

SENATE No. 00412

The Commonwealth of Massachusetts

PRESENTED BY:

Sonia Chang-Diaz, (BY REQUEST)

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 relative to homeowners' insurance coverage and toxic drywall.

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PETITION OF:

NAME:

Dianne Van der Meer

Sonia Chang-Diaz

DISTRICT/ADDRESS:

6 Weld Avenue

Roxbury, MA 02119

Second Suffolk

SENATE No. 00412

By Ms. Chang-Diaz, petition (accompanied by bill, Senate, No. 412) of Chang-Diaz for legislation relative to homeowners insurance coverage and toxic drywall [Joint Committee on Financial Services].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. 2572 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to homeowners’ insurance coverage and toxic drywall.

□.

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 175 of the General Laws is hereby amended by inserting after
2 section 4D the following 3 sections:-

3 Section 4E. (a) As used in sections 4F and 4G, unless the context clearly requires
4 otherwise, the following terms shall have the following meanings:-

5 “Association”, the joint underwriting association formed pursuant to chapter 175C.

6 “Division”, the division of insurance.

7 “Residential property”, a 1- to 4-unit dwelling used for living or sleeping.

8 “Toxic drywall”, drywall, wallboard or any other product used to construct walls,
9 ceilings or other barriers in a residential property which emits a volatile sulfur compound and
10 strontium sulfide.

11 Section 4F. Notwithstanding any general or special law or regulation to the contrary,
12 no insurer licensed to write and engaged in the writing of homeowners’ insurance, nor the
13 association, shall cancel or void any homeowners’ insurance policy in effect on or before
14 January 1, 2012, based upon the presence of toxic drywall in such policy holder’s residential
15 property. If such an insurer or the association receives a claim, timely filed, for damage related
16 to the presence of toxic drywall in a residential policy holder’s property, such claim shall be paid
17 in accordance with regulations adopted by the division for such claims.

18 Section 4G. (a) Notwithstanding any general or special law or regulation to the
19 contrary, each insurer licensed to write and engaged in the writing of homeowners’ insurance
20 and the association, shall make the following coverage available to residential owners:

21 (1) first-party property coverage for removal and replacement of toxic drywall in a
22 residential property built or rehabilitated during or between the years 2000 to 2011; and

23 (2) liability coverage for third-party claims arising out of the presence of toxic
24 drywall in a residential property. Minimum coverage of \$10,000 per occurrence for first-party
25 property, minimum coverage of \$10,000 per occurrence for third-party liability and for legal
26 defense costs shall be made available, subject to a reasonable deductible not to exceed \$1,000
27 per claim.

28 (b) As a precondition to issuing the coverage required under subsection (a), an
29 insurer or the association may require that the results of a toxic drywall assessment, conducted in

30 accordance with regulations of the division relative to such inspections, shall be paid by the
31 homeowner. If the assessment reveals the presence of toxic drywall, the homeowner shall be
32 provided opportunity to seek redress against the contractor that installed the toxic drywall or the
33 supplier of the toxic drywall before a decision relative to coverage pursuant to this section is
34 rendered.

35 (c) If an assessment reveals the presence of toxic drywall and, after the homeowner
36 has been provided opportunity to seek the redress described in subsection (b), an insurer or the
37 association may reject an application for such coverage based upon the positive assessment.

38 (d) For the purposes of this section, first-party property coverage shall include
39 response action costs incurred to assess and remediate the presence of toxic drywall in the
40 insured's property and the reimbursement of any associated personal property damage or bodily
41 injury. Third-party liability coverage shall defend and indemnify the insured against any third-
42 party claims and shall include response action costs incurred to address conditions in the
43 insured's property arising from the presence of toxic drywall in the insured's property that has
44 impacted or is likely to impact a third party. First-party and third-party liability coverage shall
45 apply simultaneously and, in addition to, one another when both coverages are applicable.
46 Insurers may charge reasonable premiums for such coverage.

47 SECTION 2. The division of insurance shall adopt regulations to carry out sections
48 4E to 4G, inclusive of chapter 175 of the General Laws, on or before December 1, 2011;
49 provided, however that such regulations shall include, but not be limited to, a requirement that
50 each insurer licensed to write and engaged in the writing of homeowners' insurance in the
51 commonwealth and the joint underwriting association formed pursuant to chapter 175C of the

52 General Laws, shall provide payment for valid claims for damage related to the presence of toxic
53 drywall in residential policy holders' property, subject to such monetary limits and within such
54 time limitations for the filing of such claims as the division deems reasonable for damage caused
55 by toxic drywall between January 1, 2000 and December 31, 2011; and, provided further, that
56 such regulations shall provide for: a list of contractors, certified to conduct toxic drywall
57 assessments consistent with the purposes of this act; the method of conducting such an
58 assessment in order to reveal the presence of toxic drywall and any damage caused thereby, or
59 potential damage, to the structure or inhabitants thereof due to such drywall; and recording of
60 the assessment results on a form to be prescribed by the commissioner of said division.

61 SECTION 3. Chapter 270 of the General Laws is hereby amended by adding the
62 following section:-

63 Section 25. (a) For the purpose of this section, the term "toxic drywall" shall mean
64 drywall, wallboard or any other product used to construct walls, ceilings or other barriers in a
65 residential property and which emits a volatile sulfur compound and strontium sulfide.

66 (b) (1) Whoever distributes, sells or offers for sale toxic drywall or whoever installs
67 or otherwise uses toxic drywall in the construction of any structure designed to inhabited or used
68 by any person, shall be punished by a fine of \$10,000.

69 (2) A violation of paragraph (1) shall constitute an unfair or deceptive act or practice
70 pursuant to chapter 93A.

71 (c) Whoever holds himself out to be a contractor, whether or not a holder of a
72 license therefore, and wantonly or recklessly installs toxic drywall in any residential structure for

73 another, or permits his agent to do so, shall be strictly liable to the owner of such structure for
74 any civil damages caused thereby.

75 SECTION 4. Sections 4E and 4F of chapter 175 of the General Laws, inserted by
76 section 1 shall take effect within 120 days of passage of this act.

77 SECTION 5. Section 4F of chapter 175 of the General Laws is hereby repealed.

78 SECTION 6. Section 4G of chapter 175 of the General Laws, inserted by section 1,
79 shall take effect on January 1, 2012.

80 SECTION 7. Section 5 shall take effect on January 1, 2012.