

By Mr. Walsh of Peabody, petition of Thomas P. Walsh relative to insurance insolvency. Insurance.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Ninety-Two.

AN ACT RELATIVE TO INSURANCE SOLVENCY.

*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 1 of Chapter 175D, as most recently  
2 amended by Chapter 570 of the Acts of 1975, is hereby further  
3 amended by adding the following definitions: —

4 “Commercial lines excess liability insurance” means any  
5 commercial lines liability insurance written over an underlying  
6 policy with policy limits of at least \$300,000 or a self-insured  
7 retention of at least \$300,000;

8 “Commercial lines insurance” means any insurance to which  
9 this act applies which is not personal lines insurance;

10 “Personal lines insurance” means any insurance to which this  
11 act applies issued for personal, family or household purposes;

12 “Self-insured retention” means:

13 (a) Any fund or other arrangement to pay claims other than  
14 by an insurance company, or

15 (b) Any arrangement under which an insurance company has  
16 no obligation to pay claims on behalf of an insured if it is not  
17 reimbursed by the insured.

1 SECTION 2. Section 1(2) of Chapter 175D is amended by  
2 striking out clause (b) and inserting in place thereof the following  
3 clause: —

4 “(b) in the case of a first party claim for damage to property  
5 with a permanent location, the property from which the claim  
6 arises is permanently located in the commonwealth.”

1 SECTION 3. Section 1(4) of Chapter 175D of the General  
2 Laws is amended by striking the clause “determined to be  
3 insolvent by a court of competent jurisdiction” and inserting in  
4 place thereof the following clause: —

5 “and against which an order of liquidation with a finding of  
6 insolvency has been entered by a court of competent jurisdiction,  
7 which order of liquidation has not been stayed.”

1 SECTION 4. Section 2 of Chapter 175D as most recently  
2 amended by Chapter 261 of the Acts of 1970, is hereby further  
3 amended by deleting the section in its entirety and inserting in  
4 place thereof the following new section: —

5 This chapter shall apply to all kinds of direct insurance, except  
6 life, accident and health, title, commercial lines excess liability  
7 insurance, surety, disability, credit, mortgage guaranty and ocean  
8 marine insurance.

1 SECTION 5. Section 5 of Chapter 175D, as most recently  
2 amended by Chapter 341 of the Acts of 1975, is hereby further  
3 amended by striking paragraph (1)(a) in its entirety and inserting  
4 in place thereof the following new paragraph: —

5 (a) be obligated to the extent of the covered claims against the  
6 insolvent insurer existing prior to the declaration of insolvency  
7 and arising within thirty days after the declaration of insolvency,  
8 or before the policy expiration date if less than thirty days after  
9 the declaration, or before the insured replaces the policy or  
10 requests cancellation, if he does so within thirty days of the  
11 declaration, but such obligation shall include only that amount  
12 of each covered claim which, except for a claim for compensation  
13 provided by Chapter 152 of the General Laws which arises out  
14 of and is within the coverage of a workers' compensation policy,  
15 is less than three hundred thousand dollars. In addition, the  
16 aggregate amount to all claimants and policyholders on a single  
17 policy issued by the insolvent insurer for all covered claims shall  
18 not exceed one million dollars. Notwithstanding the obligations  
19 of the fund enumerated in this paragraph, the fund shall not be  
20 obligated to pay the losses of any insured who would otherwise  
21 have its losses paid under this Chapter, if such insured had a net  
22 worth of ten million dollars or more on December 31 of the year  
23 next preceding the date the insurer becomes an insolvent insurer.

1 SECTION 6. Section 5(1) of Chapter 175D is hereby further  
2 amended by adding the following new clause: —

3 (h) indemnify members of the board of directors of the Fund,  
4 officers, employees and other agents of the Fund, and persons who  
5 serve at its request as directors, officers, employees or other agents  
6 of another organization, or who serve at its request in any capacity  
7 with respect to any employee benefit plan, to whatever extent may  
8 be provided in the plan of operation of the Fund or any  
9 amendment thereto, adopted by a majority vote of the members  
10 of the Fund voting, and approved in writing by the Commissioner.  
11 Such indemnification may include payment by the Fund of  
12 expenses incurred in defending a civil or criminal action or  
13 proceeding in advance of the final disposition of such action or  
14 proceeding, upon receipt of an undertaking by the person  
15 indemnified to repay such payment if such person shall be  
16 adjudicated to be not entitled to indemnification which  
17 undertaking may be accepted without reference to the financial  
18 ability of such person to make repayment. Any such indemnifi-  
19 cation may be provided although the person to be indemnified  
20 is no longer an officer, director, employee or other agent of the  
21 Fund or of such other organization or no longer serves with  
22 respect to any such employee benefit plan. The absence of any  
23 express provision for indemnification shall not limit any right of  
24 indemnification existing independently of this section. The Fund  
25 shall have power to purchase and maintain insurance on behalf  
26 of any person who is or was a director, officer, employee or other  
27 agent of the Fund, or is or was serving at the request of the Fund  
28 as a director, officer, employee or other agent of another organi-  
29 zation or with respect to any employee benefit plan, against any  
30 liability incurred by such person in any such capacity, or arising  
31 out of such person's status as such, whether or not the Fund would  
32 have the power to indemnify such person against such liability.

