

HOUSE No. 03599

The Commonwealth of Massachusetts

PRESENTED BY:

Ronald Mariano

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 third party administrators.

PETITION OF:

NAME:

Ronald Mariano

DISTRICT/ADDRESS:

3rd Norfolk

[Pin Slip]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to third party administrators.

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. The General Laws is hereby amended by inserting after chapter 175K the
2 following chapter:-

3 Chapter 175L

4 THIRD PARTY ADMINISTRATOR ACT

5 Section 1. For the purpose of this chapter, the following words shall, except the context
6 clearly requires otherwise, have the following meanings:-

7 “Administrator” or “third party administrator”, a person who directly or indirectly solicits,
8 underwrites, collects charges or premiums from, or adjusts, settles or pays claims on residents of
9 this state, in connection with life, disability, workers’ compensation, annuity, or health coverage
10 offered or provided by an insurer, except any of the following:-

- 11 (1) an employer, or a wholly owned direct or indirect subsidiary of an employer, on behalf of
12 its employees or the employees of one or more subsidiaries or affiliated corporations of such
13 employer;
- 14 (2) a union on behalf of its members;
- 15 (3) an insurer that is authorized to transact insurance in this state;
- 16 (4) An insurance producer licensed to sell life, disability, workers' compensation, annuities,
17 or health coverage in this state, whose activities are limited exclusively to the sale of insurance;
- 18 (5) a creditor on behalf of its debtors with respect to insurance covering a debt between the
19 creditor and its debtors;
- 20 (6) a trust and its trustees, agents and employees acting pursuant to such trust established in
21 conformity with 29 U.S.C. Section 186;
- 22 (7) a trust exempt from taxation under Section 501(a) of the Internal Revenue Code, its
23 trustees and employees acting pursuant to such trust, or a custodian and the custodian's agents or
24 employees acting pursuant to a custodian account which meets the requirements of Section
25 401(f) of the Internal Revenue Code;
- 26 (8) a credit union or a financial institution that is subject to supervision or examination by
27 federal or state banking authorities, or a mortgage lender, to the extent they collect and remit
28 premiums to licensed insurance producers or to limited lines producers or authorized insurers in
29 connection with loan payments;
- 30 (9) a credit card issuing company that advances for and collects insurance premiums or
31 charges from its credit card holders who have authorized collection;

32 (10) a person who adjusts or settles claims in the normal course of that person's practice or
33 employment as an attorney at law and who does not collect charges or premiums in connection
34 with life, disability, workers' compensation, annuity or health coverage;

35 (11) an adjuster licensed by this state whose activities are limited to adjustment of claims;

36 (12) a person licensed as a managing general agent in this state, whose activities are limited
37 exclusively to the scope of activities conveyed under such license; or

38 (13) an administrator who is affiliated with an insurer and who only performs the contractual
39 duties (between the administrator and the insurer) of an administrator for the direct and assumed
40 insurance business of the affiliated insurer. The insurer is responsible for the acts of the
41 administrator and is responsible for providing all of the administrator's books and records to the
42 insurance commissioner, upon a request from the insurance commissioner. For purposes of this
43 paragraph, "insurer" means a licensed or authorized insurance company, non-profit hospital
44 service plan, medical service corporation, dental service corporation, optometric service
45 corporation, health maintenance organization, or any other person providing a plan of insurance
46 subject to state regulation.

47 "Affiliate or affiliated", an entity or person who directly or indirectly through one or more
48 intermediaries, controls or is controlled by, or is under common control with, a specified entity
49 or person.

50 "Commissioner", the commissioner of insurance.

51 "Control" (including the terms "controlling," "controlled by" and "under common control
52 with"), the possession, direct or indirect, of the power to direct or cause the direction of the

53 management and policies of a person, whether through the ownership of voting securities, by
54 contract other than a commercial contract for goods or nonmanagement services, or otherwise,
55 unless the power is the result of an official position with or corporate office held by the person.
56 Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with
57 the power to vote, or holds proxies representing, 10 percent or more of the voting securities of
58 any other person. This presumption may be rebutted by a showing made in the manner provided
59 by subsection (k) of 206C of chapter 175 that control does not exist in fact. The commissioner
60 may determine, after furnishing all persons in interest notice and opportunity to be heard and
61 making specific findings of fact to support the determination, that control exists in fact,
62 notwithstanding the absence of a presumption to that effect.

