affairs of the commission.

94 **SECTION 3.** Section 168 of chapter 175 of the general laws, as so appearing, is hereby
95 amended by inserting after the sixth sentence, in line 37, the following two sentences - "Any
96 insurance policy procured pursuant to this section shall contain the following disclosure notice
97 to the policyholder: This policy is insured by a company which is not admitted to transact
98 insurance in the commonwealth, is not supervised by the commissioner of insurance, and, in the
99 event of an insolvency of such company, a loss shall not be paid by the Massachusetts Insurers
100 Insolvency Fund under chapter 175D. The commissioner may by regulation amend the
101 foregoing disclosure notice."; and further by striking in the eighth sentence, in line 61, the word
102 "or"; and further by inserting in line 65 the following text - ", or (c) such company is an eligible
103 alien unauthorized insurer, as defined in section 168A of this chapter".

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

106 Section 168A. (a) As used in this section "eligible alien unauthorized insurer" means a company
107 formed under the laws of any government or state other than the United States or one of its
108 states or its territories that has filed an application with the commissioner pursuant to subsection
109 (c)(4) of this section, which application has been approved by the commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

168 (3) A copy, certified by the trustee, of the United States trust agreement required by subsection
169 (c)(3) of this section prepared in accordance with the National Association of Insurance
170 Commissioner's Standard Form Trust Agreement for Alien Excess or Surplus Lines Insurers;

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

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

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

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

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

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

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

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

- 194 (3) The size of the company as measured by its assets, capital and surplus, reserves, premium
195 writings, insurance in force or other appropriate criteria;
- 196 (4) The kinds of business the company writes, its net exposure and the extent to which the
197 company's business is diversified among several lines of insurance and geographic locations;
198 and
- 199 (5) The past and projected trend in the size of the company's capital and surplus considering
200 such factors as premium growth, operating history, loss and expense ratios, or other appropriate
201 criteria
- 202 (f) The commissioner may revoke a company's status as an eligible alien unauthorized insurer in
203 accordance with the terms and conditions of section 5 of this chapter if at any time the
204 commissioner has determined that the insurer:
- 205 (1) Is in unsound financial condition or has acted in an untrustworthy manner;
206 (2) No longer meets the standards set forth in subsection (c) of this section;
207 (3) Has willfully violated the laws of the commonwealth; or
208 (4) Does not conduct a proper claims practice.

209 **SECTION 5.** Clause (1) of subsection (A) of section 177O of chapter 175 of the general laws,
210 as so appearing, is hereby amended by striking out in line 7 the word “producer” and inserting
211 in place there of the words “reinsurance intermediary broker”; and further, clause (1) of
212 subsection D of said section is hereby amended by striking out the second sentence in its
213 entirety.

214 **SECTION 6.** Section 1 of chapter 175C of the general laws, as so appearing, is hereby
215 amended by striking out the fourth paragraph and inserting in place thereof the following
216 paragraph:-

217 “Basic property insurance”, insurance against direct loss to property as defined and limited in
218 the standard fire policy and extended coverage endorsement thereon, filed with and accepted by
219 the commissioner, and insurance against direct loss to such property from the perils of
220 vandalism and malicious mischief and dwelling coverages, including liability coverages for one
221 (1) to four (4) family owner and non-owner occupied dwellings either by endorsement or as a
222 stand-alone policy and homeowners coverages, excluding the unlimited guaranteed
223 replacement cost endorsement, but including the scheduled personal property endorsement and
224 such other coverages as the commissioner after public hearing shall determine or the secretary
225 of the United States department of housing and urban development shall designate by rule made
226 in accordance with the provisions of the Urban Property Protection and Reinsurance Act of
227 1968 (Public Law 90-448) but shall not include insurance on automobile or manufacturing risks
228 except such classes of manufacturing risks as may, after proper hearing, be designated by the
229 commissioner.

