

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

James T. Welch

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 To Increase Insurance Capacity in the Commonwealth.

PETITION OF:

NAME:

James T. Welch

DISTRICT/ADDRESS:

6th Hampden

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1119 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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.

2

3 Section 168 of Chapter 175 of the General Laws, as appearing in the 2004 Official Edition, is hereby
4 amended by inserting in Line 37 after the words "chapter 175D" the following:-

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6 Any insurance policy procured pursuant to this section shall contain the following disclosure notice to
7 the policyholder: This policy is insured by a company which is not admitted to transact insurance in the
8 commonwealth, is not supervised by the commissioner of insurance, and, in the event of an insolvency
9 of such company, a loss shall not be paid by the Massachusetts Insurers Insolvency Fund under chapter
10 175D. The commissioner may by regulation amend the foregoing disclosure notice.

11

12 SECTION 2.

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14 Section 168 of Chapter 175 of the General Laws, as appearing in the 2004 Official Edition, is hereby
15 further amended by striking in Line 61 the word "or".

16

17 SECTION 3.

18

19 Section 168 of Chapter 175 of the General Laws, as appearing in the 2004 Official Edition, is hereby
20 further amended by inserting in Line 65 after the words "section 20A" the following:-

21

22 ; or (c) such company is an eligible alien unauthorized insurer, as defined in section 168A of this chapter.

23

24 SECTION 4.

25

26 Chapter 175 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by
27 inserting after section 168 the following new section:-

28

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

33

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

38

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

41

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

47

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

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

52

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

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

57

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

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

62

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

65

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

67

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

69

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

76

77 where:

78

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

90

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

95

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

101

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

104

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

108

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

111

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

117

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

121

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

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

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

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

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

142

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

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

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

151

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

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

157

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

160

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

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

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

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

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

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