63 “GAAP”, United States generally accepted accounting principles consistently applied.

64 “Insurance producer”, a person required to be licensed under the laws of this state to sell, solicit
65 or negotiate insurance as those terms are defined in this Act.

66 “Insurer”, a person undertaking to provide life, disability, workers’ compensation, annuity, or
67 health coverage in this state. For the purposes of this Act, insurer includes a licensed or
68 authorized insurance company, a non-profit hospital service plan, a medical service corporation,
69 a dental service corporation, an optometric service corporation, a health maintenance
70 organization, or any other person providing a plan of insurance subject to state insurance
71 regulation. Insurer shall not include a bona fide employee benefit plan established by an
72 employer or an employee organization, or both, for which the insurance laws of this state are
73 preempted pursuant to the Employee Retirement Income Security Act of 1974, nor shall insurer

74 include a workers' compensation self-insurance group as that term is used in sections twenty-five
75 E through twenty-five U, inclusive, of chapter fifty-two of the general laws.

76 "Negotiate", the act of conferring directly with or offering advice directly to a purchaser or
77 prospective purchaser of a particular contract of insurance concerning any of the substantive
78 benefits, terms or conditions of the contract, provided that the person engaged in that act either
79 sells insurance or obtains insurance from insurers for purchasers.

80 "Person", an individual or a business entity.

81 "Sell", to exchange a contract of insurance by any means, for money or its equivalent, on behalf
82 of an insurer.

83 "Solicit", attempting to sell insurance or asking or urging a person to apply for a particular kind
84 of insurance from a particular insurer.

85 "Underwrites" or "underwriting", but is not limited to, the acceptance of employer or individual
86 applications for coverage of individuals in accordance with the written rules of the insurer; the
87 overall planning and coordinating of a benefits program.

88 Section 2. No administrator shall act as such without a written agreement between the
89 administrator and the insurer, and the written agreement shall be retained as part of the official
90 records of both the insurer and the administrator for the duration of the agreement and for 5 years
91 thereafter. The agreement shall contain all provisions required by this Act, except insofar as
92 those requirements do not apply to the functions performed by the administrator.

93 The written agreement shall include a statement of duties that the administrator is expected to
94 perform on behalf of the insurer and the lines, classes or types of insurance for which the

95 administrator is to be authorized to administer. The agreement shall make provision with respect
96 to underwriting or other standards pertaining to the business underwritten by the insurer.

97 The insurer or administrator may, with written notice, terminate the written agreement for cause
98 as provided in the agreement. The insurer may suspend the authority of the administrator during
99 the pendency of any dispute regarding the cause for termination of the written agreement. The
100 insurer shall fulfill any lawful obligations with respect to policies affected by the written
101 agreement, regardless of any dispute between the insurer and the administrator.

102 Section 3. If an insurer utilizes the services of an administrator, the payment to the administrator
103 of any premiums or charges for insurance by or on behalf of the insured party shall be deemed to
104 have been received by the insurer, and the payment of return premiums or claim payments
105 forwarded by the insurer to the administrator shall not be deemed to have been paid to the
106 insured party or claimant until the payments are received by the insured party or claimant.
107 Nothing in this section limits any right of the insurer against the administrator resulting from the
108 failure of the administrator to make payments to the insurer, insured parties or claimants.

109 Section 4. An administrator shall maintain and make available to the insurer complete books and
110 records of all transactions performed on behalf of the insurer. The books and records shall be
111 maintained in accordance with prudent standards of insurance record keeping and shall be
112 maintained for a period of not less than 7 years from the date of their creation.

113 The commissioner may at any time, as he or she deems necessary, make such examination of the
114 books and affairs of the administrator and for this purpose shall have the powers conferred by
115 section four of chapter one hundred seventy-five of the general laws. Any officer, director, agent
116 or employee of any such administrator who refuses to submit to such examination, or who

117 obstructs the commissioner or any of his or her deputies or examiners in the making of such
118 examination, shall be punished by the penalty provided in section 4 of chapter 175.

