HOUSE DOCKET, NO. 2922 FILED ON: 1/18/2013

HOUSE . . . . . No. 1241

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 adoption of the accompanying bill:

An act to reform title insurance.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Antonio F. D. Cabral	*13th Bristol*

HOUSE DOCKET, NO. 2922 FILED ON: 1/18/2013

HOUSE . . . . . No. 1241

By Mr. Cabral of New Bedford, a petition (accompanied by bill, House, No. 1241) of Antonio F. D. Cabral for legislation to reform title insurance. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An act to reform 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:

SECTION 1. The General Laws are hereby amended by inserting after chapter 174C the following chapter:

Chapter 174D

TITLE INSURANCE

The following terms shall have the following meanings:

(1)"Applicant" means a person who applies to a title insurer or title agent for a title insurance policy.

(2) “Associate” means any (i) business organized for profit in which a producer of title insurance business is a director, officer, partner, employee or owner of one per cent or more of the equity capital thereof; (ii) employee of a producer of title insurance business; (iii) franchisor or franchisee of a producer of title insurance business; (iv) spouse, parent or child of a producer of title insurance business who is a natural person; (v) person, other than a natural person, who controls, is controlled by, or is under common control with a producer of title insurance business; or (vi) person with whom a producer of title insurance business or any associate of such producer has any agreement, arrangement or understanding or pursues any course of conduct the purpose or substantial effect of which is to evade the provisions of this chapter.

(3) “Charge” means any fee billed by a title agent or title insurer, or both, for the performance of the services that fall under the scope of the title insurance business. Charge includes, but is not limited to, fees for document preparation and fees for services commenced but not completed. Charge does not include fees collected by a title insurer or title agent in an

21 escrow, settlement or closing when the fees are limited to the amount billed for services rendered
22 by an entity independent of the title insurer or title agent.

23 (4) “Commissioner” means the Commissioner of Insurance.

24 (5) “Controlled Business” means any portion of a title insurer’s or title agent’s business
25 of title insurance in the Commonwealth referred to it by a producer of title business or by any
26 associate of such producer where the producer of title business, the associate, or both, have a
27 financial interest in the title insurer or title agent to which business is referred.

28 (6) “Financial Interest” means any interest, legal or beneficial, that entitles the holder,
29 directly or indirectly, to one per cent or more of the new profits or net worth of the entity in
30 which the interest is held.

31 (7) “Gross Operating Revenue” means all premiums received by a title insurer or title
32 agent.

33 (8) “Insured” means the purchaser or named beneficiary of a title insurance policy.

34 (9) “Net Retained Liability” means the total liability retained by a title insurer for a single
35 risk after taking into account the deduction for ceded liability, if any.

36 (10) “Premium” means fees for (i) issuing a title insurance policy, including any service
37 charge or administration fee for the issuance of a title insurance policy; (ii) preparing or issuing
38 preliminary reports, property profiles, commitments, binders or like products; or (iii) assuming
39 liability under a contract of reinsurance.

40 (11) “Producer of Title Insurance Business” or “Producer” means any person, including
41 any officer, director or owner of five percent or more of the equity capital of any person,
42 engaged in the Commonwealth in the trade, business, occupation or profession of (i) buying or
43 selling interests in real property; (ii) making loans secured by interests in real property; or (iii)
44 acting as a broker, agent, representative or attorney of a person who buys or sells any interest in
45 real property or who lends or borrows money with such interest as security.

46 (12) “Refer” means to direct or cause to be directed or to exercise any power or influence
47 over the direction of title insurance business, whether or not the consent or approval of any other
48 person is sought or obtained with respect to the referral.

49 (13) “Single Risk” means the insured amount of any title insurance policy, except that
50 where two or more title insurance policies are issued simultaneously covering different estates in
51 the same real property, single risk means the sum of the insured amounts of all such title
52 insurance policies, provided a title insurance policy insuring the interest of a mortgagee, a claim
53 payment under which reduces the insured amount of the title insurance policy, shall be excluded
54 in computing the amount of a single risk to the extent that the insured amount of the mortgage

55 title insurance policy does not exceed the insured amount of the fee or leasehold title insurance
56 policy.

57 (14) “Title Agent” or “Agent” means any person authorized in writing by a title insurer to
58 (i) solicit title insurance business; (ii) collect premiums; (iii) determine the insurability of a risk
59 in accordance with underwriting rules and standards prescribed by the title insurer; or (iv) issue
60 policies of the title insurer. Title agent does not include officers or employees of a title insurer.
61 No person may act as a title agent unless he is an attorney, in good standing, admitted to the Bar
62 of the Commonwealth.

