

Senate, No. 2778

[Senate, June 30, 2008 - Substituted by amendment by the Senate (Ways and Means) for Senate, No. 2639]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND EIGHT

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
2 Edition, is 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 the commonwealth and the joint
5 underwriting association, established in chapter 175C, shall produce a standard outline of
6 coverage written in language prescribed or approved by the commissioner that describe the
7 features of the coverage. Each insurer, including the joint underwriting association, shall be
8 required to provide this information to each policyholder upon the issuance or renewal of a
9 policy.

10 SECTION 2. Said chapter 175, as so appearing, is hereby amended by inserting after
11 section 99C the following 2 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 (1) the deductible is specifically approved by the commissioner and shall not exceed 3
21 per cent of the insured value of the dwelling;

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

26 (3) the deductible, whether a flat dollar amount or a percentage of insured value, shall be
27 presented in at least 2 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 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 adopt 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 shall adopt regulations to implement this section.

40 Section 99E. (a) There shall be a Center for Hurricane Research, hereinafter referred to
41 as the center, at the University of Massachusetts at Lowell. The center shall employ such
42 expert, clerical, or other assistants as the work of the center may require. For the purpose of
43 carrying out its duties as set forth in this section the center may expend such funds as may be
44 appropriated to the University of Massachusetts at Lowell.

45 (b) The center shall develop criteria for hurricane loss projection models and
46 methodologies that are specific to Massachusetts and may from time to time adopt revisions to
47 these criteria. In establishing the criteria, the center shall consider any models, model software,
48 methods, principles, standards, data, inputs, manuals, validation studies and output ranges that
49 have the potential for improving the accuracy of or reliability of the hurricane loss projections
50 used in homeowners' insurance rate filings. The criteria developed under this subsection shall
51 be based on actual data on Massachusetts construction practices, codes, and buildings. Criteria
52 developed by the center for this purpose shall be a public record.

53 (c) Insurers filing rates for approval by the commissioner shall submit to the center all
54 hurricane models, model software, methods, principles, standards, data, inputs, manuals,
55 validation studies and output ranges relevant to the insurer's hurricane loss projection model or
56 methodology that is intended to be used during a rate proceeding on an insurer's rate filing in
57 advance of the rate proceeding. The center shall review the accuracy or reliability of particular

58 models, model software, methods, principles, standards, data, inputs, manuals, validation
59 studies and output ranges submitted to the center by insurers and shall make recommendations
60 relative to the accuracy and reliability of the particular models, model software, methods,
61 principles, standards, data, inputs, manuals, validation studies and output ranges submitted to
62 the center by insurers using the criteria developed by the center under subsection (b). The
63 center shall have discretion to review findings made by similar centers, commissions, or
64 regulatory bodies and to focus on those aspects of the hurricane loss projection methodologies
65 submitted to the center by insurers that are specific to Massachusetts. All models, model
66 software, methods, principles, standards, data, inputs, manuals, validation studies and output
67 ranges shall be submitted to the center for review within a reasonable period of time, as
68 determined by the center, prior to being admitted as evidence during a rate proceeding before
69 the commissioner of insurance. If any insurer fails to submit any item or items required by the
70 center under this subsection, the commissioner shall direct the insurer to remove the hurricane
71 loss projection from its filing.

72 (d) There shall be a rebuttable presumption that the recommendations made by the
73 center relative to the accuracy or reliability of particular models, model software, methods,
74 principles, standards, data, inputs, manuals, validation studies and output ranges submitted to
75 the center by insurers shall be considered by the commissioner to be relevant evidence in a rate
76 proceeding on an insurer's rate filing, provided, however that an exemption from the disclosure
77 of trade secrets to the public may apply as set forth in subsection (e).

78 (e) A trade secret used in designing and constructing a hurricane loss model or
79 methodology, provided by an insurer to the center under subsection (c), is confidential and shall
80 not be deemed a public record, as defined in clause Twenty-sixth of section 7 of chapter 4. The

81 center shall maintain custody of any records made confidential by this paragraph using a secure
82 location or website. That portion of a rate proceeding on an insurer's rate filing at which a trade
83 secret is discussed shall be deemed confidential and not open to disclosure under the open
84 meetings law, but may be discussed at a closed meeting as provided for in section 11A ½ of
85 chapter 30A. Employees, volunteers, and students of the center will be bound not to disclose
86 information made confidential.

87 (f) The center may form a multi-state center with the states of Rhode Island, Connecticut
88 and any other interested state in furtherance of the goals of this section.