230 **SECTION 7.** Chapter 175C of the general laws, as so appearing, is hereby amended by striking
231 section 4 in its entirety and replacing it with the following:-

232 Section 4. (a) All insurers licensed to write and engaged in writing in this commonwealth, on a
233 direct basis, basic property insurance or any component thereof in multi-peril policies, shall
234 cooperate in organizing a joint underwriting association which shall provide basic property
235 insurance to eligible applicants who are otherwise unable to obtain such coverage in the
236 voluntary market. Every such insurer shall be a member of the association and remain a
237 member as a condition of its authority to transact such insurance within the commonwealth.

238 (b) Such association shall be authorized to inspect properties, issue policies, collect premiums
239 and accept payment in installments under plans approved by the commissioner consistent with

240 plans offered by voluntary market insurers and reflecting options for at least six payments
241 annually, adjust claims and pay losses on behalf of its members, employ officers, agents and
242 other employees, enter into contracts, sue and be sued in its own name and take all other actions
243 necessary or appropriate to carry out its functions hereunder.

244 (c) The association shall submit to the commissioner a proposed plan of operation, consistent
245 with the purposes of this chapter, to provide for the prompt and efficient provision of basic
246 property insurance to eligible applicants who meet reasonable underwriting standards and are
247 otherwise unable to obtain coverage from insurers in the voluntary market. Such plan of
248 operation shall provide for economical, fair and nondiscriminatory administration including, but
249 not limited to, provisions for preliminary assessment of all members for initial expenses
250 necessary to commence operations, establishment of necessary facilities, management of the
251 association, assessment of members to defray losses and expenses, commissions, reasonable
252 underwriting standards and limits of liability, purchase of reinsurance and procedures for
253 determining amounts of insurance to be provided.

254 (d) The plan of operation shall be subject to approval by the commissioner and shall take effect
255 ten days after having been approved by the commissioner. If the commissioner disapproves the
256 proposed plan of operation, the association shall, within thirty days, submit for review an
257 appropriately revised plan of operation and, if the association fails to submit such a plan or if
258 the revised plan is also disapproved by the commissioner, the commissioner shall promulgate a
259 plan of operation consistent with this section. The association may, on its own initiative or at
260 the request of the commissioner, amend the plan of operation, subject to approval by the
261 commissioner.

262 (e) (1) All members of the association shall participate in its writing, expenses, profits and
263 losses in the proportion that the premiums written by each such member for basic property
264 insurance, as defined in section one, except premiums for insurance on automobile and
265 manufacturing risks excluded from the plan and that portion of the premiums attributable to the
266 operation of the association during the preceding calendar year, bear to the aggregate premiums
267 for such insurance written in the commonwealth by all members of the association. Such
268 participation by each insurer in the association shall be determined annually on the basis of such
269 premiums written during the preceding calendar years as disclosed in the annual statements and
270 other reports filed by the insurer with the commissioner.

271 (2) The participation of each member of the association writing personal lines coverage shall be
272 adjusted based on the homeowners premiums written by such a member in any credit-eligible
273 zip code, defined as all zip codes in Massachusetts where the Fair Plan market share exceeds 1.5
274 times the Fair Plan statewide market share, never less than 15%, averaged over the latest three
275 calendar years, in accordance with the following clauses:

276 (i) The participation ratio of each member writing personal lines insurance shall be recalculated,
277 in accordance with the procedures set forth in subparagraph (1) but subtracting the premium
278 written by members of the association writing only commercial lines insurance from the
279 aggregate premiums written in the commonwealth by all members of the association.

280 (ii) The participation ratio of each member writing personal lines insurance as recalculated in
281 clause (i) shall be multiplied by the sum of the total premium written by the association in the
282 commonwealth and 150% of the total industry homeowners credit eligible premium written in
283 credit-eligible zip codes, as defined in this chapter.

284 (iii) The product of the multiplication described in clause (ii) of this subsection shall be a)
285 reduced by subtracting therefrom 150% of the homeowners premium written by each member in
286 any credit-eligible zip code in the year of an MPIUA loss or b) shall be increased by adding
287 therefrom 150% of the homeowners premium written by each member in any credit-eligible zip
288 code in the year of an MPIUA profit.

289 (iv) The result of the calculation described in clause (iii) for a carrier, never less than zero, shall
290 be divided by sum of this calculation across all carriers. The resulting ratio shall be the adjusted
291 participation ratio for the member.

