

Redraft of H1099, H1089, and H1119

The committee moves to amend the bill by striking out all after the enacting clause and replacing it with the following text:-

SECTION 1. Chapter 175 of the general laws, as appearing in the 2006 official edition, is hereby amended by inserting after section 4C the following section:-

Section 4D. The commissioner shall promulgate regulations by which all insurers licensed to write and engaged in the writing of homeowners insurance the commonwealth and the joint underwriting association, formed pursuant to the provisions of chapter 175C, shall produce a standard outline of coverage written in language prescribed or approved by the commissioner that describes the features of the coverage. Each insurer, including the aforesaid joint underwriting association, shall be required to provide this information to each policyholder upon the issuance or renewal of a policy.

SECTION 2. Chapter 175 of the general laws, as so appearing, is hereby amended by inserting after section 99C the following two sections: -

Section 99D. (a) In all instances where an insurance company licensed to write property insurance in the commonwealth offers or includes any deductible for wind related damages and mitigation measures related to such deductible, the insurance company shall provide prominent and clear notice to the insured that shall be included with the policy issuance or renewal package, and shall fully disclose all details pertaining to any such deductible and mitigation measure in a format approved by the commissioner of insurance.

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

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

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

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

(c) The insurance commissioner, in consultation with the board of building and regulations and standards, shall investigate mitigation measures designed to reduce losses from wind related damages. Based so far as reasonably feasible on national standards for such measures and practices in other comparable states, the commissioner shall promulgate regulations describing approved mitigation measures and the minimum corresponding benefits, such as credits, lower deductibles, and reduced premiums that policyholders will receive from insurers upon completion of said measures and either inspection of the property by the insurer or submission of satisfactory proof of installation of the approved mitigation measures by the insured.

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

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

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

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

by the governor prior to the expiration of their term. Vacancies on the commission shall be filled in the same manner as the original appointment.

The governor shall annually appoint one of the members of the commission to serve as chair. The commission is authorized to hire staff of consultants to assist in the performance of its duties.

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

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

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

(e) A trade secret used in designing and constructing a hurricane loss model, provided by a person to the commission, is confidential and shall not be deemed a public record, as defined in section 7 of chapter 4 of the Massachusetts general laws. The commission

shall maintain custody of any records made confidential by this paragraph using a secure location or website.

That portion of a meeting of the commission or of a rate proceeding on an insurer's rate filing at which a trade secret made confidential and exempt by this paragraph is discussed shall be deemed confidential and not open to disclosure pursuant to the open meetings act, but may be discussed at a closed meeting as provided for in section 11A1/2 of chapter 30A of the Massachusetts general laws. Members of the commission will be bound not to disclose information made confidential.

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

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

SECTION 3. Section 168 of chapter 175 of the general laws, as so appearing, is hereby amended by inserting after the sixth sentence, in line 37, the following two sentences -

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

The commissioner may by regulation amend the foregoing disclosure notice.”; and further by striking in the eighth sentence, in line 61, the word “or”; and further by

inserting in line 65 the following text – “, or (c) such company is an eligible alien unauthorized insurer, as defined in section 168A of this chapter”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) The liabilities are maintained in an irrevocable trust account in the United States in a qualified financial institution, on behalf of United States policyholders consisting of cash,

securities, letters of credit or other investments of substantially the same character and quality as those which are eligible investments pursuant to this chapter for the capital and statutory reserves of admitted insurers to write like kinds of insurance in the commonwealth. The trust fund, which shall be included in any calculation of capital and surplus or its equivalent, shall satisfy the requirements of the Standard Form Trust Agreement required for listing with the International Insurers Department of the National Association of Insurance Commissioners;

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

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

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

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

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

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

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

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

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

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

(7) Biographical affidavits, on forms promulgated by the National Association of Insurance Commissioners or approved by the commissioner, for all executive officers, directors, and senior management personnel of the alien unauthorized insurer, prepared

no more than twelve (12) months prior to the submission date of the application required by subsection (c)(4) of this section; and

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

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

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

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

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

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

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

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

- (1) Is in unsound financial condition or has acted in an untrustworthy manner;
- (2) No longer meets the standards set forth in subsection (c) of this section;
- (3) Has willfully violated the laws of the commonwealth; or
- (4) Does not conduct a proper claims practice.

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

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

“Basic property insurance”, insurance against direct loss to property as defined and limited in the standard fire policy and extended coverage endorsement thereon, filed with and accepted by the commissioner, and insurance against direct loss to such property from the perils of vandalism and malicious mischief and dwelling coverages, including liability coverages for one (1) to four (4) family owner and non-owner occupied dwellings either by endorsement or as a stand-alone policy and homeowners coverages, excluding the unlimited guaranteed replacement cost endorsement, but including the scheduled personal property endorsement and such other coverages as the commissioner after public hearing shall determine or the secretary of the United States department of

housing and urban development shall designate by rule made in accordance with the provisions of the Urban Property Protection and Reinsurance Act of 1968 (Public Law 90-448) but shall not include insurance on automobile or manufacturing risks except such classes of manufacturing risks as may, after proper hearing, be designated by the commissioner.

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

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

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

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

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

(e) (1) All members of the association shall participate in its writing, expenses, profits and losses in the proportion that the premiums written by each such member for basic property insurance, as defined in section one, except premiums for insurance on automobile and manufacturing risks excluded from the plan and that portion of the

premiums attributable to the operation of the association during the preceding calendar year, bear to the aggregate premiums for such insurance written in the commonwealth by all members of the association. Such participation by each insurer in the association shall be determined annually on the basis of such premiums written during the preceding calendar years as disclosed in the annual statements and other reports filed by the insurer with the commissioner.

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

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

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

(iii) The product of the multiplication described in clause (ii) of this subsection shall be a) reduced by subtracting therefrom 150% of the homeowners premium written by each

member in any credit-eligible zip code in the year of an MPIUA loss or b) shall be increased by adding therefrom 150% of the homeowners premium written by each member in any credit-eligible zip code in the year of an MPIUA profit.

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

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

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

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

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

SECTION 8. Subsection c of section 5 of chapter 175C, as so appearing, is hereby amended by inserting after the third sentence, the following sentence: "Nothing in this subsection shall be construed as to prevent the commissioner from considering the following premium adjustments on owner's policy forms for homeowners in all territories - adjustments to key factors to keep costs reasonable for applicants with Coverage A amounts less than the median Coverage A amount within that territory, coastal area rating factors that are based upon predicted hurricane losses associated

with distance from the coast, approving rating adjustments to keep costs reasonable for primary residents, and approving rating adjustments to keep costs reasonable for insureds over the age of 64.”

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

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

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