1 SECTION 7. Section 5(1)(c) of Chapter 175D is hereby  
2 amended by striking the following sentence: — “No insurer may  
3 be assessed in any year an amount greater than two percent of  
4 that insurer's net direct written premiums for the calendar year  
5 preceding the assessment.” and inserting in place thereof the  
6 following new sentences: —

7 “An insurer shall cease to write insurance to which this  
8 Chapter applies or which shall cease to be licensed to transact  
9 insurance in the commonwealth shall remain obligated to pay all  
10 assessments, whenever made, on account of insolvent insurers  
11 determined to be insolvent prior to the time such insurer shall  
12 cease to write insurance or shall cease to be licensed, whichever  
13 is later. No insurer may be assessed in any year an amount greater  
14 than two percent of that insurer’s net direct written premiums for  
15 the calendar year preceding the assessment, or in the case of  
16 insurers who have ceased to write insurance to which this  
17 chapter applies or who have ceased to be licensed to transact  
18 insurance in the commonwealth, two percent of that insurer’s net  
19 direct written premium for the calendar year preceding the deter-  
20 mination of insolvency of the insolvent insurer on account of  
21 which the assessment is made.”

1 SECTION 8. Section 14 of Chapter 175D is hereby amended  
2 by striking the section in its entirety, and inserting in place thereof  
3 the following new section: —

4 There shall be no liability on the part of a no cause of action  
5 of any nature shall arise against any insurer, the Fund or its agents  
6 or employees, or any member of the board of directors of the Fund  
7 for any act or omission in the performance of their powers and  
8 duties under this chapter.

1 SECTION 9. Section 9 of Chapter 175D is amended by  
2 striking the first two sentences in such section and inserting in  
3 place thereof the following sentences: —

4 Any person having a claim against an insurer under any provi-  
5 sion in an insurance policy which is also a covered claim shall be  
6 required to exhaust first his right under such policy. Any amount  
7 payable on a covered claim under this chapter shall be reduced  
8 by the amount of any recovery under such insurance policy.

1 SECTION 10. Section 15 of Chapter 175D is amended by  
2 striking such section and inserting in place thereof the following  
3 section: —

4 All proceedings in which the insolvent insurer is a party or is  
5 obligated to defend a party in any court or arbitration proceeding

6 in this commonwealth and all proceedings before an adminis-  
7 trative judge pursuant to Chapter 152 of the General Laws  
8 involving claims against an insolvent insurer, shall be stayed for  
9 up to six months and such additional time thereafter as may be  
10 determined by the court from the date the insolvency is determined  
11 or an ancillary proceeding is instituted in the commonwealth  
12 whichever is later to permit proper defense or handling by the  
13 Fund of all pending causes of action.

1 SECTION 11. Section 8 of Chapter 175D is hereby amended  
2 by adding the following new clause: —

3 (4) The Fund shall have the right to recover the amount of any  
4 covered claim paid pursuant to this Chapter on behalf of any  
5 person who is an affiliate of the insolvent insurer and whose  
6 liability obligations to other persons are satisfied in whole or in  
7 part by payments made under this Chapter.

1 SECTION 12. Section 1 of Chapter 175D is hereby amended  
2 by inserting the following clause as clause (1) and by renumber-  
3 ing the numbered clauses of Section 1 as now appearing: —

4 (1) "Affiliate" means a person who directly, or indirectly,  
5 through one or more intermediaries, controls, is controlled by,  
6 or is under common control with an insolvent insurer on  
7 December 31 of the year next preceding the date the insurer  
8 becomes an insolvent insurer.

1 SECTION 13. Section 9 of Chapter 175D is hereby amended  
2 by adding at the end of the third sentence of section 9, the  
3 following clause: —

4 , and if it is a workers' compensation claim, from the fund of  
5 the residence of the claimant.





