

HOUSE No. 687

By Mr. Allen of Brookline, petition of P. A. O'Connell and others for legislation to authorize and regulate the exchange of reciprocal or inter-insurance contracts and providing for the taxation thereof. Insurance.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Forty-Six.

AN ACT AUTHORIZING AND REGULATING THE EXCHANGE OF RECIPROCAL OR INTER-INSURANCE CONTRACTS IN THE COMMONWEALTH AND PROVIDING FOR THE TAXATION THEREOF.

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 one hundred and seventy-five
2 of the General Laws is hereby amended by inserting
3 after section ninety-four the twelve following sec-
4 tions under the heading, "reciprocal insurance ex-
5 changes":—

6 *Section 94A.* The following words as used in
7 sections ninety-four B to ninety-four L, inclusive,
8 or elsewhere in this chapter, shall, unless the context
9 otherwise requires or a different meaning is specific-
10 ally prescribed, have the following meanings:—

11 "Attorney in fact", a person, partnership or cor-
12 poration acting under power of attorney as the repre-

13 sentative of the subscribers in the exchange of recip-
14 rocal or inter-insurance contracts and matters inci-
15 dent thereto.

16 “Exchange”, the office of the attorney in fact,
17 being the place where the contracts of insurance are
18 issued.

19 “Subscribers”, the participants or policyholders.

20 *Section 94B.* Individuals, partnerships and cor-
21 porations of this commonwealth herein designated
22 subscribers are hereby authorized to exchange re-
23 ciprocal or inter-insurance contracts with each other
24 or with individuals, partnerships and corporations of
25 other states and countries providing indemnity among
26 themselves from any loss or damage caused by any
27 of the hazards specified in section forty-seven of
28 chapter one hundred and seventy-five, and in chapter
29 one hundred and fifty-two, General Laws, which any
30 one stock or mutual fire or liability insurance com-
31 pany or association is now or may hereafter be au-
32 thorized to transact, except the following clauses
33 specified in said section forty-seven; fourth, tenth,
34 eleventh, twelfth, thirteenth and sixteenth, subject
35 to the provisions of section ninety-four A to ninety-
36 four L, inclusive.

37 *Section 94C.* Such contracts may be executed by
38 an attorney in fact, as herein defined, duly authorized
39 and acting for such subscribers. The principal office
40 of the attorney in fact shall be maintained at such
41 place as is designated by the subscribers in the power
42 of attorney.

43 *Section 94D.* Where the principal office of the
44 attorney in fact is located in this commonwealth
45 such attorney in fact in order to obtain a license to
46 transact business, shall file with the commissioner of

47 insurance an application therefor, accompanied by a
48 declaration signed and sworn to by him, or in case of a
49 corporation, signed and sworn to on its behalf by an
50 executive officer, duly authorized thereto, setting
51 forth:—

52 (a) The name or designation under which the
53 reciprocal or inter-insurance contracts are to be
54 issued, which shall not be so similar to the name of
55 any other insurance carrier as to be calculated to
56 deceive or confuse.

57 (b) The location of the office or offices from which
58 such contracts are to be issued.

59 (c) The classes of insurance to be written.

60 (d) An exact copy of the form of agreement or
61 policy contracts to be used in the exchanging of the
62 insurance provided for.

63 (e) An exact copy of the form of power of attorney
64 authorizing the attorney in fact to effect the exchang-
65 ing of insurance provided for.

66 (f) The name of the attorney in fact.

67 (g) That a fund of at least two hundred thousand
68 dollars is in the possession of the attorney in fact and
69 advisory committee as a surplus fund for the carrying
70 out of reciprocal or inter-insurance contracts executed
71 by said attorney in fact, said fund to be in cash or
72 invested in such securities as are hereinafter specified.

