

By Mr. LaFontaine of Gardner, petition of Raymond M. LaFontaine, Theodore J. Aleixo, Jr., William A. Carey, Robert J. Rohan and Daniel J. Foley for legislation to establish the product liability insurance placement facility. Insurance.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Nine.

AN ACT RELATIVE TO PRODUCTS LIABILITY 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. The General Laws are hereby amended by
2 inserting after Chapter 175E the following chapter:

3 CHAPTER 175F

4 THE PRODUCT LIABILITY INSURANCE PLACEMENT
5 FACILITY

6 *Section 1.* As used in this chapter, unless the context otherwise
7 requires or a different meaning is specifically prescribed, the
8 following words shall have the following meanings:—

9 “Commissioner”, the commissioner of insurance;

10 “Facility”, the product liability Insurance Placement Facility
11 established and further defined herein;

12 “Association”, the Joint Underwriting and Reinsurance
13 Association as further defined herein;

14 “Product Liability Insurance”, insurance against direct loss
15 arising out of the use or consumption of the insured’s product.

16 “Eligible applicant”, and corporation, company or person
17 involved in the manufacture, sale, or distribution of products
18 shall be eligible for product liability insurance.

19 “Premiums written” gross direct premiums written on liability
20 and casualty insurance written pursuant to the provisions of

21 chapter ninety and one hundred and seventy-five of the General
22 Laws less all premiums and dividends credited or returned to
23 policyholders on the unusual or absorbed portion of premiums
24 deposits.

25 *Section 2.* All insurance companies licensed to provide
26 casualty and liability insurance within the Commonwealth shall
27 cooperate in organizing a products liability insurance placement
28 facility in such manner as shall be approved by the commissioner
29 of insurance and shall submit to the commissioner a plan of
30 organization and a plan of operation for such facility. Such plans
31 shall, among other appropriate provisions deemed necessary and
32 helpful to achieve the purposes of this chapter, provide that:

33 (1) Each insurance company licensed to provide all or any part
34 of the coverage provided for as part of casualty insurance, as
35 defined in section one, shall participate in the plan of operation as
36 a condition precedent to obtaining or maintaining authority to
37 sell all or any part of such coverage in the commonwealth.

38 (2) The facility shall have the authority to equitably apportion
39 the product liability insurance among all such insurance
40 companies in a method and manner approved by the com-
41 missioner as reasonably calculated to distribute fairly the risk of
42 loss which may be incurred among insurers on the basis of
43 premiums written within the commonwealth;

44 (3) Every eligible applicant for product liability insurance
45 upon proof that he has made a reasonable effort to obtain
46 insurance and has been unable to obtain it shall be entitled on
47 request to the facility to:

48 (a) a prompt inspection of his product by representatives of the
49 facility, in such manner and form as the facility shall prescribe
50 with the approval of the commissioner,

51 (b) a report from the facility stating it has presented the
52 application and inspect report to insurance companies par-
53 ticipating in the plan of operation and that a company or
54 companies writing casualty and liability insurance have agreed to
55 write all the coverage requested or a part of it if certain specified
56 improvements are made or safety prevention measures taken
57 within a reasonable time, or that no company has agreed to write
58 any of the coverage requested for specified reason:

59 (c) insurance coverage agreed to in the report up to a
60 reasonable insurable value will be obtained upon satisfactory
61 proof that any improvements or safety prevention measures
62 suggested have been made or taken, and upon payment of the
63 required premium to the company or companies, or agents
64 thereof, that agree to provide the coverage.

65 It shall be evidence of a reasonable effort to obtain insurance if
66 a person presents to the facility a written statement from a
67 company, broker or agent that they are unable to provide the
68 required amount of such insurance.

69 *Section 3.* No insurance company shall direct any agent or
70 other producer not to solicit business through the facility; no
71 insurance agent shall direct any other agent in his employ or any
72 broker or other producer not to solicit business through the
73 facility; and no agent, broker or other producer shall be penalized
74 in any way be an insurance company or employer producer for
75 submitting applications to the facility.

76 No insurance agent or broker licensed to sell casualty and
77 liability insurance shall be allowed to refuse a request for
78 inspection from an eligible applicant for products liability
79 insurance unless such applicant is:

80 (a) Then indebted to any agent, broker or company for
81 coverage requested;

82 (b) Then unwilling to make satisfactory payment
83 arrangements for the coverage requested.

