

HOUSE No. 02798

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 bill:

An Act reforming title insurance.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Mark C. Montigny</i>	<i>Second Bristol and Plymouth</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>
<i>Stephen Stat Smith</i>	<i>28th Middlesex</i>

HOUSE No. 02798

By Mr. Cabral of New Bedford, a petition (accompanied by bill, House, No. 2798) of Swan and others relative to title insurance Joint Committee on the Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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:

- 1 The General Laws are hereby amended by inserting after chapter 174C the following chapter:-
- 2 Section 1. This chapter shall be known and may be cited as the Title Insurance Law.
- 3 Section 2. The purpose of this chapter is to promote the public welfare by prohibiting lender's
- 4 title insurance from being assessed to buyers who refinance the mortgage on their home.
- 5 Nothing in this chapter is intended (1) to prohibit or discourage reasonable competition, or (2) to
- 6 prohibit, or encourage, except to the extent necessary to accomplish the aforementioned purpose,
- 7 uniformity in insurance rates, rating systems, rating plans or practices.
- 8 Section 3. The following words, as used in this chapter, unless the text otherwise requires or a
- 9 different meaning is specifically required, shall mean—
- 10 "Applicant for insurance" shall be deemed to include approved attorneys, real estate brokers, real
- 11 estate salesmen, attorneys at law and all others who from time to time apply to a title insurance

12 company or to an agent of a title insurance company, for title insurance, and who at the time of
13 such application are not agents for a title insurance company.

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

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

18 The "business of title insurance" shall be deemed to be (i) the making as insurer, guarantor or
19 surety, or proposing to make as insurer, guarantor or surety, of any contract or policy of title
20 insurance; (ii) the transacting, or proposing to transact, any phase of title insurance, including
21 solicitation, negotiation preliminary to execution, execution of a contract of title insurance,
22 insuring and transacting matters subsequent to the execution of the contract and arising out of it,
23 including reinsurance; and (iii) the doing, or proposing to do, any business in substance
24 equivalent to any of the foregoing in a manner designed to evade the provisions of this article.

25 "Commissioner", the commissioner of insurance.

26 "Company", all corporations, associations, partnerships or individuals engaged as principals in
27 the business of insurance and authorized to transact business in this commonwealth under the
28 Eleventh clause of section forty-seven of chapter one hundred and seventy-five.

29 "Insurance Company" or "Insurer", the same meaning as company.

30 "Rates" for title insurance means and includes the premium, the examination and settlement or
31 closing fees, and every other charge, whether denominated premium or otherwise, made by a
32 title insurance company, agent of a title insurance company or an approved attorney of a title

33 insurance company, or any of them, to an insured or to an applicant for insurance, for any policy
34 or contract for the issuance of, or an application for any class or kind of, title insurance; but the
35 term "rates" shall not include any charges paid by an insured or by an applicant for insurance, for
36 any policy or contract, to an attorney at law acting as an independent contractor and retained by
37 such attorney at law, whether or not he is acting as an agent of or an approved attorney of a title
38 insurance company, or any charges made for special services not constituting title insurance,
39 even though performed in connection with a title insurance policy or contract.

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

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

53 Section 5. Two or more insurers who by virtue of their business associations in the United States
54 represent themselves to be or are customarily known as an "insurance company group", or

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

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

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

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

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

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

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

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

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

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

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

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