

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Ronald Mariano

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 passage of the accompanying bill:

An Act relative to homeowners insurance.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Ronald Mariano	3rd Norfolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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 adopt regulations to require all insurers licensed to
4 write and engaged in the writing of homeowners insurance in the commonwealth and the joint
5 underwriting association, established in chapter 175C, to produce a standard outline of coverage
6 written in language prescribed or approved by the commissioner that describe the features of the
7 coverage. Each insurer, including the joint underwriting association, shall be required to provide
8 this information to each policyholder upon the issuance or renewal of a policy.

9 SECTION 2. Said chapter 175, as so appearing, is hereby amended by inserting after section
10 99C the following section:-

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

15 and shall fully disclose all details pertaining to any such deductible and mitigation measure in a
16 format approved by the commissioner of insurance.

17 (b) An insurer may only apply a deductible for wind related damages in personal lines of
18 insurance, where:

19 (1) the deductible is specifically approved by the commissioner and shall not exceed 3
20 per cent of the policy's coverage A amount; nothing herein shall prohibit the policyholder from
21 electing a higher deductible, not to exceed 5 per cent of the policy's coverage A amount, by
22 affirmative signature.

23 (2) the deductible shall be applicable to losses due to a named hurricane with wind
24 velocities exceeding 74 miles per hour, commencing with the issuance of a hurricane warning or
25 hurricane wind speed warning ,in the geographical area of the commonwealth where the damage
26 occurs, by the local National Weather Service office and concluding 12 hours after the storm has
27 been downgraded from a hurricane status by said office;

28 (3) the deductible, whether a flat dollar amount or a percentage of insured value, shall be
29 presented in at least 2 examples that illustrate the application of the deductible to the insured.
30 Nothing herein shall prohibit the insurer from providing any additional information to the
31 insured to assist in the insured's understanding of the deductible to be applied to the insured's
32 policy.

33 (c) The commissioner, in consultation with the board of building and regulations and
34 standards, shall investigate mitigation measures designed to reduce losses from wind related
35 damages. Based so far as reasonably feasible on national standards for such measures and
36 practices in other comparable states, the commissioner shall adopt regulations describing
37 approved mitigation measures and the minimum corresponding benefits, such as credits, lower

38 deductibles, and reduced premiums that policyholders will receive from insurers upon
39 completion of said measures and either, at the insurers discretion, inspection of the property by
40 the insurer or submission of satisfactory proof of installation of the approved mitigation
41 measures by the insured.

42 (d) The commissioner shall adopt regulations to implement this section.

43 SECTION 3. Section 168 of chapter 175 of the general laws, as so appearing, is hereby amended
44 by inserting after the sixth sentence, in line 37, the following two sentences - "Any insurance
45 policy procured pursuant to this section shall contain the following disclosure notice to the
46 policyholder: This policy is insured by a company which is not admitted to transact insurance in
47 the commonwealth, is not supervised by the commissioner of insurance, and, in the event of an
48 insolvency of such company, a loss shall not be paid by the Massachusetts Insurers Insolvency
49 Fund under chapter 175D. The commissioner may by regulation amend the foregoing disclosure
50 notice."; and further by striking in the eighth sentence, in line 61, the word "or"; and further by
51 inserting in line 65, after the word "20A", the following text - ", or (c) such company is an
52 eligible alien unauthorized insurer, as defined in section 168A of this chapter".

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

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

59 (b) Notwithstanding any general or specific law to the contrary, a special broker licensed
60 by the commissioner pursuant to section 168 of this chapter may procure insurance from any

61 company formed under the laws of any government or state other than the United States or one
62 of its states or its territories that is not authorized to transact business in this commonwealth if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

149 (5) The past and projected trend in the size of the company's capital and surplus
150 considering such factors as premium growth, operating history, loss and expense ratios, or other
151 appropriate criteria

152 (f) The commissioner may revoke a company's status as an eligible alien unauthorized
153 insurer in accordance with the terms and conditions of section 5 of this chapter if at any time the
154 commissioner has determined that the insurer:

155 (1) Is in unsound financial condition or has acted in an untrustworthy manner;

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

157 (3) Has willfully violated the laws of the commonwealth; or

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

159 SECTION 5. Clause (1) of subsection (A) of section 177O of said chapter 175, as so appearing,
160 is hereby amended by striking out, in line 7, the word “producer” and inserting in place there of
161 the words “reinsurance intermediary broker”

162 SECTION 6. Clause (1) of subsection D of said section 177O of said chapter 175, as so
163 appearing, is hereby amended by striking out the second sentence.