84 Agents and brokers submitting applications to the facility shall
85 be compensated by commissions upon the original issuance of
86 coverage, each installment payment if any, and each renewal
87 thereof and shall be entitled to no other compensation.

88 Commissions to licensed insurance agents and brokers from
89 the facility and from any joint underwriting and reinsurance
90 association established in accordance with the provisions of this
91 chapter shall be set by the commissioner from time to time at such
92 percentage of the average commission rate customarily paid by
93 those insurance companies who customarily compensate agents
94 by commissions, as the commissioner, after appropriate hearing,
95 shall find to be sufficiently attractive to encourage agents and

96 brokers to actively seek out risks in products liability insurance
97 while at the same time leaving a further incentive to the agent or
98 broker to place such business through his customary markets
99 when he finds that that is practicable.

100 *Section 4.* If at any time the commissioner determines that
101 the facility is not adequately fulfilling its stated purpose he shall,
102 after proper notice and hearing, promulgate an order establishing
103 in the commonwealth a joint underwriting and reinsurance
104 association consisting of all insurers licensed to write and engaged
105 in writing in this commonwealth, on a direct basis, liability and
106 casualty insurance. Every such insurer shall be a member of the
107 association and remain a member as a condition of its authority
108 to transact such kinds of insurance within the commonwealth.
109 Within ninety days following any such order, the association shall
110 submit to the commissioner a proposed plan of operation,
111 consistent with the purposes of this chapter, to provide for the
112 prompt efficient provision of products liability insurance to
113 eligible applicants meeting reasonable underwriting standards
114 who are otherwise unable to obtain coverage from the facility
115 established in section two. Such plan of operation shall provide
116 for economical, fair and nondiscriminatory administration
117 including but not limited to, provisions for preliminary
118 assessment of all members for initial expenses necessary to
119 commence operations, establishment of necessary facilities,
120 management of the association, assessment of members to defray
121 losses and expenses, commissions, reasonable underwriting
122 standards and limits of liability, acceptance and cession of
123 reinsurance, and procedures for determining amounts of
124 insurance to be provided.

125 The plan of operation shall be subject to approval by the
126 commissioner and shall take effect ten days after having been
127 approved by him. If the commissioner disapproves the proposed
128 plan of operation, the association shall within thirty days submit
129 for review an appropriately revised plan of operation and, if the
130 association fails to submit such a plan, or if the revised plan is
131 also disapproved by the commissioner, the commissioner shall
132 promulgate a plan of operation. The association may, on its own
133 initiative or at the request of the commissioner amend the plan of
134 operation, subject to approval by the commissioner. Any

135 member of the association may cede to the association products
136 liability insurance to the extent, if any, and on the terms and
137 conditions set forth in the plan of operation. All members of the
138 association shall participate in its writing, expenses, profits and
139 losses in the proportion that the premiums written by each such
140 member except (premiums for insurance on automobile and
141 manufacturing risks excluded from the plan and) that portion of
142 the premiums attributable to the operation of the association
143 during the preceding calendar year, bear to the aggregate
144 premiums written in the commonwealth by all members of the
145 association. Such participation by each insurer in the association
146 shall be determined annually on the basis of such premiums
147 written during the preceding calendar year as disclosed in the
148 annual statements and other reports filed by the insurer with the
149 commissioner. The association and the facility shall be governed
150 by a board of fifteen directors, who shall serve without
151 compensation, eleven to be elected annually by the members of
152 the association by cumulative voting and four representatives of
153 community groups and associations of insurance agents and
154 brokers doing business in the commonwealth to be appointed
155 annually by the commissioner. Cumulative voting by the
156 members shall be permitted at all such elections.

157 *Section 5.* The operation of the facility or the association
158 shall at all times be subject to the supervision and regulation of
159 the commissioner. The commissioner or any suitable person
160 designated to act for him shall have the power to examine and
161 investigate the operation of the facility or association and shall
162 have free access to all the books, records, files, papers and
163 documents that relate to such operations, may summon and
164 qualify witnesses under oath, and may examine directors,
165 officers, agents or employees or any other person having
166 knowledge of such operations for the purpose of determining if the
167 purposes of this chapter are being fulfilled.

