HOUSE DOCKET, NO. 3327 FILED ON: 1/21/2011

HOUSE . . . . . No. 2798

The Commonwealth of Massachusetts

PRESENTED BY:

Antonio F. D. Cabral

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:

An Act reforming title insurance.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Antonio F. D. Cabral	*13th Bristol*
Mark C. Montigny	☐ *[District]* ☐
Benjamin Swan	*11th Hampden*
Marcos A. Devers	*16th Essex*
Stephen Stat Smith	*28th Middlesex*

HOUSE DOCKET, NO. 3327 FILED ON: 1/21/2011

HOUSE . . . . . No. 2798

By Mr. Cabral of New Bedford, a petition (accompanied by bill, House, No. 2798) of Antonio F. D. Cabral and others relative to title insurance. The Judiciary.

The Commonwealth of Massachusetts

An Act reforming title insurance.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

The General Laws are hereby amended by inserting after chapter 174C the following chapter:-

Section 1. This chapter shall be known and may be cited as the Title Insurance Law.

Section 2. The purpose of this chapter is to promote the public welfare by prohibiting lender's title insurance from being assessed to buyers who refinance the mortgage on their home. Nothing in this chapter is intended (1) to prohibit or discourage reasonable competition, or (2) to prohibit, or encourage, except to the extent necessary to accomplish the aforementioned purpose, uniformity in insurance rates, rating systems, rating plans or practices.

Section 3. The following words, as used in this chapter, unless the text otherwise requires or a different meaning is specifically required, shall mean—

"Applicant for insurance" shall be deemed to include approved attorneys, real estate brokers, real estate salesmen, attorneys at law and all others who from time to time apply to a title insurance company or to an agent of a title insurance company, for title insurance, and who at the time of such application are not agents for a title insurance company.

An "approved attorney" means an attorney at law in good standing upon whose examination of title and report of title thereon a title insurance company may issue a policy of title insurance.

"Refinancing" means the process of paying off an existing home loan by obtaining a new home loan and using the same property as security.

The "business of title insurance" shall be deemed to be (i) the making as insurer, guarantor or surety, or proposing to make as insurer, guarantor or surety, of any contract or policy of title insurance; (ii) the transacting, or proposing to transact, any phase of title insurance,

23 including solicitation, negotiation preliminary to execution, execution of a contract of title
24 insurance, insuring and transacting matters subsequent to the execution of the contract and
25 arising out of it, including reinsurance; and (iii) the doing, or proposing to do, any business in
26 substance equivalent to any of the foregoing in a manner designed to evade the provisions of this
27 article.

28 “Commissioner”, the commissioner of insurance.

29 “Company”, all corporations, associations, partnerships or individuals engaged as
30 principals in the business of insurance and authorized to transact business in this commonwealth
31 under the Eleventh clause of section forty-seven of chapter one hundred and seventy-five.

32 “Insurance Company” or “Insurer”, the same meaning as company.

33 "Rates" for title insurance means and includes the premium, the examination and
34 settlement or closing fees, and every other charge, whether denominated premium or otherwise,
35 made by a title insurance company, agent of a title insurance company or an approved attorney
36 of a title insurance company, or any of them, to an insured or to an applicant for insurance, for
37 any policy or contract for the issuance of, or an application for any class or kind of, title
38 insurance; but the term "rates" shall not include any charges paid by an insured or by an
39 applicant for insurance, for any policy or contract, to an attorney at law acting as an independent
40 contractor and retained by such attorney at law, whether or not he is acting as an agent of or an
41 approved attorney of a title insurance company, or any charges made for special services not
42 constituting title insurance, even though performed in connection with a title insurance policy or
43 contract.

44 "Title insurance" means insuring, guaranteeing or indemnifying against loss or damage
45 suffered by owners of real property or by others interested therein by reason of liens,
46 encumbrances upon, defects in or the unmarketability of the title to said real property;
47 guaranteeing, warranting or otherwise insuring the correctness of searches relating to the title to
48 real property; and doing any business in substance equivalent to any of the foregoing in a manner
49 designed to evade the provisions of this article.

50 Section 4. (a) Every insurance company who engages in the business of title insurance
51 must file quarterly statements with the Commissioner that detail the Insurer’s rates related to the
52 sale of title insurance in the commonwealth. (b) The statements set forth in subsection (a) of this
53 section shall be filed by January 1, April 1, July 1, and October 1. (c) Within 10 days after each
54 filing period, the Commissioner shall post on the Division of Insurance’s website the schedule of
55 rates for each title insurance company. (d) Each filing and all supporting information shall be
56 open to public inspection after the filing becomes effective.