63 (15) “Title Insurance Business” or “Business of Title Insurance” means (i) issuing as
64 insurer or offering to issue as insurer a title insurance policy or (ii) transacting or proposing to
65 transact by a title insurer or title agent any of the following activities when conducted or
66 performed in contemplation of the issuance of a title insurance policy: (A) Soliciting or
67 negotiating the issuance of a title insurance policy; (B) guaranteeing, warranting, or otherwise
68 insuring the correctness of title searches; (C) execution of title insurance policies; (D) effecting
69 contracts of reinsurance; or (E) doing or proposing to do any business in substance equivalent to
70 any of the foregoing in a manner designed to evade the provisions of this chapter.

71 (16) “Title Insurance Policy” or “Policy” means a contract insuring or indemnifying
72 against loss or damage arising from actual or alleged (i) defects in or liens or encumbrances on
73 the insured title; (ii) un-marketability of the insured title; or (iii) invalidity or unenforceability of
74 liens or encumbrances on the stated property. Title insurance does not include a preliminary
75 report, binder, commitment or abstract.

76 (17) “Title Insurer” or “Insurer” means a company engaged in the Commonwealth in the
77 title insurance business.

78 Section 4. Each title insurer may engage in the title insurance business in this state if
79 licensed to do so by the commissioner. The commissioner shall promulgate such rules and
80 regulations as are necessary to carry out the provisions of this Chapter. The commissioner may
81 assess fees from title insurers designed to mitigate the cost of reviewing license and form
82 applications submitted by title insurers.

83 Section 5. No title insurer may do any other line of insurance business, except that title
84 insurers may guarantee the obligations of their agents in the normal course of business by issuing
85 closing protection letters. The commissioner may adopt regulations which set requirements
86 concerning the amount of deposits and the establishment and maintenance of unearned premium
87 and loss reserves and other liabilities of title insurance companies for the purpose of protecting
88 policyholders.

89 Section 6. A title insurer shall have such minimum capital, surplus and reserve
90 requirements as is required by the Commissioner.

91 Section 7. No title insurance policy may be written unless and until the title insurer or its
92 title agent has conducted a reasonable search and examination of the title and has made a
93 determination of insurability of title in accordance with sound underwriting practices. Evidence
94 of the examination of title and determination of insurability, the sufficiency of which shall be
95 determined by regulations established by the commissioner, shall be preserved and retained in
96 the files of the title insurer or its title agent for a period of not less than ten years after the title
97 insurance policy has been issued. In conducting a reasonable search and examination of title and
98 determination of insurability of title, a title insurer or its agent may rely upon a policy of title
99 insurance previously issued by a title insurer authorized to do business in the Commonwealth
100 when such policy was issued.

101 Section 8. A title insurer may obtain reinsurance for all or any part of its liability under
102 one or more of its title insurance policies or reinsurance agreements and may also reinsure title
103 insurance policies issued by other title insurers on risks located in the Commonwealth.
104 Reinsurance on policies issued on properties located in the Commonwealth must be obtained
105 from title insurers licensed to transact title insurance business in this state.

106 Section 9. (a) No title insurer or title agent shall (1) pay, directly or indirectly, to the
107 insured, to any producer of title insurance business, to any associate of a producer or to any other
108 person, any commission, any part of its premiums, fees or other charges or any other
109 consideration or thing of value as inducement or compensation for the referral of title insurance
110 business or (2) issue any title insurance policy in connection with any transaction in which it has
111 paid or intends to pay any commission or any part of its premiums, fees or other charges, or any
112 other consideration or thing of value which it knows to be in violation of this section.

113 (b) No insured named in a title insurance policy, no producer of title insurance business,
114 no associate of a producer, nor any other person, other than another title agent, may knowingly
115 receive or accept, directly or indirectly, any commission, rebate, consideration, thing of value or
116 inducement referred to in subsection (a) of this section.

117 Section 10. No title insurer shall pay to any title insurance agent or permit such agent to
118 retain any amount exceeding ten percent of the gross premium for any policy of the title insurer
119 issued by such agent. The maximum commission to a title insurance agent shall not be increased
120 directly or indirectly by an insurer providing anything of value, including services, to an agent
121 for less than the actual cost or fair market value.

122 Section 11. (a) No title insurer or title insurance agent may accept any order for, issue a
123 title insurance policy to, or provide services to, an applicant if it knows or has reason to believe
124 that the applicant was referred to it by an producer of title insurance business or by any associate
125 of such producer, where the producer, the associate or both, have a financial interest in the title
126 insurer or title agent to which business is referred.

