

By Mr. Flood of Canton, petition of John H. Flood that provision be made for municipal legal liability insurance. Insurance.

The Commonwealth of Massachusetts

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

AN ACT RELATIVE TO MUNICIPAL LEGAL 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. As used in this section, and section two to
2 twelve, inclusive, the following words shall have the following
3 meanings: —

4 “Association”, the joint underwriting association established
5 pursuant to the provisions of this section.

6 “Commissioner”, the commissioner of insurance.

7 “Municipal legal liability insurance”, insurance coverage against
8 the legal liability of the insured and against loss, damage, or
9 expense incident to a claim arising out of death and injury to any
10 person as the result of negligence on the part of any municipality,
11 or its elected or appointed officers or employees in the official
12 performance of their duties.

13 “Municipality”, any duly incorporated city or town in the
14 Commonwealth of Massachusetts.

15 “Net direct premiums”, gross direct premiums written on
16 municipal legal liability insurance written pursuant to the
17 provisions of chapter one hundred and seventy-five of the
18 General Laws, less all premiums and dividends credited or
19 returned to policyholders or the unused or unabsorbed portions
20 of premium deposits.

1 SECTION 2. There is hereby established a temporary, non-
2 exclusive, joint underwriting association consisting of all insur-
3 ers authorized to write and engage in writing, within the com-
4 monwealth on a direct basis, municipal legal liability insurance

5 pursuant to the provisions of chapter one hundred and seventy-
6 five of the General Laws, including insurers covering such
7 perils in multiple peril packages policies. Every such insurer
8 shall be a member of the association and shall remain a mem-
9 ber as a condition of its authority to continue to transact such
10 kind of insurance within the commonwealth. The purpose of
11 the association shall be to provide municipal legal liability
12 insurance on a self-supporting basis.

1 SECTION 3. The association shall, pursuant to the provi-
2 sions of this chapter and the plan of operation with respect to
3 municipal legal liability insurance, on behalf of its members,
4 issue or cause to be issued, policies of insurance to applicants,
5 including incidental coverages and subject to limits as specified
6 in the plan of operation, but not to exceed five hundred thou-
7 sand dollars for each claimant under one policy and one million
8 dollars for all claimants under one policy in and one cause of
9 action to underwrite such insurance and to adjust any pay
10 losses with respect thereto, to appoint service companies to
11 perform these functions; to assume reinsurance from its mem-
12 bers; and to assign reinsurance.

1 SECTION 4. The commissioner shall, after consultation
2 with the joint underwriting association, representatives of the
3 public, and other affected individuals and organizations,
4 promulgate a plan of operation consistent with the provisions
5 of this section to become effective and operative no later than
6 thirty days from the effective date of this act. Said plan of
7 operation shall provide for economic, fair and nondiscrimina-
8 tory administration, and for the prompt and efficient provision
9 of municipal legal liability insurance, and shall contain other
10 provisions including, but not limited to, preliminary assessment
11 of all members for initial expenses necessary to commence
12 operations, establishment of necessary facilities, management
13 of the association, assessment of members to defray losses and
14 expenses, commission arrangements, reasonable and objective
15 underwriting standards, acceptance and cession of reinsurance,
16 appointment of servicing carriers and procedures for determin-
17 ing amounts of insurance to be provided by the association.

18 Said plan shall also provide for the offering of an installment
19 payment plan for each policy which either gives the insured the
20 option to pay the annual premium in a minimum of six monthly
21 installments or gives the insured the option to pay the annual
22 premium in four quarterly installments. Said plan shall also
23 provide for sufficient levels of reserves achieved by the asso-
24 ciation. Amendments to the plan of operation may be made by
25 the directors of the association subject to the approval of
26 the commissioner, or shall be made at the direction of the
27 commissioner.

1 SECTION 5. Any municipality upon proof that the munici-
2 pality made a reasonable effort to obtain insurance and has
3 been unable to obtain it, shall be entitled to apply to the asso-
4 ciation for such coverage. Such application shall be made on
5 behalf of an applicant by a broker or agent authorized by the
6 applicant, if the municipality so desires. If the association
7 determines that the applicant meets the underwriting standards
8 of the association as prescribed in the plan of operation, and
9 there is no unpaid, uncontested premium due from the appli-
10 cant for prior insurance as shown by the insured having failed
11 to make written objection to premium charges within thirty
12 days after billing, the association, upon receipt of the premium,
13 or such portion thereof as is prescribed in the plan of opera-
14 tion, shall cause to be issued a policy of municipal legal liabil-
15 ity insurance for a term of one year. The joint underwriting
16 association shall establish and promulgate rules and regulations
17 for a mandatory offer for insurance, and the criteria pertaining
18 thereto under the provisions of this statute and subject to the
19 approval of the commissioner.

