

**HOUSE . . . . . No. 4413**

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*The Commonwealth of Massachusetts*

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HOUSE OF REPRESENTATIVES, January, 7, 2004.

The committee on Insurance, to whom was referred the petition (accompanied by bill, House, No. 2256) of John P. Fresolo relative to investments of certain life insurance companies, reports recommending that the accompanying bill (House, No. 4413) ought to pass.

For the committee,

RONALD MARIANO.

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Three.

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AN ACT RELATIVE TO THE INVESTMENT LAWS 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 Massachusetts  
2 General Laws shall be amended by adding after paragraph 14A  
3 the following new paragraph, 14A½:—  
4 14A½. Notwithstanding the provisions of paragraph 14A, a  
5 domestic stock or mutual life company may invest three fourths of  
6 its reserve in obligations issued, assumed or guaranteed by busi-  
7 ness entities organized under the laws of the United States or any  
8 state thereof or in the Dominion of Canada or any province or ter-  
9 ritory thereof or in obligations that are foreign investments  
10 without regard to the limitations that appear in paragraph 14A,  
11 provided that: (a) either the obligations, or the long-term debt of  
12 the business entity or business entities issuing, assuming or guar-  
13 anteeing the obligations, (1) are initially rated at least BBB- or  
14 Baa3 or the equivalent thereof by any of the nationally recognized  
15 statistical rating organizations recognized by the NAIC-SVO, (2)  
16 are initially rated one (1) or two (2) by the NAIC-SVO subsequent  
17 to such acquisition, or (3) subject to the NAIC-SVO's initial  
18 rating if not successfully appealed by the insurer, are provisionally  
19 rated NAIC-SVO 1Z or 2Z by the insurer; and (b) if, after giving  
20 effect to each investment in an obligation that is a foreign invest-  
21 ment, (1) the aggregate amount of foreign investments then held  
22 by such domestic stock or mutual life company under this sen-  
23 tence would not exceed fourteen percent (14%) of its admitted  
24 assets and (2) the aggregate amount of foreign investments then  
25 held by such domestic stock or mutual life company under this  
26 sentence is a single foreign jurisdiction would not exceed eight  
27 percent (8%) of such company's admitted assets.

28 “Business entity” includes a sole proprietorship, corporation,  
29 limited liability company, association, general or limited partner-  
30 ship, joint stock company, joint venture, mutual fund, bank, trust,  
31 real estate investment trust, joint tenancy or other similar form of  
32 business organization, whether organized for-profit or non-profit.

33 “Foreign investment” means an investment in, or an investment  
34 in a company, person, real estate or asset domiciled in, a jurisdic-  
35 tion other than the United States or any state thereof, or Canada or  
36 any province or territory thereof. An investment shall not be  
37 deemed to be foreign if the issuing person, qualified credit source  
38 or qualified guarantor is, or is a person or company organized or  
39 domiciled in, the United States or any state thereof, or Canada or  
40 any province or territory thereof, unless:

41 (A) The issuing person is a shell business entity; and

42 (B) The investment is not assumed, accepted, guaranteed or  
43 insured or otherwise backed by the United States or any state  
44 thereof, or Canada or any province or territory thereof, or a person  
45 which is not a shell business entity that is domiciled in the United  
46 States or any state thereof, or Canada or any province or territory  
47 thereof.

48 For the purposes of this definition:

49 (i) “Shell business entity” means a business entity having no  
50 economic substance, except as a vehicle for owning interests in  
51 assets issued, owned or previously owned by a person domiciled  
52 in a foreign jurisdiction;

53 (ii) “Qualified guarantor” means a guarantor against which an  
54 insurer has a claim for full and timely payment, evidenced by a  
55 contractual right for which and enforcement action can be brought  
56 in the United States or Canada or any political subdivision  
57 thereof, and

58 (iii) “Qualified credit source” means the credit source to which  
59 an insurer looks for payment as to an investment and against  
60 which an insurer has a claim for full and timely payment, evi-  
61 denced by a contractual right for which an enforcement action can  
62 be brought in the United States or Canada or any political subdivi-  
63 sion thereof.

64 “Foreign jurisdiction” means a jurisdiction other than the  
65 United States or any state thereof, or Canada or any province or  
66 territory thereof.

67 “NAIC-SVO” means the Securities Valuation Office of the  
68 National Association of Insurance Commissioners.