127 (b) Each title insurer and title agent shall file with the commissioner on forms prescribed
128 by the commissioner a report setting forth the names and addresses of those persons, if any, who
129 have had a financial interest in the title insurer or title agent during the calendar year, who are
130 known or reasonably believed by the title insurer to be producers of title business or associates of
131 producers. Each title insurer shall file the report required under this subsection with its
132 application for a license and within ten days of any time there is a change in the information
133 provided in the last report.

134 (b) No title insurer or title agent may accept an order for title insurance business, issue a
135 title insurance policy or receive or retain any premium, or charge in connection with any
136 transaction if (1) the title insurer or title agent knows or has reason to believe that the transaction
137 will constitute controlled business for that title insurer and (2) ten percent or more of the gross
138 operating revenue of that title insurer in the calendar year in which the transaction takes place is
139 derived from controlled business.

140 (c) No license may be issued, renewed or continued for a title insurer or title agent who
141 fails to comply with this section.

142 Section 12. (a) Premium rates shall not be inadequate, excessive or unfairly
143 discriminatory.

144 (b) Rates are excessive if the gross operating revenue of a title insurer is more than fifteen
145 percent greater than the average annual payments made to the title insurer's insureds over a
146 period of five consecutive years.

147 (c) Rates are inadequate if, in the opinion of the commissioner, they are insufficient to
148 sustain projected losses and expenses.

149 (d) Premium rates are unfairly discriminatory if, in the unanimous opinion of the
150 commissioner and the attorney general, the premium charged for any classification is not
151 reasonably related to the services performed or the risks assumed by the insurer.

152 Section 13. (a) A title insurer shall file the premium rate schedules it uses in the
153 Commonwealth with the commissioner and the attorney general as part of its license application
154 and must receive approval of such schedule prior to receiving a license to sell title insurance in
155 the Commonwealth. Changes to the premium rate schedule filed by the title insurer must be
156 approved by both the commissioner and the attorney general.

157 (b) All rate schedules offered by a title insurer licensed to do business in the
158 Commonwealth shall be posted on the Division of Insurance's website within thirty days of the
159 schedule's approval by the commissioner and attorney general.

160 (c) If at any time after the approval of a rate schedule, the commissioner has reason to
161 believe that the filed rate schedule does not meet the requirements of this section or is otherwise

162 contrary to law, or receives written notification from the attorney general stating that the attorney
163 general has reason to believe the filing does not meet the requirements of this section or is
164 otherwise contrary to law, the commissioner shall hold a hearing within thirty days and shall give
165 written notice of the hearing to all interested parties.

166 (d) The attorney general may intervene in a public hearing under this subsection and may
167 require additional information as the attorney general considers necessary to ensure compliance
168 with this subsection.

169 Section 14. (a) A title insurer shall file with the commissioner all forms it proposes to use
170 in this Commonwealth, including (1) title insurance policies, including standard form
171 endorsements and (2) commitments, binders or any other reports issued prior to the issuance of a
172 title insurance policy.

173 (b) The commissioner shall approve any form filed under this section only if the form is
174 (1) logically and clearly arranged and is understandable to a person of normal intelligence
175 without special insurance or legal knowledge or training; (2) does not contain or incorporate by
176 reference any inconsistent, ambiguous or misleading clauses, exceptions or conditions
177 deceptively affecting the risk purported to be assumed in the affirmative coverage of the
178 contract; (3) does not contain any misleading title, heading or other indication of its coverage; (4)
179 is not printed or otherwise reproduced in such a manner as to render any provision illegible.

180 (c) A title insurer must receive approval from the commissioner prior to using any such
181 form in the Commonwealth.

182 (d) If at any time after the approval of a form, the commissioner has reason to believe that
183 the form does not meet the requirements of this section or is otherwise contrary to law, or
184 receives written notification from the attorney general stating that the attorney general has reason
185 to believe the form does not meet the requirements of this section or is otherwise contrary to law,
186 the commissioner shall hold a hearing within thirty days and shall give written notice of the
187 hearing to all interested parties.

188 (e) The attorney general may intervene in a public hearing under this subsection and may
189 require additional information as the attorney general considers necessary to ensure compliance
190 with this subsection.