89 SECTION 3. Clause (1) of subsection (A) of section 177O of said chapter 175, as so
90 appearing, is hereby amended by striking out, in line 7, the word "producer" and inserting in
91 place there of the words "reinsurance intermediary broker"

92 SECTION 4. Clause (1) of subsection D of said section 177O of said chapter 175, as so
93 appearing, is hereby amended by striking out the second sentence.

94 SECTION 5. Section 1 of chapter 175C of the general laws, as so appearing, is hereby
95 amended by striking out definition of "Basic property insurance" and inserting in place thereof
96 the following definition:-

97 "Basic property insurance", insurance against direct loss to property as defined and
98 limited in the standard fire policy and extended coverage endorsement thereon, filed with and
99 accepted by the commissioner, and insurance against direct loss to such property from the perils
100 of vandalism and malicious mischief and dwelling coverages, including liability coverages for
101 one (1) to four (4) family owner and non-owner occupied dwellings either by endorsement or as
102 a stand-alone policy and homeowners coverages, excluding the unlimited guaranteed
103 replacement cost endorsement, but including the scheduled personal property endorsement and

104 such other coverages as the commissioner after public hearing shall determine or the secretary
105 of the United States department of housing and urban development shall designate by rule made
106 in accordance with the provisions of the Urban Property Protection and Reinsurance Act of
107 1968 (Public Law 90-448) but shall not include insurance on automobile or manufacturing risks
108 except such classes of manufacturing risks as may, after proper hearing, be designated by the
109 commissioner.

110 SECTION 6. Chapter 175C of the General Laws, as so appearing, is hereby amended by
111 striking out section 4 and inserting in place thereof the following section:-

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

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

124 (c) The association shall submit to the commissioner a proposed plan of operation,
125 consistent with the purposes of this chapter, to provide for the prompt and efficient provision of
126 basic property insurance to eligible applicants who meet reasonable underwriting standards and

127 are otherwise unable to obtain coverage from insurers in the voluntary market. Such plan of
128 operation shall provide for economical, fair and nondiscriminatory administration including, but
129 not limited to, provisions for preliminary assessment of all members for initial expenses
130 necessary to commence operations, establishment of necessary facilities, management of the
131 association, assessment of members to defray losses and expenses, commissions, reasonable
132 underwriting standards and limits of liability, purchase of reinsurance and procedures for
133 determining amounts of insurance to be provided.

134 (d) The plan of operation shall be subject to approval by the commissioner and shall take
135 effect 10 days after the commissioner approves it. If the commissioner disapproves the
136 proposed plan of operation, the association shall, within 30days, submit for review an
137 appropriately revised plan of operation and, if the association fails to submit such a plan or if
138 the revised plan is also disapproved by the commissioner, the commissioner shall adopt a plan
139 of operation consistent with this section. The association may, on its own initiative or at the
140 request of the commissioner, amend the plan of operation, subject to approval by the
141 commissioner.

142 (e) (1) All members of the association shall participate in its writing, expenses, profits
143 and losses in the proportion that the premiums written by each such member for basic property
144 insurance, as defined in section one, except premiums for insurance on automobile and
145 manufacturing risks excluded from the plan and that portion of the premiums attributable to the
146 operation of the association during the preceding calendar year, bear to the aggregate premiums
147 for such insurance written in the commonwealth by all members of the association. Such
148 participation by each insurer in the association shall be determined annually on the basis of such
149 premiums written during the preceding calendar years as disclosed in the annual statements and

150 other reports filed by the insurer with the commissioner.

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

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

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

164 (iii) The product of the multiplication described in clause (ii) of this subsection shall be
165 (A) reduced by subtracting therefrom 150% of the homeowners premium written by each
166 member in any credit-eligible zip code in the year of an MPIUA loss or (B) shall be increased
167 by adding therefrom 150% of the homeowners premium written by each member in any credit-
168 eligible zip code in the year of an MPIUA profit.

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

172 (v) The adjusted participation ratio of those members whose participation ratio is

173 calculated as provided in this subparagraph shall apply to that portion of the writings, expenses,
174 profits and losses of the association not recovered by applying the participation ratios of the
175 remaining members of the association as calculated, as provided in subparagraph (1).