119 The insurer shall own the records generated by the administrator pertaining to the insurer;
120 however, the administrator shall retain the right to continuing access to such books and records
121 to permit the administrator to fulfill all of its contractual obligations to insured parties, claimants,
122 and the insurer.

123 In the event the insurer and the administrator terminate their agreement; notwithstanding the
124 provisions of Subsection A of this section, the administrator may, by written agreement with the
125 insurer, transfer all records to a new administrator rather than retain them for 7 years. In such
126 cases, the new administrator shall acknowledge, in writing, to the insurer, that it is responsible
127 for retaining the records of the prior administrator as required in subsection A of this section.

128 If an administrator maintains books and records of an insurer against which an order of
129 receivership is entered in any state, the administrator shall, within 30 days of demand by the
130 receiver, deliver such books and records to the receiver or, at the receiver's sole discretion, to the
131 applicable state guaranty association(s). Copies of the books and records of an insurer may be
132 made by the administrator at their own expense. Failure to comply with the demands of the
133 receiver shall be subject to penalties as provided in section 14 of this Act. The receiver will be
134 entitled to the same access to all books and records as provided to both the insurer and the
135 commissioner.

136 Section 5. An administrator may use only advertising pertaining to the business underwritten
137 by an insurer that has been approved in writing by the insurer in advance of its use.

138 Section 6. If an insurer utilizes the services of an administrator, the insurer shall be
139 responsible for determining the benefits, premium rates, underwriting criteria and claims
140 payment procedures applicable to the coverage and for securing reinsurance, if any. The rules
141 pertaining to these matters shall be provided, in writing, by the insurer to the administrator. The
142 responsibilities of the administrator as to any of these matters shall be set forth in the written
143 agreement between the administrator and the insurer.

144 It is the sole responsibility of the insurer to provide for competent administration of its programs.

145 The insurer shall, at least semiannually, conduct a review of the operations of the administrator.

146 At least one such review each year shall be an on-site audit of the operations of the administrator.

147 No insurer shall utilize the services of an administrator that is not duly licensed as an

148 administrator. Any insurer that violates this provision shall be punished by a fine of not more

149 than \$5,000.

150 For purposes of this section, "insurer" means a licensed insurance company, a non-profit hospital

151 service plan, medical service corporation, dental service corporation, optometric service

152 corporation, health maintenance organization, or any other person providing a plan of insurance

153 subject to state regulation.

154 Section 7. All insurance charges or premiums collected by an administrator on behalf of or

155 for an insurer, and the return of premiums received from that insurer, shall be held by the

156 administrator in a fiduciary capacity. The funds shall be immediately remitted to the person

157 entitled to them or shall be deposited promptly in a fiduciary account established and maintained

158 by the administrator in a federally or state insured financial institution. The administrator shall

159 establish a separate fiduciary account for the insurer and no monies received in a fiduciary

160 capacity shall be commingled with monies held for another insurer. The written agreement
161 between the administrator and the insurer shall provide for the administrator to render an
162 accounting to the insurer detailing all transactions performed by the administrator pertaining to
163 the business underwritten by the insurer on an annual basis.

164 If charges or premiums deposited in a fiduciary account have been collected on behalf of or for
165 one or more insurers, the administrator shall keep records clearly recording the deposits in and
166 withdrawals from the account on behalf of each insurer. The administrator shall keep copies of
167 all the records and, upon request of an insurer, shall furnish the insurer with copies of the records
168 pertaining to the deposits and withdrawals.

169 The administrator shall not pay any claim by withdrawals from a fiduciary account in which
170 premiums or charges are deposited. Withdrawals from the account shall be made as provided in
171 the written agreement between the administrator and the insurer. The written agreement shall
172 address, but not be limited to, the following:-

- 173 (i) remittance to an insurer entitled to remittance;
- 174 (ii) deposit in an account maintained in the name of the insurer;
- 175 (iii) transfer to and deposit in a claims-paying account, with claims to be paid as provided for
176 in fourth paragraph;
- 177 (iv) payment to a group policyholder for remittance to the insurer entitled to such remittance;
- 178 (v) payment to the administrator of its commissions, fees or charges; and
- 179 (vi) remittance of return premium to the person or persons entitled to such return premium.