1 SECTION 6. The rates, rating plans, rating rules, rating
2 classifications and policy forms applicable to the insurance
3 written by the association and statistics relating thereto shall be
4 subject to the provisions of chapter one hundred and seventy-
5 five of the General Laws. Within such time as the commis-
6 sioner shall direct, the association shall submit for the approval
7 of the commissioner, in such form as he shall require, an initial
8 filing, of policy forms applicable to municipal legal liability

9 insurance to be written by the association. In the event the
10 commissioner disapproves such initial filing, the association
11 shall amend such filing, in whole or in part, in accordance with
12 the direction of the commissioner. If the commissioner is
13 unable to approve such filing or amended filing, within the
14 time specified, he shall promulgate the policy forms, and rules
15 to be used by the association in writing such insurance.

16 Any deficit sustained by the association in any one year shall
17 be recouped, pursuant to the plan of operation and the rating
18 plan then in effect by an assessment upon the policyholders,
19 or a rate increase applicable prospectively, or both; provided,
20 however, that in no event shall a deficit incurred by the asso-
21 ciation be charged directly or indirectly, to any person other
22 than the insured under a policy of municipal legal liability
23 insurance; and provided, further, that for purposes of this
24 sentence, when deficits sustained on account of municipal legal
25 liability coverage are being recouped, the term "policyholders"
26 shall mean all those municipalities insured under a policy of
27 municipal legal liability insurance, whether obtained through
28 the joint underwriting association or not.

29 Effective after the initial year of operation, rates, rating plans
30 and any provision for recoupment through policyholder assess-
31 ment or premium rate increase, shall be based upon the asso-
32 ciation's loss and expense experience, and investment income
33 from unearned premium and loss reserves together with such
34 other information based upon such experience as the commis-
35 sioner may deem appropriate. The resultant premium rates
36 shall be on an actuarially sound basis and shall be calculated
37 to be self-supporting. In the event that sufficient funds are not
38 available for the sound financial operation of the association,
39 pending recoupment as provided hereinbefore, all members
40 shall, on a temporary basis, contribute to the financial require-
41 ments of the association in the manner hereinafter provided.
42 Any such contribution shall be reimbursed to the members
43 following recoupment as provided in this section. The associa-
44 tion shall offer policies on both a claims made and occurrence
45 basis so that applicants may select either policy at their option;
46 provided, however, that the rates charged for both claims made

47 and occurrence policies shall be at rates established on an
48 actuarially sound basis and which are calculated to be
49 self-supporting.

1 SECTION 7. All insurers which are members of the associa-
2 tion shall participate in its writings, expenses, and losses in the
3 proportion that the net direct premiums of each such member,
4 excluding that portion of premiums attributable to the opera-
5 tion of the association written during the preceding calendar
6 year, bears to the aggregate net direct premiums written in the
7 commonwealth by all members of the association. Each insurer's
8 participation in the association shall be determined annually on
9 the basis of such net direct premiums of each such member,
10 excluding that portion of premiums attributable to the opera-
11 tion of the association written during the preceding calendar
12 year, bears to the aggregate net direct premiums written in the
13 commonwealth by all members of the association. Each insurer's
14 participation in the association shall be determined annually on
15 the basis of such net direct premiums written during the pre-
16 ceding calendar year, as reported in the annual statements and
17 other reports filed by the insurer with the commissioner. No
18 member shall be obligated in any one year to reimburse the
19 association on account of its proportionate share in the deficit
20 from operations of the association in that year in excess of one
21 per cent of its surplus to policyholders and the aggregate
22 amount not so reimbursed shall be reallocated among the
23 remaining members in accordance with the method of deter-
24 mining participation prescribed in this chapter after excluding
25 from the computation the total net direct premiums of all
26 members not sharing in such excess deficit. In the event that
27 the deficit from operation allocated to all members of the asso-
28 ciation in any calendar year shall exceed one per cent of their
29 respective surplus to policyholders, the amount of such deficit
30 shall be allocated to each member in accordance with the
31 method of determining participation prescribed in this chapter.