57 Section 5. Two or more insurers who by virtue of their business associations in the
58 United States represent themselves to be or are customarily known as an “insurance company

59 group", or similar insurance trade designation, shall have the right to make the same filings or to
60 use the same rates for each such insurer; and nothing contained in this chapter shall be construed
61 to prohibit an agreement to make the same filings or use the same rates and concerted action in
62 connection with such filings or rates by such insurers. This section shall not apply to two or more
63 insurers who are not under the same common executive or general management or control and
64 who act in concert in underwriting groups or pools.

65 Section 6. Except to the extent necessary to meet the provisions of section 7, nothing in
66 this chapter shall abridge or restrict the freedom of contract between insurers and agents or
67 brokers with respect to commissions or between insurers and their employees with respect to
68 compensation.

69 Section 7. All applicants for insurance, including agents, brokers attorneys and approved
70 attorneys must provide a written disclosure to every prospective buyer of a title insurance policy
71 at or prior to closing, which shall be signed by or on behalf of the buyer of the title insurance
72 policy, and shall include the following disclosures: (1) That the agent, broker, or attorney is an
73 agent of the title insurance company, (2) The total cost to the buyer for a lender's title insurance
74 policy, (3) The total cost to the buyer for an owner's title insurance policy, if applicable, (4) The
75 total amount of the cost that is dedicated to title insurance premiums, (5) The total amount of the
76 cost that is dedicated to commissions or fees paid to the agent, broker or attorney, (6) The total
77 amount of the cost that is dedicated to any other component of the transaction and a specification
78 of what those other components are.

79 Section 8. (a) A buyer of a title insurance policy shall be entitled to the basic rate in
80 accordance with subsection (e) of this section.

81 (b) A buyer of a title insurance policy shall be entitled to the reissue rate, in accordance
82 with subsection (e) of this section, if the real property to be insured is identical to, or is part of,
83 real property insured within the 15 years immediately prior to the date the insured transaction
84 closes. Evidence of previous insurance must be considered in order to apply the reissue rate. As
85 evidence of previous insurance, an Insurer shall rely upon: (1) the recording of either (i) a deed
86 to a bone fide buyer for value, or (ii) an unsatisfied mortgage to an institutional lender; or in the
87 alternative, (2) any of the following documents produced by or on behalf of the purchases of the
88 title insurance policy: (i) a copy of the prior policy; (ii) a copy of the marked-up commitment;
89 (iii) a settlement sheet showing payment of a title insurance premium; or (4) other written
90 evidence acceptable to the Insurer that title insurance coverage was purchased for the property.

91 (c) In the event that a current homeowner seeks title insurance at the time of a refinancing
92 through a different lender than the original lender on a home mortgage, the homeowner shall be
93 entitled to the reissue rate, in accordance with subsection (e) of this section, if evidence of
94 previous insurance is provided in accordance with the provisions of subsection (b) of this
95 section.

96 (d) In the event that a homeowner seeks title insurance at the time of a refinancing of a
97 home mortgage through the same lender or a successor-in-interest to the original lender on a
98 home mortgage, the title insurance company shall issue the homeowner a continuation of his title
99 insurance at no additional cost from the original title insurance payment. Evidence of previous
100 insurance must be shown in addition to a continuous and unbroken chain of ownership.
101 Evidence of previous insurance shall be provided in accordance with provisions of subsection (b)
102 of this section.

103 (e) The rate charged to customers who do not qualify for the reissue rate or a refinance
104 waiver under subsections (b), (c) and (d) of this section shall be charged the Insurer's basic rate
105 as reported to the Commissioner. The reissue rate shall be 60% of the basic rate.

106 (f) A written notice must be provided to every prospective buyer of a title insurance
107 policy at or prior to closing, which shall be signed by or on behalf of the buyer of the title
108 insurance policy, and shall include language substantially in the following form:

109 THIS CONVEYANCE OR REFINANCE MAY BE ENTITLED TO A REDUCED
110 RATE OR WAIVED PURCHASE REQUIREMENT UNDER M.G.L. CHAPTER 174D.

111 Section 9. No person or organization shall willfully withhold information from, or
112 knowingly give false or misleading information to, the commissioner, any statistical agency
113 designated by the commissioner, any rating organization, or any insurer, which will affect the
114 rates or premiums chargeable under this chapter.

115 Section 10. Any person or organization willfully violating any provision of this chapter
116 shall be punished by a fine of not more than five hundred dollars for each such violation. Such
117 penalty may be in addition to any other penalty provided by law.