180 All claims paid by the administrator from funds collected on behalf of or for an insurer shall be
181 paid only on drafts or checks of and as authorized by the insurer.

182 In the event that an insurer with whom the administrator has an agreement becomes subject to a
183 receivership order entered in any state, the administrator shall provide a receivership
184 reconciliation and accounting to the receiver within 90 days after such request by the receiver.

185 Upon the receiver's request, the administrator shall remit any and all funds held on behalf of the
186 subject insurer.

187 Section 8. An administrator shall not enter into an agreement or understanding with an insurer in
188 which the effect is to make the amount of the administrator's commissions, fees, or charges
189 contingent upon savings effected in the adjustment, settlement and payment of losses covered by
190 the insurer's obligations. This provision shall not prohibit an administrator from receiving
191 performance-based compensation for providing hospital or other auditing services.

192 This section shall not prevent the compensation of an administrator from being based on
193 premiums or charges collected or the number of claims paid or processed.

194 Section 9. When the services of an administrator are utilized, the administrator shall provide
195 a written notice approved by the insurer to covered individuals advising them of the identity of,
196 and relationship among, the administrator, the policyholder and the insurer.

197 When an administrator collects funds, the reason for collection of each item shall be identified to
198 the insured party and each item shall be shown separately from any premium. Additional charges
199 may not be made for services to the extent the services have been paid for by the insurer.

200 The administrator shall disclose to the insurer all charges, fees and commissions received from
201 all services in connection with the provision of administrative services for the insurer, including
202 any fees or commissions paid by insurers providing reinsurance.

203 Section 10. Any policies, certificates, booklets, termination notices or other written
204 communications delivered by the insurer to the administrator for delivery to insured parties or
205 covered individuals shall be delivered by the administrator promptly after receipt of instructions
206 from the insurer to deliver them.

207 Section 11. No person shall act as, offer to act as, or hold himself out to be an
208 administrator in this state without a valid license as an administrator issued by the commissioner.
209 The commissioner may impose a fine of not more than \$5,000 for each and every violation
210 against any person who acts as an administrator without a valid license.

211 An administrator applying for licensure under this Act shall initially and annually thereafter
212 make application to the commissioner upon a form to be furnished by the commissioner. The
213 application shall include or be accompanied by an application fee as required by the
214 commissioner and by the following information and documents:-

215 (i) all basic organizational documents of the administrator, including any articles of
216 incorporation, articles of association, partnership agreement, trade name certificate, trust
217 agreement, shareholder agreement and other applicable documents and all amendments to such
218 documents;

219 (ii) the bylaws, rules, regulations or similar documents regulating the internal affairs of the
220 administrator;

221 (iii) NAIC Biographical Affidavit for the individuals who are responsible for the conduct of
222 affairs of the administrator; including all members of the board of directors, board of trustees,
223 executive committee or other governing board or committee; the principal officers in the case of
224 a corporation or the partners or members in the case of a partnership, association or limited
225 liability company; any shareholders or member holding directly or indirectly ten percent (10%)
226 or more of the voting stock, voting securities or voting interest of the administrator; and any
227 other person who exercises control or influence over the affairs of the administrator;

228 (iv) audited annual financial statements or reports, prepared in accordance with GAAP and
229 certified by an independent certified public accountant, for the 2 most recent fiscal years that
230 prove that the administrator has an adequate net worth to engage in the business proposed. If the
231 administrator has been in existence for less than two (2) fiscal years, the application shall include
232 financial statements or reports, certified by an officer of the administrator and prepared in
233 accordance with GAAP, for any completed fiscal years, and for any month during the current
234 fiscal year for which such financial statements or reports have been completed. An audited
235 financial/annual report prepared on a consolidated basis shall include a columnar consolidating
236 or combining worksheet that shall be filed with the report and include the following: (a) amounts
237 shown on the consolidated audited financial report shall be shown on the worksheet; (b) amounts
238 for each entity shall be stated separately, and (c) explanations of consolidating and eliminating
239 entries shall be included. The administrator shall also include such other information as the
240 commissioner may require in order to review the current financial condition of the administrator;