292 (v) The adjusted participation ratio of those members whose participation ratio is calculated as
293 provided in this subparagraph shall apply to that portion of the writings, expenses, profits and
294 losses of the association not recovered by applying the participation ratios of the remaining
295 members of the association as calculated, as provided in subparagraph (1).

296 (3) The participation of any member of the association writing personal lines insurance shall be
297 further adjusted if such member has written homeowners insurance during the preceding
298 calendar year, hereafter called the "base year", on property that was insured by the association
299 in the year immediately preceding such base year and which is located in any credit eligible zip
300 code, defined as all zip codes in Massachusetts where the Fair Plan market share exceeds 1.5
301 times the Fair Plan statewide market share, never less than 15%, averaged over the latest three
302 calendar years. The participation of such a member shall be adjusted by a) reducing the amount
303 of premium written by such member in subparagraph (1) by one hundred percent of the total
304 homeowners insurance premiums written by the member on property described in this clause in
305 the year of an MPIUA loss or by b) increasing the amount of premium written by such member
306 in subparagraph (1) by one hundred percent of the total homeowners insurance premiums

307 written by the member on property described in this clause in the year of an MPIUA profit.
308 Such adjustment shall not apply to any insurance written on property that was insured by the
309 member or any affiliate or subsidiary member in either of the two years preceding the base year.

310 (f). The association shall be governed by a board of 18 directors, who shall serve without
311 compensation. 10 directors shall be elected annually by the members of the association by
312 cumulative voting; 2 directors of associations of insurance agents and brokers doing business in
313 the commonwealth appointed by the commissioner of insurance; 4 directors from the general
314 public appointed by the commissioner of insurance; and 2 directors from the general public
315 appointed by the attorney general. The 6 directors appointed from the general public by the
316 commissioner of insurance and the attorney general shall serve 3 year terms, staggered in a
317 manner to ensure the annual expiration of the terms of 2 directors, and shall not serve as director
318 for more than 3 consecutive terms. The 6 directors appointed from the general public may not
319 have affiliations with the insurance industry. Cumulative voting by members shall be permitted
320 at all such elections.

321 **SECTION 8.** Subsection c of section 5 of chapter 175C, as so appearing, is hereby amended by
322 inserting after the third sentence, the following sentence: "Nothing in this subsection shall be
323 construed as to prevent the commissioner from considering the following premium adjustments
324 on owner's policy forms for homeowners in all territories - adjustments to key factors to keep
325 costs reasonable for applicants with Coverage A amounts less than the median Coverage A
326 amount within that territory, coastal area rating factors that are based upon predicted hurricane
327 losses associated with distance from the coast, approving rating adjustments to keep costs
328 reasonable for primary residents, and approving rating adjustments to keep costs reasonable for
329 insureds over the age of 64."

330 **SECTION 9.** Notwithstanding the provisions of section 7 of this bill, the appointment of the 4
331 directors from the general public appointed by the commissioner of insurance shall be as
332 follows: two directors shall be appointed for a term of 3 years, 1 director shall be appointed for
333 a term of 2 years, and 1 director shall be appointed for a term of 1 year. The appointment of the
334 2 directors from the general public appointed by the attorney general shall be as follows: one
335 director shall be appointed for a term of 2 years and 1 director shall be appointed for a term of 1
336 year. Upon expiration of these appointments, all subsequent appointments of directors from the
337 general public shall be appointed for 3 year terms

338 **SECTION 10.** The department of revenue, in consultation with the division of insurance, shall
339 make an investigation and study relative to the benefits and viability of a low interest loan
340 program to assist homeowners in the commonwealth with both the costs associated with the
341 purchase and installation of approved mitigation measures as described in section 2 of this bill
342 and homeowners insurance deductibles on damage associated with wind storms. The
343 department shall also study the potential utilization by homeowners as well as the funding
344 required to support such a loan program.

345 The department of revenue shall report to the general court the results of its investigation and
346 study and its recommendations, if any, together with drafts of legislation necessary to carry its
347 recommendations into effect by filing the same with the clerk of the house of representatives
348 and the clerk of the senate, who shall forward the same to the joint committee on financial
349 services on or before January 15, 2009.