1 SECTION 8. The association shall be governed by a board
2 of thirteen directors, eight of whom shall be elected by cumula-
3 tive voting by the members of the association, whose votes in

4 such election shall be weighed in accordance with each mem-
5 ber's net direct premiums written during the preceding calendar
6 year. Five directors shall be appointed by the commissioner as
7 representatives of the municipalities. The eight elected directors
8 serving on the first board shall be elected at a meeting of
9 members, or their authorized representatives, which shall be
10 held at a time and place designated by the commissioner. The
11 other five directors serving on the first board shall be appointed
12 on or before the date of such meeting.

1 SECTION 9. Any applicant to the association, any person
2 insured pursuant to this section, or their representatives, or any
3 affected insurer, may appeal for review to the commissioner
4 within thirty days after any ruling, action, or decision by or on
5 behalf of the association with respect to those items the plan of
6 operation defines as appealable matters. On receipt of any such
7 appeal, the commissioner shall, after due hearing and investi-
8 gation enter such finding or decision as he deems shall best
9 meet the purpose of this section.

1 SECTION 10. Any municipality aggrieved by any such find-
2 ing, order or decision and any person aggrieved by any other
3 rule or regulation of the commissioner made pursuant to this
4 chapter may, within thirty days of the filing of any such find-
5 ing, order, decision, rule or regulation in the office of the com-
6 missioner, appeal therefrom to the superior court for the county
7 in which the complainant resides. The court shall, after such
8 notice to the parties as it deems reasonable, hold a summary
9 hearing on such appeal and shall have jurisdiction to review all
10 question of fact and law, and to affirm or reverse such finding
11 or order and to make any appropriate judgment.

1 SECTION 11. The association shall file in the office of the
2 commissioner, annually on or before the first day of March,
3 a statement which shall contain information with respect to its
4 transactions, conditions, operations and affairs during the
5 preceding year. Such statement shall contain such matters and
6 information as are prescribed and shall be in such form as is
7 approved by the commissioner. The commissioner may, at any

8 time, require the association to furnish additional information
9 with respect to its transactions, conditions or any matter con-
10 nected therewith considered to be material and of assistance, in
11 evaluating the scope, operation and experience of the association.

1 SECTION 11A. The commissioner of insurance is hereby
2 authorized to make an annual estimated assessment against
3 each insurer who is required under the provisions of this act to
4 be a member of the joint underwriting association relative to
5 municipal legal liability insurance. Said estimated assessment
6 shall be in an amount determined and certified by the commis-
7 sioner as necessary to cover the costs to be incurred by the
8 division of insurance in carrying out its responsibilities under
9 sections one through twelve, inclusive, of this act. Said esti-
10 mated assessment shall be made against each such insurer in
11 the same proportion as would apply under the provisions of
12 this act to such insurer's participation in the writings, expenses
13 and losses of the association and shall be paid to the commis-
14 sioner within thirty days after the date of the notice from the
15 commissioner of such estimated assessments. The commissioner
16 shall subsequently determine and assess proportionately the
17 amount of actual costs against each such insurer and shall
18 make assessment adjustments for any variation between esti-
19 mated and actual costs.

1 SECTION 12. The commissioner shall make an examination
2 into the affairs of the association at least annually. Such exami-
3 nation shall be conducted and the report thereon filed in the
4 manner prescribed in section four of chapter one hundred and
5 seventy-five of the General Laws.

6 There shall be no liability on the part of, and no cause of
7 action of any nature shall arise against the association, its
8 agents or employees, an insurer, any licensed agent or broker,
9 or the commissioner or his authorized representatives, for any
10 statements made in good faith by them in any reports or com-
11 munication concerning risks insured or to be insured by the
12 association, or at any administrative hearing conducted in
13 connection therewith.

1 SECTION 13. Section one to twelve, inclusive, of this act
2 shall expire on December thirty-first, nineteen hundred and
3 eighty-seven.

4 Section 112A. Effective sixty days after the inception of a
5 municipal legal liability insurance contract, no notice of inten-
6 tion to terminate the contract or, if the contract is a renewal,
7 no notice of intention not to renew the contract shall be effec-
8 tive unless the insurer at least sixty days prior to the effective
9 date of such cancellation or the end of the contract period,
10 as the case may be, mails or delivers to the insured at the
11 address shown on the policy such notice of cancellation or
12 intention not to renew except where the cancellation is for
13 non-payment of premium.