241 (v) a statement describing the business plan including information on staffing levels and
242 activities proposed in this state and nationwide. The plan shall provide details setting forth the

243 administrator's capability for providing a sufficient number of experienced and qualified
244 personnel in the areas of claims processing, record keeping and underwriting;

245 (vi) if the administrator will be managing the solicitation of new or renewal business, proof
246 that it employs or has contracted with a producer licensed in this state for solicitation and taking
247 of applications. Any administrator which intends to directly solicit insurance contracts or to
248 otherwise act as an insurance producer shall provide proof that it has a license as an insurance
249 producer in this state; and

250 (vii) such other pertinent information as may be required by the commissioner.

251 An administrator licensed or applying for licensure under this section shall make available for
252 inspection by the commissioner copies of all contracts with insurers or other persons utilizing the
253 services of the administrator.

254 An administrator licensed or applying for licensure under this section shall produce its accounts,
255 records and files for examination, and make its officers readily available to give information with
256 respect to its affairs, as often as reasonably required by the commissioner.

257 The commissioner may refuse to issue a license if the commissioner determines that the
258 administrator, or any individual responsible for the conduct of affairs of the administrator is not
259 competent, trustworthy, financially responsible or of good personal and business reputation, or
260 has had an insurance or an administrator certificate of authority or license denied or revoked for
261 cause by any jurisdiction, or if the commissioner determines that any of the grounds set forth in
262 section 14 exists with respect to the administrator.

263 A license issued under this section shall expire on June thirtieth of each year, unless sooner
264 surrendered, suspended or revoked by the commissioner, but may be renewed by the
265 commissioner on or before said date upon written application of the administrator, subject to all
266 of the provisions of this chapter.

267 An administrator licensed or applying for licensure under this section shall immediately notify
268 the commissioner of any material change in its ownership, control, or other fact or circumstance
269 affecting its qualification for a license in this state.

270 An administrator licensed or applying for licensure under this section shall have and keep in full
271 force and effect a surety bond in the amount \$100,000.

272 No administrator not domiciled in this state shall be licensed to do business until it has filed with
273 the commissioner a power of attorney constituting and appointing the commissioner or his or her
274 successor its true and lawful attorney, upon whom all lawful processes in any action or legal
275 proceeding against it may be served, and therein shall agree that any lawful process against it
276 which may be served upon its said attorney shall be of the same force and validity as if served on
277 the administrator, and that the authority thereof shall continue in force irrevocable so long as any
278 liability of the administrator remains outstanding in this state. The service of such process shall
279 be made by leaving the same in duplicate in the hands of the office of the commissioner. One of
280 the duplicates of such process certified by the commissioner as having been served upon him or
281 her shall be deemed sufficient evidence thereof, and service upon such attorney shall be deemed
282 service upon the principal.

283 Section 12. A person who, in whole or in part, directly or indirectly solicits, underwrites,
284 collects charges or premiums from, or adjusts, settles or pays claims on residents of this state, in

285 connection with life, disability, workers' compensation, annuity or health coverage provided by a
286 bona-fide employee benefit plan which is established by an employer or an employee
287 organization, or both, and for which the insurance laws of this state are preempted pursuant to
288 the Employee Retirement Income Security Act of 1974 shall register with the commissioner
289 annually, verifying its status as herein described.

290 A person who, in whole or in part, directly or indirectly solicits, underwrites, collects charges or
291 premiums from, or adjusts, settles or pays claims on residents of this state, in connection with
292 workers' compensation coverage provided by a workers' compensation self-insurance group, as
293 that term used in sections 25 E through 25 U, inclusive, of chapter fifty-two of the general laws,
294 shall register with the commissioner annually, verifying its status as herein described.