164 SECTION 7. Section 4 of Chapter 175C of the general laws, as so appearing, is hereby amended
165 by striking sub-section (b) and inserting in place thereof the following sub-section:-

166 (b) Such association shall be authorized to inspect properties, issue policies, collect
167 premiums and accept payment in installments under plans approved by the commissioner
168 consistent with plans offered by voluntary market insurers and reflecting options for at least 6
169 payments annually, adjust claims and pay losses on behalf of its members, employ officers,
170 agents and other employees, enter into contracts, sue and be sued in its own name and take all
171 other actions necessary or appropriate to carry out its functions.;

172 and further, by striking sub-section (f) and in place thereof the following sub-section:-

173 (f) The association shall be governed by a board of 18 directors, who shall serve without
174 compensation. Ten directors shall be elected annually by the members of the association by

175 cumulative voting; 2 directors of associations of insurance agents and brokers doing business in
176 the commonwealth appointed by the commissioner; 4 directors from the general public appointed
177 by the commissioner, one of whom shall reside in a coastal territory; and 2 directors from the
178 general public appointed by the attorney general, one of whom shall reside in a coastal territory.
179 The 6 directors appointed from the general public by the commissioner of insurance and the
180 attorney general shall serve 3-year terms, staggered in a manner to ensure the annual expiration
181 of the terms of 2 directors, and shall not serve as director for more than 3 consecutive terms. The
182 6 directors appointed from the general public may not have affiliations with the insurance
183 industry. Cumulative voting by members shall be permitted at all such elections.

184 SECTION 8. Subsection (c) of section 5 of said chapter 175C, as so appearing, is hereby
185 amended by inserting after the third sentence, the following sentence: “The commissioner shall
186 consider premium adjustments on owner’s policy forms for homeowners in large share territories
187 to keep costs reasonable for primary residents.”

188 SECTION 9. Said section 5 of said chapter 175C, as so appearing, is hereby further amended by
189 inserting the following subsection:-

190 (d) The commissioner shall promulgate regulations requiring insurers to educate
191 consumers as to the nature of and alternatives to the unlimited guaranteed replacement cost
192 endorsement. Consumers shall then be required to sign a waiver assuring their understanding of
193 the unlimited guaranteed replacement cost.

194 SECTION 10. Notwithstanding the provisions of section (7), the appointment of the 4 directors
195 from the general public appointed by the commissioner of insurance shall be as follows: 2
196 directors shall be appointed for a term of 3 years, 1 director shall be appointed for a term of 2
197 years, and 1 director shall be appointed for a term of 1 year. The appointment of the 2 directors

198 from the general public appointed by the attorney general shall be as follows: 1 director shall be
199 appointed for a term of 2 years and 1 director shall be appointed for a term of 1 year. Upon
200 expiration of these appointments, all subsequent appointments of directors from the general
201 public shall be appointed for 3 year terms

202 SECTION 11. The department of revenue, in consultation with the division of insurance, shall
203 make an investigation and study relative to the benefits and viability of a low interest loan
204 program to assist homeowners in the commonwealth with both the costs associated with the
205 purchase and installation of approved mitigation measures as described in section 2 and
206 homeowners insurance deductibles on damage associated with wind storms. The department
207 shall also study the potential utilization by homeowners as well as the funding required to
208 support such a loan program.

209 The department of revenue shall file a report of the results of its investigation, along with
210 any legislative and regulatory recommendations, with the joint committee on financial services
211 and the clerks of the senate and house of on or before January 15, 2010.

212 SECTION 12. Notwithstanding any general law to the contrary the Massachusetts Property
213 Insurance Underwriting Association shall not increase rates for the association homeowners
214 insurance policies in large scale territories before March 1, 2010.

215 SECTION 13. Section 99D of chapter 175 of the general laws shall apply to all policies issued
216 or renewed on or after June 30, 2010.