168 *Section 6.* There shall be no liability on the part of, and no
169 cause of action of any nature shall arise against insurance
170 companies, the facility, the association, or agents or employees
171 thereof, or insurance agents or brokers using the facility, plan or
172 association, or the commissioner or his authorized represen-

173 tatives, for any inspections undertaken, acts or omissions in
174 connection therewith or statements made in any reports and
175 communications concerning the insurability of the property, or at
176 the time of any hearings conducted in connection therewith, or in
177 the findings required by the provisions of this chapter. The
178 reports and communications of the facility and the association
179 shall not be considered public records.

180 *Section 7.* The denial by the facility, or the denial by the
181 association of a part or all of the coverage requested by an eligible
182 applicant and any other decision requiring improvements to be
183 made or safety measures to be taken as a condition of providing
184 products liability insurance shall be subject to review by the
185 commissioner if an eligible applicant files an appeal with the
186 commissioner within ten days of any such denial or decision. On
187 receipt of any such appeal the commissioner shall cause an
188 investigation of the facts to be made, shall grant all interested
189 parties an opportunity to be heard and shall enter such finding,
190 order or decision as he deems will best meet the purposes of this
191 chapter.

192 Any person aggrieved by any such finding, order or decision
193 and any person aggrieved by any other rule or regulation of the
194 commissioner made pursuant to this chapter may, within ten days
195 of the filing of any such finding, order, decision, rule or
196 regulation in the office of the commissioner, appeal therefrom to
197 the superior court, for the county in which the complainant
198 resides. The court shall, after such notice to the parties as it deems
199 reasonable, hold a summary hearing on such appeal and shall
200 have jurisdiction in equity to review all questions of fact and law,
201 and to affirm or reverse such findings or order and to make any
202 appropriate decree. The decision of the court shall be final and
203 binding on all parties and may include such order as to costs as
204 the court deems equity.

1 SECTION 2. Section 2-318 of chapter 106 of the General
2 Laws, as most recently amended by chapter 153 of the acts of
3 1974, is hereby further amended by striking out the last sentence
4 and inserting in place thereof the following sentences:— All
5 actions under this section shall be commenced within three years
6 next after the date the injury and damage occurs, except that no

7 action for breach of warranty hereunder shall be brought more
8 than ten years next after the tender of the goods to the original
9 purchaser thereof. A merchant shall not be deemed an original
10 purchaser under the provisions of the preceding sentence, unless
11 the goods are used by him primarily for his own personal, family
12 or household purposes.

1 SECTION 3. A special committee to consist of three members
2 of the senate to be appointed by the president thereof, one of
3 whom shall be a member of the minority party, and four members
4 of the house of representatives to be appointed by the speaker
5 thereof, one of whom shall be a member of the minority party, is
6 hereby established for the purpose of making an investigation and
7 study relative to products liability insurance and the nature and
8 consequence of products liability.

9 Said committee shall in the course of its investigation and
10 study, consider, among other questions it deems relevant, the
11 scope and extent of the increase in product liability claims;
12 reasons for the increase in product liability insurance premium;
13 effects of the rise of product liability insurance premiums on
14 manufacturers including any related effects on the com-
15 monwealth's economy; and any other matter related directly or
16 indirectly to product liability. Said committee shall involve in
17 consultive roles members of the insurance industry, actuarial
18 science, manufacturers, bar associations, and others it may deem
19 necessary.

20 Said committee shall be provided with quarters in the state
21 house or elsewhere, may travel within or without the com-
22 monwealth, and may expend for legal, clerical and other services
23 and expenses such sums as may be appropriated therefor. Said
24 committee may require by summons the attendance and
25 testimony under oath of witnesses and the production of books
26 and papers.

27 Said committee may call upon officials of the commonwealth
28 or its various subdivisions, and may also call upon officials of the
29 federal government and its various agencies and departments for
30 such information as it may desire in the course of its investigation
31 and study. Said committee may seek, accept and expend any

32 grants or gifts of money, professional services, consultant
33 services, clerical and other services and supplies from the federal
34 government or any other private or public source in the course of
35 its investigation and study.

36 Said committee shall report to the general court the results of
37 its investigation and study, and its recommendations, if any,
38 together with drafts of legislation necessary to carry its
39 recommendations into effect, by filing the same with the clerk of
40 the house of representatives from time to time, but shall file its
41 final report on or before December thirty-first, nineteen hundred
42 and seventy-nine.