

# HOUSE . . . . . No. 6886

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## *The Commonwealth of Massachusetts*

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HOUSE OF REPRESENTATIVES, November 13, 1985.

The committee on Bills in the Third Reading, to whom was referred the Bill relative to investment practices of life insurance companies (Senate, No. 1052); and the Bill further regulating domestic insurance companies (Senate, No. 1054), reports recommending that the same be consolidated and amended by substitution of a bill (House, No. 6886).

For the committee,

DAVID B. COHEN.

## The Commonwealth of Massachusetts

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In the Year One Thousand Nine Hundred and Eighty-Five.

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### AN ACT RELATIVE TO INVESTMENT PRACTICES OF LIFE INSURANCE 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 63 of chapter 175 of the General Laws, as  
2 appearing in the 1984 Official Edition, is hereby amended by  
3 inserting after the word "mortgagee," in line 162, the words: — or a  
4 mortgagee under paragraph 7B.

1 SECTION 2. Said section 63 of said chapter 175, as so appear-  
2 ing, is hereby further amended by striking out, in line 176, the word  
3 "limitations" and inserting in place thereof the word: — provisions.

1 SECTION 3. Said section 63 of said chapter 175, as so appear-  
2 ing, is hereby further amended by inserting after paragraph 7A the  
3 following paragraph: —

4 7B. In loans of the same classes as those described in paragraphs  
5 7 and 7A and subject to the provisions therein expressed except  
6 that the security for any such loan may be a junior lien upon the  
7 real property or leasehold estate securing such loan if the sum of  
8 the amounts unpaid on loans secured by prior mortgage liens and  
9 the amount of such loan does not exceed (i) seventy-five per cent of  
10 the fair market value of such real property or leasehold estate at the  
11 time of making such loan if clause (ii) of this paragraph 7B is not  
12 applicable or, (iii) ninety per cent of the fair market value thereof if  
13 such loan is secured by a junior lien upon residential real property  
14 designed for occupancy by not more than four families and if the  
15 terms of such loan otherwise meet the requirements of the second  
16 sentence of said paragraph 7. Real property and leasehold estates  
17 shall not be deemed to be encumbered within the meaning of said  
18 paragraph 7 by reason of the existence of prior mortgage liens

19 permitted by this paragraph provided that, other than such prior  
20 mortgage liens, there is no condition or right of reentry or forfei-  
21 ture under which such junior lien can be cut off, subordinated or  
22 otherwise disturbed.

1 SECTION 4. Paragraph 14A of said section 63 of said chapter  
2 175, as so appearing, is hereby amended by striking out the first  
3 sentence and inserting in place thereof the following sentence: — In  
4 the bonds, notes or other evidences of indebtedness issued,  
5 assumed or guaranteed by companies incorporated under the laws  
6 of the United States, or any state thereof, or of the Dominion of  
7 Canada or any province thereof, or of associations or trusts as  
8 defined in section one of chapter one hundred and eighty-two,  
9 whose net earnings during either of the last two fiscal years next  
10 preceding the date of investment and whose average net earnings  
11 during the five fiscal years next preceding the date of investment,  
12 have been not less than (1) one and one-half times the average fixed  
13 charges for said period if such company, association or trust is not  
14 engaged in wholesale, retail, installment, commercial or consumer  
15 financing, factoring or the small loan business, or is not a bank  
16 chartered or incorporated under the laws of the United States or  
17 any state thereof, or (2) one and fifteen one-hundredths times the  
18 average fixed charges for said period if such company, association  
19 or trust is so engaged or is a bank chartered or incorporated under  
20 the laws of the United States or any state thereof.

1 SECTION 5. Clause (2) of paragraph 14C of said section 63 of  
2 said chapter 175, as so appearing, is hereby amended by striking  
3 out subclause (b) and inserting in place thereof the following  
4 subclause: — (b) the net earnings of any lessee under (2), or of any  
5 such company, association or trust assuming or guaranteeing said  
6 lease, during either of the last two fiscal years next preceding the  
7 date of investment and the average net earnings of such lessee, or  
8 company, association or trust assuming or guaranteeing said lease,  
9 during the five fiscal years next preceding the date of investment,  
10 have been not less than (1) one and one-half times the average fixed  
11 charges for said period if such company, association or trust is not

12 engaged in wholesale, retail, installment, commercial or consumer  
13 financing, factoring or the small loan business, or is not a bank  
14 chartered or incorporated under the laws of the United States or  
15 any state thereof: or (2) one and fifteen-one hundredths times the  
16 average fixed charges for said period if such company, association  
17 or trust is so engaged or is a bank chartered or incorporated under  
18 the laws of the United States or any state thereof.

1 SECTION 6. The second paragraph of section 64 of said chap-  
2 ter 175, as so appearing, is hereby amended by striking out the  
3 second sentence and inserting in place thereof the following sen-  
4 tence: — The board of directors, or committee thereof, referred to  
5 above, may authorize by vote duly recorded in the books of the  
6 company, one or more officers of the company or of any other  
7 person in the investment advisory business to acquire or dispose of  
8 investments for such company between meetings of said board or  
9 committee, under such restrictions and conditions as said board, or  
10 committee thereof, shall deem advisable, and a copy of such  
11 authorization shall be filed with the commissioner; provided, how-  
12 ever, that for the purpose of this sentence any such person in the  
13 investment advisory business, except a company which controls, is  
14 controlled by, or is under common control with such domestic  
15 company, shall be registered as an investment adviser under the  
16 Investment Advisers Act of 1940 enacted by Congress on August  
17 twenty-second, nineteen hundred and forty as amended from time  
18 to time, or any similar statute enacted in substitution therefor, and  
19 have at least one hundred million dollars of assets under manage-  
20 ment.