191 Section 15. (a) A title insurer or title agent that issues a mortgagee's policy of title
192 insurance on a loan made simultaneous with the purchase of all or part of the residential property
193 securing the loan, where no owner's policy has been purchased, shall inform the borrower in
194 writing that the mortgagee's policy does not protect the borrower and that the borrower may
195 obtain an owner's title insurance policy. This notice must be provided before the disbursement of
196 the loan proceeds and before issuance of a mortgagee's policy. The notice must be on a form
197 approved by the commissioner.

198 (b) If the borrower elects not to purchase an owner's title insurance policy, the title
199 insurer or title agent shall obtain from the owner a statement in writing that the notice has been
200 received and that the borrower waives the right to purchase an owner's title insurance policy. If
201 the buyer refuses to provide the statement and waiver, the title insurer or title agent shall create a
202 record of such refusal in the file. The statement and waiver must be on a form prescribed by the
203 commissioner and must be retained by the title insurer or title agent for at least five years after
204 receipt.

205 SECTION 16. (a) A title insurer or title agent that issues a policy of title insurance shall
206 inform the applicant in writing that the rates for all title insurance sold in the commonwealth are
207 published by the Division of Insurance. The notice must be on a form approved by the
208 commissioner, must be signed by the applicant and must be retained by the title insurer or title
209 agent for at least five years after receipt. Such form shall also include: (i) the name of the agent
210 selling the insurance policy; (ii) the name of the insurer; and (iii) the charge. A copy of the
211 policy shall be attached to the form and each page thereof shall be initialed by the applicant.

212 Section 17. The provisions of this chapter, inclusive, shall be severable, and, if any of the
213 provisions are held to be unconstitutional or invalid, the validity of the remaining provisions of
214 said sections will not be affected.

215 SECTION 2.

216 (a) There shall be a commission to study the feasibility of establishing a title insurer
217 owned by the commonwealth or by a public authority constituted by the commonwealth.

218 (b) The commission shall consist of the attorney general and the secretary of housing and
219 economic development or their respective designees, who shall serve as co-chairs of the
220 commission; the state treasurer or the treasurer's designee; the state comptroller or the
221 comptroller's designee; 2 persons to be appointed by the president of the senate, 1 of whom shall
222 be a member of the senate; 1 person to be appointed by the minority leader of the senate; 2
223 persons to be appointed by the speaker of the house of representatives; 1 of whom shall be a
224 member of the house of representatives; 1 person to be appointed by the minority leader of the
225 house; the executive directors of the Massachusetts Development Financing Agency and the
226 Massachusetts Housing Finance Agency or their designees; president of the Massachusetts Bar
227 Association or the president's designee; and 6 persons to be appointed by the governor who shall
228 not be employees of the executive branch, 1 of whom shall be drawn from a list of 3 names
229 submitted by the Associated Industries of Massachusetts, 1 of whom shall be drawn from a list of
230 3 names submitted by the Small Business Association of New England and 2 of whom shall be a
231 professor of law at an institution of higher education in the commonwealth who has researched
232 and published articles on insurance or real property law. Of the governor's remaining
233 appointments, not more than 2 may be a representative of a financial services firm located in the
234 commonwealth. The governor shall ensure geographic diversity in the governor's appointments

235 to the commission. The members of the commission shall be appointed not later 90 days after the
236 effective date of this act.

237 (c) The commission shall examine the technical, legal and financial feasibility of
238 establishing a commonwealth-owned title insurer. The commission shall evaluate the experience
239 of Iowa with state-owned title insurance, identifying the advantages and disadvantages presented
240 to purchasers of title insurance for residential property in Iowa as compared with such purchasers
241 in Massachusetts. The commission shall also examine the existing structure and dynamics of the
242 title insurance market as it currently operates in Massachusetts and shall include in its
243 examination a review of how title risk is determined and title policies are priced. The
244 commission shall also examine the proceeds generated by the sale of title insurance in
245 Massachusetts and shall identify the parties that receive or make payments as a result of
246 underwriting and issuing a typical title insurance policy. The commission shall make
247 recommendations based on its examination as to the extent to which it believes the conduct of
248 the business of title insurance in Massachusetts requires new legislation in order to protect
249 consumers, reduce the price of title insurance or improve the regulation of the conveyance of real
250 property.

251 (d) The commission shall hold at least 3 public hearings in distinct geographic regions of
252 the commonwealth.

253 (e) The commission shall publish its findings and recommendations, together with drafts
254 of legislation, if any, necessary to carry those recommendations into effect, in a written report
255 not later than 1 year after the effective date of this act. The report shall be published on the
256 official website of the commonwealth, and shall be contemporaneously filed with the house and
257 senate committees on ways and means and the house and senate chairs of the joint committee on
258 financial services.