73 (h) That except as to the kinds of insurance herein-
74 after specifically mentioned in this subdivision,
75 applications shall have been made for indemnity upon
76 at least one hundred separate risks aggregating not
77 less than two and one half million dollars represented
78 by executed contracts or bona fide applications to
79 become concurrently effective upon the issuance of a
80 license to transact business. In the case of employers'

81 liability or workmen's compensation insurance, appli-
82 cations shall have been made for indemnity upon at
83 least one hundred separate risks covering a total
84 annual pay roll of not less than two and one half
85 million dollars represented by executed contracts or
86 bona fide applications to become concurrently effec-
87 tive upon the issuance of a license to transact busi-
88 ness. In the case of automobile insurance, whether
89 written by an exchange writing automobile insurance
90 only or in conjunction with other risks on any of the
91 coverages permitted for any one stock or mutual
92 insurance company, applications shall have been
93 made for indemnity upon at least one thousand
94 motor vehicles, represented by executed contracts
95 or bona fide applications to become concurrently
96 effective upon the issuance of a license to transact
97 business.

98 (i) That the attorney in fact will execute no con-
99 tracts of insurance save upon the express condition
100 that the commissioner shall be the attorney of each
101 subscriber to receive service of process in any action
102 or proceeding against the subscriber, nor unless the
103 subscriber shall have authorized the attorney in fact
104 to designate the commissioner for service of process
105 and shall have ratified any prior designations or
106 appointments for service of process.

107 This declaration shall be accompanied by a power
108 of attorney executed by the attorney in fact, constitut-
109 ing and appointing the commissioner or his successor
110 the true and lawful attorney of the subscribers upon
111 whom all lawful process in an action or legal proceed-
112 ing against them may be served, which shall be in the
113 form prescribed by and shall be subject to the pro-
114 visions of the third clause of section one hundred and

115 fifty-one so far as applicable. The service of such
116 process shall be made as provided in said third clause
117 of section one hundred and fifty-one.

118 *Section 94E.* Where the principal office of the
119 attorney in fact is located in another state, such
120 attorney in fact may apply for a license to transact
121 business in the manner set forth in the preceding sec-
122 tion, with the following exceptions and additions:—

123 (a) Instead of the declarations under clause (g)
124 of section ninety-four D, he shall file a declaration
125 setting forth that he has in his possession and avail-
126 able for the payment of losses, funds in the amount
127 required by section ninety-four H, either in cash or
128 invested as required by the laws of the state where
129 such principal office is located.

130 (b) That except as to the kinds of insurance here-
131 inafter specifically mentioned, instead of the declara-
132 tion under clause (h) of section ninety-four D, he
133 shall file a statement that the exchange has at least
134 one hundred subscribers with insurance in force
135 aggregating not less than two and one half million
136 dollars. In the case of employers' liability or work-
137 men's compensation insurance the exchange shall
138 have at least one hundred subscribers with insurance
139 in force covering a total annual pay roll of not less
140 than two and one half million dollars. In the case
141 of automobile insurance there shall be in force insur-
142 ance covering at least one thousand motor vehicles.

143 (c) He shall file a financial statement under oath
144 in form prescribed by section twenty-five.

145 (d) He shall file a certificate from the proper
146 official of the state where the principal office of the
147 attorney in fact is located, showing that all provisions
148 of law applicable thereto have been complied with

149 and that authority has been given to transact the
150 classes of business which are sought to be transacted
151 in the commonwealth.

152 (e) He shall file an agreement that he will not trans-
153 act in this commonwealth any class of business
154 which cannot be transacted through an exchange
155 located in this commonwealth.

156 *Section 94F.* The commissioner shall examine the
157 application and declaration and all documents filed
158 in connection therewith; and if he is satisfied that
159 they comply with the law and that the allegations
160 of fact contained therein are true, he shall issue a
161 license to transact business to the attorney in fact
162 authorizing him to execute for the subscribers under
163 the name designated, such contracts of reciprocal or
164 inter-insurance as are authorized by this chapter,
165 which license shall be subject to the provisions of
166 section five.

