

HOUSE No. 882

The Commonwealth of Massachusetts

PRESENTED BY:

Michael A. Costello

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 relative to insurance holding companies.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Michael A. Costello</i>	<i>1st Essex</i>	<i>1/16/2013</i>

HOUSE No. 882

By Mr. Costello of Newburyport, a petition (accompanied by bill, House, No. 882) of Michael A. Costello relative to insurance holding companies. Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to insurance holding companies.

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 175 of the General Laws, as appearing in the 2010
2 Official Edition, is hereby amended is hereby amended by inserting after the definition of
3 “Insurance company” or “insurer,” the following definition:

4 “NAIC,” the National Association of Insurance Commissioners.

5 SECTION 2. Section 206 of chapter 175 of the General Laws, is hereby amended by
6 striking out subsection (v), and inserting thereof the following subsection: -

7 (v)(1) Power of Commissioner. With respect to any insurer registered under this section,
8 and in accordance with paragraph (3) of subsection (v), the commissioner shall also have the
9 power to participate in a supervisory college for any domestic insurer that is part of an insurance
10 holding company system with international operations in order to determine compliance by the
11 insurer with this section. The powers of the commissioner with respect to supervisory colleges
12 include, but are not limited to, the following:

13 (i) Initiating the establishment of a supervisory college;

14 (ii) Clarifying the membership and participation of other supervisors in the supervisory
15 college;

16 (iii) Clarifying the functions of the supervisory college and the role of other regulators,
17 including the establishment of a group-wide supervisor;

18 (iv) Coordinating the ongoing activities of the supervisory college, including planning
19 meetings, supervisory activities, and processes for information sharing; and

(v) Establishing a crisis management plan.

(2) Expenses. Each registered insurer subject to this subsection shall be liable for and shall pay the reasonable expenses of the commissioner's participation in a supervisory college in accordance with paragraph (3) of subsection (v), including reasonable travel expenses. For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates, and the commissioner may establish a regular assessment to the insurer for the payment of these expenses.

(3) Supervisory College. In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management and governance processes, and as part of the examination of individual insurers in accordance with subsection (u), the commissioner may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal and international regulatory agencies. The commissioner may enter into agreements in accordance with subsection (w)(3) providing the basis for cooperation between the commissioner and the other regulatory agencies, and the activities of the supervisory college. Nothing in this subsection shall delegate to the supervisory college the authority of the commissioner to regulate or supervise the insurer or its affiliates within its jurisdiction.

SECTION 3. Section 206C of chapter 175 of the General Laws, is hereby amended by striking out subsection (w), and inserting thereof the following subsection:

(w)(1) Documents, materials or other information in the possession or control of the Division of Insurance that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to subsection (u) and all information reported pursuant to section 206C shall be confidential by law and privileged, shall not be a public record under clause Twenty-sixth of section seven of chapter four, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.

The commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event the commissioner may publish all or any part in such manner as may be deemed appropriate.

(2) Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner or with whom such documents,

materials or other information are shared pursuant to this section shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (v)(1).

(3) In order to assist in the performance of the commissioner's duties, the commissioner:

(i) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection (v)(1) with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material or other information, and has verified in writing the legal authority to maintain confidentiality.

(ii) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential and privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(iii) Shall enter into written agreements with the NAIC governing sharing and the use of information provided pursuant to this section that shall:

(a) specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiaries pursuant to this section, including procedures and protocols for sharing by the NAIC with other state, federal or international regulators;

(b) specify that ownership of information shared with the NAIC and its affiliates and subsidiaries pursuant to this section remains with the commissioner and the NAIC's use of the information is subject to the direction of the commissioner;

(c) require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC pursuant to this section is subject to a request or subpoena to the NAIC for disclosure or

production; and

(d) require the NAIC and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the NAIC and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the NAIC and its affiliates and subsidiaries pursuant to this section.

(4) The sharing of information by the commissioner pursuant to this section shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution and enforcement of the provisions of this section.

(5) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (3).

(6) Documents, materials or other information in the possession or control of the NAIC pursuant to this section shall be confidential by law and privileged, shall not be a public record under clause Twenty-sixth of section seven of chapter four, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

SECTION 4. Section 206C of chapter 175 of the General Laws, is hereby amended by inserting after subsection (w), the following new subsection:

(x) The commissioner may, pursuant to chapter thirty A, upon notice and opportunity for all interested parties to be heard, issue such rules, regulations and orders as shall be necessary to carry out the provisions of sections two hundred and six to two hundred and six D, inclusive.