HOUSE DOCKET, NO. 1102 FILED ON: 1/16/2013

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 passage of the accompanying:

An Act relative to insurance holding companies.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Michael A. Costello	*1st Essex*

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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

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:

SECTION 1. Section 1 of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended is hereby amended by inserting after the definition of "Insurance company" or "insurer," the following definition:

"NAIC," the National Association of Insurance Commissioners.

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

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

(i) Initiating the establishment of a supervisory college;

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

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

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

(v) Establishing a crisis management plan.

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

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

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

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

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

55 (2) Neither the commissioner nor any person who received documents, materials or other
56 information while acting under the authority of the commissioner or with whom such documents,
57 materials or other information are shared pursuant to this section shall be permitted or required to

58 testify in any private civil action concerning any confidential documents, materials, or
59 information subject to subsection (v)(1).

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

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

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

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

75 (a) specify procedures and protocols regarding the confidentiality and

76 security of information shared with the NAIC and its affiliates and

77 subsidiaries pursuant to this section, including procedures and protocols

78 for sharing by the NAIC with other state, federal or international

79 regulators;

80 (b) specify that ownership of information shared with the NAIC and its

81 affiliates and subsidiaries pursuant to this section remains with the

82 commissioner and the NAIC's use of the information is subject to the

83 direction of the commissioner;

84 (c) require prompt notice to be given to an insurer whose confidential

85 information in the possession of the NAIC pursuant to this section is

86 subject to a request or subpoena to the NAIC for disclosure or

87 production; and

88 (d) require the NAIC and its affiliates and subsidiaries to consent to
89 intervention by an insurer in any judicial or administrative action in
90 which the NAIC and its affiliates and subsidiaries may be required to
91 disclose confidential information about the insurer shared with the
92 NAIC and its affiliates and subsidiaries pursuant to this section.
93 (4) The sharing of information by the commissioner pursuant to this section shall not
94 constitute a delegation of regulatory authority or rulemaking, and the commissioner
95 is solely responsible for the administration, execution and enforcement of the
96 provisions of this section.
97 (5) No waiver of any applicable privilege or claim of confidentiality in the documents,
98 materials or information shall occur as a result of disclosure to the commissioner
99 under this section or as a result of sharing as authorized in subsection (3).
100 (6) Documents, materials or other information in the possession or control of the NAIC
101 pursuant to this section shall be confidential by law and privileged, shall not be a public
102 record under clause Twenty-sixth of section seven of chapter four, shall not be subject to
103 subpoena, and shall not be subject to discovery or admissible in evidence in any private civil
104 action.

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

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