167 *Section 94G.* The attorney in fact shall execute
168 no insurance contract with any subscriber unless the
169 subscriber shall have agreed that in case the funds on
170 hand are not sufficient to meet the losses, he will,
171 upon demand, pay to the attorney in fact an amount
172 at least equal to and in addition to the current annual
173 premium or deposit called for by his contract, which
174 liability shall endure as long as there are outstanding
175 any claims on contracts issued while he was a sub-
176 scriber; provided, however, that if the exchange has
177 a surplus equal to the minimum paid-up capital
178 required of a stock insurance company transacting
179 the same kind of business, in addition to the require-
180 ments of section ninety-four B, paragraph (g), where
181 the principal office of the attorney in fact is located
182 in this commonwealth or to those of section ninety-

183 four H where the principal office of the attorney in
184 fact is located in another state, the attorney in fact
185 may execute insurance contracts without contingent
186 liability; provided, however, that any attorney in fact
187 which shall have issued contracts without contingent
188 liability after the acquisition of such surplus may
189 continue to do so only so long as said exchange main-
190 tains a surplus in the above amount, and no attorney
191 in fact shall execute any such insurance contract
192 without contingent liability except during such time
193 as said exchange shall continue to maintain such
194 surplus.

195 *Section 94H.* There shall be maintained at all
196 times in the hands of the attorney in fact or trustees
197 duly authorized for that purpose, assets in cash or
198 securities equal to all outstanding claims and liabili-
199 ties, including a reserve liability on contracts in
200 force, calculated on the same basis as for mutual
201 companies transacting the same kinds of business.
202 There shall also be maintained as a surplus fund an
203 additional sum of not less than two hundred thousand
204 dollars. This fund shall in the case where the prin-
205 cipal office of the attorney in fact is located in this
206 commonwealth, be in cash or invested according to
207 the laws applicable to the investment of the surplus
208 of mutual companies transacting the same kinds of
209 business. The attorney in fact or the subscribers
210 may make deposits to maintain the surplus fund at the
211 required amount, which shall be made upon condition
212 that they shall not be repaid to the depositor until
213 such time as repayment thereof will not reduce the
214 surplus below the required amount.

215 *Section 94I.* Every attorney in fact shall make an
216 annual statement in accordance with section twenty-

217 five and shall be subject to the penalties provided by
218 section twenty-six of this chapter and section six of
219 chapter two hundred and sixty-eight. He shall
220 include therein a certificate of the maximum amount
221 of indemnity upon any single fire insurance risk and a
222 certificate that no subscriber has assumed on any
223 such risk an amount greater than ten per cent of the
224 net worth of such subscriber. The attorney in fact
225 shall not be required to furnish the names and ad-
226 dresses of any subscribers except in the case of an
227 unpaid final judgment.

228 *Section 94J.* Contracts of reciprocal or inter-
229 insurance and the exchanging thereof, and exchanges,
230 attorneys in fact and other representatives of the
231 subscribers, shall be subject to the provisions of this
232 chapter, excepting sections twenty-one, seventy-five,
233 one hundred and fifty, the first, second and fourth
234 clauses of section one hundred and fifty-one, and
235 section one hundred and fifty-seven, in so far as such
236 provisions are applicable to the exchanging of recip-
237 rocal or inter-insurance contracts; providing that
238 sections one hundred and sixty-two to one hundred
239 and seventy-seven, inclusive, shall not apply to the
240 attorney in fact or manager, nor shall they apply to
241 the representatives of the exchange employed on a
242 salary basis only.

243 *Section 94K.* The subscribers shall elect or appoint
244 in the manner provided by them an advisory com-
245 mittee or other similar committee or board composed
246 of not less than three subscribers, which committee
247 or board shall have authority to adopt such rules and
248 regulations for the conduct of the attorney in fact
249 and the affairs and funds of the subscribers as they

250 may deem proper and which may not be inconsistent
251 with the provisions of the power of attorney.

252 *Section 94L.* A true copy of the power of attorney
253 executed by any subscriber shall be furnished him
254 by the attorney in fact at the time of the signing
255 thereof.

1 SECTION 2. Section twenty-five of said chapter
2 one hundred and seventy-five, as amended by
3 chapter ninety-two of the acts of nineteen hundred
4 and thirty-four, is hereby further amended by strik-
5 ing out the words "Mutual companies and United
6 States branches of companies of foreign countries"
7 under forms B and C and inserting in place thereof
8 the following:— Mutual companies, reciprocal in-
9 surance exchanges and United States branches of
10 companies of foreign countries.