295 Section 13. Each administrator shall file an annual report for the preceding calendar year with
296 the commissioner on or before May 1 annually, or within such extension of time as the
297 commissioner for good cause may grant. The annual report shall include an audited financial
298 statement performed by an independent certified public accountant. An audited financial/annual
299 report prepared on a consolidated basis shall include a columnar consolidating or combining
300 worksheet that shall be filed with the report and include the following: a) amounts shown on the
301 consolidated audited financial report shall be shown on the worksheet; b) amounts for each entity
302 shall be stated separately, and c) explanations of consolidating and eliminating entries shall be
303 included. The report shall be in the form and contain such matters as the commissioner
304 prescribes and shall be verified by at least two (2) officers of the administrator.

305 The annual report shall include the complete names and addresses of all insurers with which the
306 administrator had agreements during the preceding fiscal year.

307 At the time of filing its annual report, the administrator shall pay a filing fee as required by the
308 commissioner.

309 An administrator neglecting to make and file its annual report under this section in the form and
310 within the time provided may be fined not more than \$100 for each day during which such
311 neglect continues.

312 Section 14. The license of an administrator shall be denied, suspended or revoked if the
313 commissioner finds that the administrator: -

314 (i) is in unsound financial condition;

315 (ii) is using such methods or practices in the conduct of its business so as to render its further
316 transaction of business in this state hazardous or injurious to insured persons or the public; or

317 (iii) has failed to pay any judgment rendered against it in this state within 60 days after the
318 judgment has become final.

319 The commissioner may deny, suspend or revoke the license of an administrator if the
320 commissioner finds that the administrator:

321 (i) has violated any lawful rule or order of the commissioner or any provision of the insurance
322 laws of this state;

323 (ii) has refused to be examined or to produce its accounts, records and files for examination, or if
324 any individual responsible for the conduct of affairs of the administrator, including members of
325 the board of directors, board of trustees, executive committee or other governing board or
326 committee; the principal officers in the case of a corporation or the partners or members in the
327 case of a partnership, association or limited liability company; any shareholder or member

328 holding directly or indirectly 10 per cent or more of the voting stock, voting securities or voting
329 interest of the administrator; and any other person who exercises control or influence over the
330 affairs of the administrator; has refused to give information with respect to its affairs or has
331 refused to perform any other legal obligation as to an examination, when required by the
332 commissioner;

333 (iii) has, without just cause, refused to pay proper claims or perform services arising under its
334 contracts or has, without just cause, caused covered individuals to accept less than the amount
335 due them or caused covered individuals to employ attorneys or bring suit against the
336 administrator to secure full payment or settlement of such claims;

337 (iv) at any time fails to meet any qualification for which issuance of the license could have been
338 refused had the failure then existed and been known to the commissioner;

339 (v) or any of the individuals responsible for the conduct of its affairs, including members of the
340 board of directors, board of trustees, executive committee or other governing board or
341 committee; the principal officers in the case of a corporation or the partners or members in the
342 case of a partnership, association or limited liability company; any shareholder or member
343 holding directly or indirectly 10 per or more of its voting stock, voting securities or voting
344 interest; and any other person who exercises control or influence over its affairs; has been
345 convicted of, or has entered a plea of guilty or nolo contendere to, a felony without regard to
346 whether adjudication was withheld;

347 (vi) is under suspension or revocation in another state; or

348 (vii) has failed to timely file its annual report pursuant to section 13.

349 The commissioner may, in his or her discretion and without advance notice or hearing,
350 immediately suspend the license of an administrator if the commissioner finds that one or more
351 of the following circumstances exist:

352 (i) the administrator is insolvent or impaired;

353 (ii) a proceeding for receivership, conservatorship, rehabilitation or other delinquency
354 proceeding regarding the administrator has been commenced in any state; or

355 (iii) the financial condition or business practices of the administrator otherwise pose an
356 imminent threat to the public health, safety or welfare of the residents of this state.

357 If the commissioner finds that one or more grounds exist for the suspension or revocation of a
358 license issued under this Act, the commissioner may, in lieu of, or in addition to, suspension or
359 revocation, impose a fine from \$1,000 to \$10,000 for each and every violation upon the
360 administrator.

361 Section 15. The commissioner may in accordance with provisions of chapter 30A, after notice
362 and hearing, promulgate reasonable rules and regulations necessary to carry out the provisions of
363 this chapter.