

**HOUSE . . . . . No. 1057**

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By Mr. Welch of West Springfield, a petition (accompanied by bill, House, No. 1057) of James T. Welch for legislation to authorize the procurement of insurance from certain companies not authorized to transact business in the Commonwealth. Financial Services.

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**James T. Welch**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act To Increase Insurance Capacity in the Commonwealth.

PETITION OF:

NAME:

James T. Welch

DISTRICT/ADDRESS:

6th Hampden

**The Commonwealth of Massachusetts**

—  
In the Year Two Thousand and Nine  
—

AN ACT TO INCREASE INSURANCE CAPACITY IN THE COMMONWEALTH.

*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. Section 168 of Chapter 175 of the General Laws, as appearing in the 2004 Official  
2 Edition, is hereby amended by inserting in Line 37 after the words "chapter 175D" the following:-  
3 Any insurance policy procured pursuant to this section shall contain the following disclosure notice to the  
4 policyholder: This policy is insured by a company which is not admitted to transact insurance in the  
5 commonwealth, is not supervised by the commissioner of insurance, and, in the event of an insolvency of  
6 such company, a loss shall not be paid by the Massachusetts Insurers Insolvency Fund under chapter  
7 175D. The commissioner may by regulation amend the foregoing disclosure notice.
- 8 SECTION 2. Section 168 of Chapter 175 of the General Laws, as appearing in the 2004 Official Edition,  
9 is hereby further amended by striking in Line 61 the word "or".
- 10 SECTION 3. Section 168 of Chapter 175 of the General Laws, as appearing in the 2004 Official Edition,  
11 is hereby further amended by inserting in Line 65 after the words "section 20A" the following:- ; or (c)  
12 such company is an eligible alien unauthorized insurer, as defined in section 168A of this chapter.
- 13 SECTION 4. Chapter 175 of the General Laws, as appearing in the 2004 Official Edition, is hereby  
14 amended by inserting after section 168 the following new section:-
- 15 Section 168A. (a) As used in this section "eligible alien unauthorized insurer" means a company formed  
16 under the laws of any government or state other than the United States or one of its states or its territories  
17 that has filed an application with the commissioner pursuant to subsection (c)(4) of this section, which  
18 application has been approved by the commissioner.
- 19 (b) Notwithstanding any general or specific law to the contrary, a special broker licensed by the  
20 commissioner pursuant to section 168 of this chapter may procure insurance from any company formed

21 under the laws of any government or state other than the United States or one of its states or its territories  
22 that is not authorized to transact business in this commonwealth if:

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

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

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

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

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

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

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

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

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

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

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

42 (ii) A percentage of its United States surplus lines gross liabilities arising from  
43 business written on or after January 1, 1998, excluding aviation, wet marine,  
44 transportation insurance and direct procurement placements, said percentage to equal  
45 the percentage, and be subject to any cap, employed by the International Insurance  
46 Department of the National Association of Insurance Commissioners, as of December  
47 31 next preceding the date of determination, where:

48 (I) The liabilities are maintained in an irrevocable trust account in the  
49 United States in a qualified financial institution, on behalf of United  
50 States policyholders consisting of cash, securities, letters of credit or  
51 other investments of substantially the same character and quality as those  
52 which are eligible investments pursuant to this chapter for the capital and  
53 statutory reserves of admitted insurers to write like kinds of insurance in  
54 the commonwealth. The trust fund, which shall be included in any  
55 calculation of capital and surplus or its equivalent, shall satisfy the

56 requirements of the Standard Form Trust Agreement required for listing  
57 with the International Insurers Department of the National Association of  
58 Insurance Commissioners;

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

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

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

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

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

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

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

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

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

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

- 92 (7) Biographical affidavits, on forms promulgated by the National Association of Insurance  
93 Commissioners or approved by the commissioner, for all executive officers, directors, and senior  
94 management personnel of the alien unauthorized insurer, prepared no more than twelve (12) months  
95 prior to the submission date of the application required by subsection (c)(4) of this section; and
- 96 (8) Such additional information as the commissioner may require in order to determine whether the  
97 alien unauthorized insurer complies with the requirements of this section.
- 98 (e) The commissioner may refuse to approve an application pursuant to this section if he or she is of the  
99 opinion that such refusal will be in the public interest. In reviewing an application the Commissioner  
100 may consider such factors as:
- 101 (1) The length of time the insurer has been authorized in its domiciliary jurisdiction and elsewhere;
- 102 (2) The unavailability of the particular coverages from authorized insurers or unauthorized insurers  
103 meeting the requirements of this section and section 168 of this chapter;
- 104 (3) The size of the company as measured by its assets, capital and surplus, reserves, premium  
105 writings, insurance in force or other appropriate criteria;
- 106 (4) The kinds of business the company writes, its net exposure and the extent to which the  
107 company's business is diversified among several lines of insurance and geographic locations; and
- 108 (5) The past and projected trend in the size of the company's capital and surplus considering such  
109 factors as premium growth, operating history, loss and expense ratios, or other appropriate criteria
- 110 (f) The commissioner may revoke a company's status as an eligible alien unauthorized insurer in  
111 accordance with the terms and conditions of section 5 of this chapter if at any time the commissioner has  
112 determined that the insurer:
- 113 (1) Is in unsound financial condition or has acted in an untrustworthy manner;
- 114 (2) No longer meets the standards set forth in subsection (c) of this section;
- 115 (3) Has willfully violated the laws of the commonwealth; or
- 116 (4) Does not conduct a proper claims practice.