1 SECTION 7. Section 65 of said chapter 175, as so appearing, is  
2 hereby amended by striking out, in line 19, the word “five”, and  
3 inserting in place thereof the word: — ten.

1 SECTION 8. Said section 65 of said chapter 175, as so appear-  
2 ing, is hereby further amended by striking out, in line 4 and in line  
3 25, the words “paragraph 7 or paragraph 7A” and inserting in place  
4 thereof, in each instance, the word: — paragraph 7, 7A or 7B.

1 SECTION 9. The first paragraph of section 66 of said chapter  
2 175, as so appearing, is hereby amended by striking out the second  
3 and third sentences and inserting in place thereof the following two  
4 sentences: — No domestic life company shall invest in, acquire or  
5 hold directly or indirectly more than twenty-five percent of the  
6 capital stock of any corporation, other than a life company or  
7 except as otherwise provided in either section sixty-six C or section  
8 sixty-six D; nor, except as otherwise provided in section sixty-six  
9 C, shall more than two per cent of its assets be invested in the  
10 capital stock of any one corporation, other than a life company,  
11 without the approval of the commissioner, and such approval shall  
12 be granted only if after making such investment such life com-  
13 pany's surplus shall be reasonable in relation to its outstanding  
14 liabilities and adequate to its financial needs.

15 The disposition of the property of a domestic life company shall  
16 be at all times the responsibility of its board of directors.

1 SECTION 10. The second paragraph of said section 66 of chap-  
2 ter 175, as so appearing, is hereby amended by striking out the first  
3 sentence and by inserting in place thereof the following sentence: —  
4 Nothing in this section or in section sixty-three shall prevent such a  
5 life company from investing or loaning any funds, not required to  
6 be invested as provided in section sixty-three, in any manner that  
7 the directors may determine; provided, however, that no loan of  
8 such funds shall be made to an individual unless it is secured by  
9 collateral security; and provided, further, that such funds shall not  
10 be invested in the purchase of stock or evidence of indebtedness  
11 prohibited by the preceding paragraph except as hereinafter  
12 provided.

1 SECTION 11. Said section 66 of chapter 175, as so appearing,  
2 is hereby further amended by striking out the third paragraph and  
3 inserting in place thereof the following paragraph: —

4 Nothing in this section or in section sixty-three shall prevent  
5 such a life company from investing or loaning any funds, not  
6 required to be invested as provided in section sixty-three, in the  
7 transferrable certificates of participation or shares, bonds, notes or  
8 other evidences of indebtedness whether or not secured by collat-

9 eral, of an association or trust as defined in section one of chapter  
10 one hundred and eighty-two. Any such association or trust shall be  
11 treated as if it were a corporation for purposes of this section and of  
12 section sixty-six D.

1 SECTION 12. The second paragraph of section 132F of said  
2 chapter 175, as so appearing, is hereby amended by inserting after  
3 the word "contracts" in line 11, the words: — or any other policies  
4 or contracts and by striking out the words "which meets the  
5 requirements for the tax treatment specified in sections 402(a),  
6 402(c), 402(d), 403(a), or 403(b) of the Internal Revenue Code of  
7 1954, as such sections may at any time be in force."

1 SECTION 13. The third paragraph of said section 132F of said  
2 chapter 175, as so appearing, is hereby amended by adding the  
3 following sentence: — If and to the extent so provided under the  
4 applicable contracts, that portion of the assets of a separate  
5 account equal to the reserves and other contract liabilities with  
6 respect to such account shall not be chargeable with liabilities  
7 arising out of any other business the life company may conduct.

1 SECTION 14. Section 132H of said chapter 175, as so appear-  
2 ing, is hereby amended by striking out the second sentence.

1 SECTION 15. The first paragraph of section 141 of said chap-  
2 ter 175, as so appearing, is hereby amended by adding the following  
3 sentence: — This safety fund shall be in addition to any safety fund  
4 accumulated from a mutual domestic life company's surplus funds  
5 attributable to its nonparticipating business, which funds may be  
6 appointed equitably, in the discretion of the company, as part of  
7 any annual dividend on participating business.

1 SECTION 16. Said chapter 175 is hereby further amended by  
2 striking out section 149, as so appearing, is hereby further amended  
3 by striking out section 149, and inserting in place thereof the  
4 following section: —

5 Section 149. A domestic life company is authorized to issue  
6 both participating and nonparticipating policies of life, endow-

7 ment and accident and sickness insurance, and annuity and pure  
8 endowment contracts, but no such company shall issue any such  
9 participating policies or contracts which do not by their terms give  
10 to the holders thereof full right to participate in the accumulations  
11 of said company attributable to such business as provided in  
12 section one hundred and forty.

13 Every domestic mutual and stock life company issuing both  
14 participating and nonparticipating policies or contracts shall file  
15 with the commissioner each year together with its annual statement  
16 for the year a separate calculation of its annual analysis of opera-  
17 tions by line of business.

18 A domestic life company issuing policies or contracts on the  
19 nonparticipating plan may provide therein that, in addition to the  
20 rate of interest guaranteed by the company to be paid on deferred  
21 payments of the proceeds, excess interest may be paid thereon at  
22 such rate as the company may annually declare; and the inclusion  
23 in any nonparticipating policy or contract of such provision shall  
24 not be construed to make the policy or contract participating.

25 The provisions of sections ninety-four, one hundred and ten, one  
26 hundred and thirty-two D and one hundred and thirty-seven rela-  
27 tive to membership and voting rights shall not apply to nonparti-  
28 cating policies and contracts issued by a domestic mutual life  
29 company under this section, unless the domestic mutual life com-  
30 pany elects to provide membership and voting rights in the policy  
31 or contract.

32 This section shall not apply to policies of reinsurance.