69 “Obligation” means a note, bond, debenture, trust certificate,  
70 equipment trust certificate, production payment, negotiable bank  
71 certificate of deposit, bankers’ acceptance, asset-backed security,  
72 NAIC-SVO credit tenant loan, loan secured by financing a net  
73 lease or net leases, and other evidence or indebtedness or other  
74 obligation for the payment of money (or participations, certifi-  
75 cates or other evidences of an interest in any of the foregoing),  
76 whether constitution a general obligation of the issuer or payable  
77 only out of certain revenues or certain funds pledged or otherwise  
78 dedicated for payment.

1 SECTION 2. Section 66E of chapter 175 of the Massachusetts  
2 General Laws is hereby amended by striking the first sentence in  
3 its entirety and replacing it with the following:—

4 A domestic life company may invest in or otherwise acquire  
5 and hold a limited partnership interest in any limited partnership  
6 formed (1) pursuant to chapter one hundred and nine or (2) pur-  
7 suant to the laws of any state or of the United States, or Canada or  
8 any province or territory thereof or (3) pursuant to the laws of any  
9 foreign jurisdiction that has a long-term debt rating at the time the  
10 investment is made of at least A- or A3 or the equivalent thereof  
11 by any of the nationally recognized statistical rating organizations  
12 recognized by the NAIC-SVO.

1 SECTION 3. Section 66F of chapter 175 of the Massachusetts  
2 General Laws is hereby amended by striking the first sentence in  
3 its entirety and replacing it with the following:—

4 A domestic life company may invest in or otherwise acquire  
5 and hold a limited liability company interest in any limited lia-  
6 bility company formed (1) pursuant to the General Laws or (2)  
7 pursuant to the laws of any state or of the United States, or  
8 Canada or any province or territory thereof, or (3) pursuant to the  
9 laws of any foreign jurisdiction that has a long-term debt rating at  
10 the time the investment is made of at least A- or A3 or the equiva-  
11 lent thereof by any of the nationally recognized statistical rating  
12 organizations recognized by the NAIC-SVO.

1 SECTION 4. Section 63 of chapter 175 of the General Laws, as  
2 appearing in the 2002 Official Edition, is hereby amended by  
3 inserting in line 101 after the word “unexpired” the following:—

4 “as of the date of the loan, including all renewal or extension  
5 terms the exercise of which is within the control of the borrower  
6 or the lender.”.

1 SECTION 5. Section 63 of chapter 175 of the General Laws, as  
2 appearing in the 2002 Official Edition, is hereby amended by  
3 striking in lines 152 and 153 the words “ and payments of interest  
4 only may be made for a period not to exceed five years” and  
5 inserting in place thereof the following:—

6 “except that payments of interest only may be made for a  
7 period not to exceed five years for loans with a loan to value ratio  
8 in excess of sixty per cent”.

1 SECTION 6. Section 63 of chapter 175 of the General Laws, as  
2 appearing in the 2002 Official Edition, is hereby amended by  
3 striking the text following the words “eighty-three” in line 157  
4 through line 175 and inserting in place thereof the following:—

5 “No loan on such real property or such leasehold estate which  
6 is a participation or a part of a series or issue secured by the same  
7 mortgage instrument shall be authorized by this paragraph unless  
8 (1) the entire series or issue, which is secured by the same mort-  
9 gage instrument, is held by the company, (2) the company holds a  
10 participation in such mortgage instrument giving it substantially  
11 the rights of a first mortgagee, or a mortgagee under paragraph 7B  
12 or (3) the loan is evidenced by one or more bonds, certificates,  
13 notes or other evidences of indebtedness held by such company or  
14 such company holds a participating interest therein and such  
15 bonds, certificates, notes or other evidences of indebtedness form  
16 part of a series or issue of obligations or aggregate amount of  
17 indebtedness secured by a mortgage instrument to a domestic or  
18 foreign insurer admitted and qualified to transact business in the  
19 commonwealth or in trust to a bank or trust company or other  
20 entity, with or without a co-trustee, competent to act as trustee or  
21 collateral agent in the state of its domicile, provided that (i) the  
22 bonds, certificates, notes or other evidences of indebtedness give  
23 the holder substantially the rights of a first mortgagee, or a mort-

24 gagee under paragraph 7B, (ii) the total amount of each series or  
25 issue or the aggregate amount of indebtedness complies with the  
26 restrictions of this paragraph respecting the ratio of loan to fair  
27 market value, and (iii) the security for such loan complies with all  
28 other provisions of this paragraph.”

1 SECTION 7. Section 63 of chapter 175 of the General Laws, as  
2 appearing in the 2002 Official Edition, is hereby amended by  
3 inserting in line 378 after the words “certificates of deposit,” the  
4 following:—  
5 “letters of credit”.