1 SECTION 3. Section ninety-nine of said chapter
2 one hundred and seventy-five, as amended by chapter
3 four hundred and sixty-two of the acts of nineteen
4 hundred and forty-three, is hereby further amended
5 by inserting after the ninth clause the following new
6 clause:—

7 Tenth. A reciprocal or inter-insurance exchange
8 may with the written approval of the commissioner
9 add to the said standard form any provisions re-
10 quired by the plan of reciprocal insurance or inter-
11 insurance or may modify said form.

1 SECTION 4. Chapter sixty-three of the General
2 Laws is hereby amended by inserting after section
3 twenty-nine the following new section:—

4 *Section 29A.* Every attorney in fact of a reciprocal
5 or inter-insurance exchange defined in section ninety-
6 four A of chapter one hundred and seventy-five and
7 authorized to transact business in the commonwealth
8 under the provisions of sections ninety-four A to
9 ninety-four L, inclusive, of chapter one hundred and
10 seventy-five, shall be subject to the provisions of the
11 eight preceding sections, in so far as such provisions
12 are applicable to the exchange of reciprocal or inter-
13 insurance contracts; and provided further that in
14 section twenty-four the word "premiums" as used
15 in the following quoted portion thereof, to-wit "and
16 all premiums returned to or credited to policyholders
17 during the year for which the tax is determined"
18 shall be construed to mean when applied to reciprocal
19 or inter-insurance exchanges, premium deposits
20 credited or returned to subscribers.

1 SECTION 5. Chapter one hundred and fifty-five
2 of the General Laws is hereby amended by inserting
3 after section twelve the following new section—

4 *Section 12A.* Any corporation organized or to be
5 organized under the laws of the commonwealth shall
6 have full power and authority to participate as a
7 subscriber in the exchanging of insurance contracts
8 specified in section ninety-four B of chapter one
9 hundred and seventy-five. The right to participate
10 in the exchanging of such contracts shall be deemed
11 to be incidental to the purposes for which such cor-
12 poration was organized, and as much granted as the
13 rights and powers expressly conferred.

1 SECTION 6. Chapter two hundred and twenty-
2 three of the General Laws is hereby amended by

3 inserting after section eight the following new sec-
4 tion: —

5 *Section 8A.* Transitory actions by or against the
6 subscribers to a reciprocal or inter-insurance exchange
7 defined in section ninety-four A of chapter one hun-
8 dred and seventy-five and authorized to transact
9 business in the commonwealth under said chapter
10 may be brought as provided in the second or fourth
11 clause of section eight, and for such purposes the
12 subscribers shall be deemed a company or association.

1 SECTION 7. Said chapter two hundred and twenty-
2 three is hereby further amended by inserting after
3 section nineteen the following new section: —

4 *Section 19A.* Actions shall be brought by or
5 against subscribers of a reciprocal or inter-insurance
6 exchange defined in section ninety-four A of chapter
7 one hundred and seventy-five and authorized to
8 transact business in the commonwealth under said
9 chapter in the name or designation under which the
10 contracts are issued by the attorney in fact without a
11 recital of the names of the several subscribers.

1 SECTION 8. Said chapter two hundred and
2 twenty-three is hereby further amended by inserting
3 after section thirty-nine A the following new sec-
4 tion: —

5 *Section 39B.* In an action against the subscribers
6 of a reciprocal or inter-insurance exchange defined
7 in section ninety-four A of chapter one hundred and
8 seventy-five and authorized to transact business in
9 the commonwealth under said chapter, service may
10 be made upon the attorney in fact of such subscribers,
11 as defined in said section ninety-four A, if the prin-

12 cipal office of the attorney in fact is located in the
13 commonwealth, instead of on the commissioner of
14 insurance under clause third of section one hundred
15 and fifty-one of chapter one hundred and seventy-five.

1 SECTION 9. Chapter one hundred and fifty-two of
2 the General Laws is hereby amended by inserting
3 after subsection (7) of section one the following new
4 subsection: —

5 (7a) "Insurer" and "insurance company" as used
6 in this chapter shall include within their meaning a
7 reciprocal or inter-insurance exchange.