176 (3) The participation of any member of the association writing personal lines insurance
177 shall be further adjusted if such member has written homeowners insurance during the
178 preceding calendar year, hereafter called the base year, on property that was insured by the
179 association in the year immediately preceding such base year and which is located in any credit
180 eligible zip code, defined as all zip codes in Massachusetts where the Fair Plan market share
181 exceeds 1.5 times the Fair Plan statewide market share, never less than 15%, averaged over the
182 latest three calendar years. The participation of such a member shall be adjusted by (i) reducing
183 the amount of premium written by such member in subparagraph (1) by one hundred percent of
184 the total homeowners insurance premiums written by the member on property described in this
185 clause in the year of an MPIUA loss or by (ii) increasing the amount of premium written by
186 such member in subparagraph (1) by one hundred percent of the total homeowners insurance
187 premiums written by the member on property described in this clause in the year of an MPIUA
188 profit. Such adjustment shall not apply to any insurance written on property that was insured by
189 the member or any affiliate or subsidiary member in either of the two years preceding the base
190 year.

191 (f) The association shall be governed by a board of 18 directors, who shall serve without
192 compensation. Ten directors shall be elected annually by the members of the association by
193 cumulative voting; 2 directors of associations of insurance agents and brokers doing business in
194 the commonwealth appointed by the commissioner; 4 directors from the general public
195 appointed by the commissioner; and 2 directors from the general public appointed by the

196 attorney general. The 6 directors appointed from the general public by the commissioner of
197 insurance and the attorney general shall serve 3 year terms, staggered in a manner to ensure the
198 annual expiration of the terms of 2 directors, and shall not serve as director for more than 3
199 consecutive terms. The 6 directors appointed from the general public may not have affiliations
200 with the insurance industry. Cumulative voting by members shall be permitted at all such
201 elections.

202 SECTION 7. Subsection (c) of section 5 of said chapter 175C, as so appearing, is
203 hereby amended by inserting after the third sentence, the following sentence: “Nothing in this
204 subsection shall be construed as to prevent the commissioner from considering the following
205 premium adjustments on owner’s policy forms for homeowners in all territories: adjustments to
206 key factors to keep costs reasonable for applicants with Coverage A amounts less than the
207 median Coverage A amount within that territory, coastal area rating factors that are based upon
208 predicted hurricane losses associated with distance from the coast, approving rating adjustments
209 to keep costs reasonable for primary residents, and approving rating adjustments to keep costs
210 reasonable for insureds over the age of 64.”

211 SECTION 8. Said section 5 of said chapter 175C, as so appearing, is hereby further
212 amended by inserting the following subsection:-

213 (d) The commissioner shall develop a disclosure form to inform individuals seeking to
214 purchase basic property insurance about the risks associated with choosing solely a stand alone
215 liability policy. This form shall be written in plain language, explained to an individual seeking
216 to purchase stand along liability coverage as their sole basic property insurance, and signed by
217 that individual.

218 SECTION 9. Said chapter 175C is hereby further amended by adding the following
219 section:-

220 Section 10. The association shall pay a dividend on homeowners insurance premiums
221 for coastal properties occupied as primary residences having a cost not greater than the median
222 coverage A for the territory in which the property is located. This dividend shall be paid in a
223 year which is the third year consecutive year in which there have been no hurricane related
224 losses in the territory and this dividend shall be a third of all hurricane loss premiums less the
225 cost of reinsurance purchased by the association. This dividend shall not be paid in any year
226 where payment of it will cause the association to realize a net loss for that year, and shall only
227 be made in a year in which the association has purchased adequate reinsurance for hurricane
228 losses, as determined by the commissioner.

229 SECTION 10. Notwithstanding the provisions of section 7, the appointment of the 4
230 directors from the general public appointed by the commissioner of insurance shall be as
231 follows: 2 directors shall be appointed for a term of 3 years, 1 director shall be appointed for a
232 term of 2 years, and 1 director shall be appointed for a term of 1 year. The appointment of the 2
233 directors from the general public appointed by the attorney general shall be as follows: 1
234 director shall be appointed for a term of 2 years and 1 director shall be appointed for a term of 1
235 year. Upon expiration of these appointments, all subsequent appointments of directors from the
236 general public shall be appointed for 3 year terms

237 SECTION 11. The department of revenue, in consultation with the division of
238 insurance, shall make an investigation and study relative to the benefits and viability of a low
239 interest loan program to assist homeowners in the commonwealth with both the costs associated
240 with the purchase and installation of approved mitigation measures as described in section 2 and

241 homeowners insurance deductibles on damage associated with wind storms. The department
242 shall also study the potential utilization by homeowners as well as the funding required to
243 support such a loan program.

244 The department of revenue shall file a report of the results of its investigation, along
245 with any legislative and regulatory recommendations, with the joint committee on financial
246 services and the clerks of the senate and house of on or before January 15, 2009.

247 SECTION 12. Section 99D of chapter 175 of the General Laws shall apply to all
248 policies issued or renewed on or after June 30, 2009.