HOUSE DOCKET, NO. 3370 FILED ON: 1/16/2015

HOUSE . . . . . No. 776

The Commonwealth of Massachusetts

PRESENTED BY:

James Arciero

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 adoption of the accompanying bill:

An Act to amend the insurance law, in relation to providing protection to certain retirees from pension de-risking transactions.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
James Arciero	*2nd Middlesex*
Richard Ferry	*3 Tenney Road Westford, MA 01886*

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By Mr. Arciero of Westford, a petition (accompanied by bill, House, No. 776) of James Arciero and Richard Ferry for legislation to provide protections to retirees whose pension benefits are transferred from a pension plan protected under the Employee Retirement Income Security Act to a substitute pension benefit provider. Financial Services.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act to amend the insurance law, in relation to providing protection to certain retirees from pension de-risking transactions.

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. Short Title

This act shall be known and may be cited as the Pension De-Risking Act.

Section 2. Statement of Purpose

To provide protections to retirees whose pension benefits are transferred from a pension plan protected under the Employee Retirement Income Security Act ("ERISA") to a substitute pension benefit provider such as an insurance company licensed and regulated under state law.

Section 3. Declaration of Legislative Findings and Intent

Retiree benefits under pension plans that were previously protected under ERISA are increasingly being transferred to insurance companies in pension de-risking or "pension stripping" transactions involving the purchase of group annuity contracts governed under state

11 law. State laws should be enacted or amended to provide reasonably equivalent protection to
12 retirees in de-risking transactions who lose benefits Congress intended under ERISA.

13 Section 4. Applicability

14 This Act shall apply to any insurance company or other benefit provider that issues a
15 group annuity contract or other retirement funding vehicle governed by state law to replace
16 pension plan benefits under a retirement plan previously governed by ERISA.

17 Section 5. Regulatory Approval

18 All pension de-risking or pension stripping transactions that divest retirees of ERISA
19 protections shall be approved by the Commissioner prior to implementation.

20 Section 6. Third-Party Guaranty or Reinsurance

21 All de-risking transactions shall include supplemental protections in the form of a third
22 party guarantee or reinsurance contract designed to equal the scope and breadth of the coverage
23 provided by the Pension Benefit Guaranty Corporation ("PBGC") under ERISA. Such third
24 party guaranty or reinsurance arrangement shall cover disruptions or shortfalls in payments due
25 to retirees in the event of an annuity provider insolvency up to limits that mirror PBGC coverage
26 or as otherwise established by the Commissioner. Third party guaranty or reinsurance coverage
27 amounts shall only payable when there is an actual reduction or delay in scheduled benefit
28 payments to retirees. Third party guaranty arrangements and reinsurance contracts shall be
29 designed to supplement and/or enhance state guaranty association contributions so as to avoid
30 disruption and/or reduction of benefit payments to retirees whenever possible. Third party
31 guaranty providers and reinsurers may assert statutory subrogation rights against insolvent

32 insurers and guaranty associations only after payment in full is made to retirees protected
33 hereunder.

34 Section 7. Mandatory Disclosures

35 That the insurance laws of Massachusetts under Chapter 175 be amended to:

36 A. Require mandatory disclosures by the benefit provider to all retirees whose
37 benefits are transferred in a pension de-risking or annuitization transaction to an insurance
38 company or other benefit provider regulated under state law with the following information prior
39 to the effective date of the transfer:

40 1. A detailed disclosure statement that contains information regarding the loss of
41 federal ERISA protections, including PBGC protection and the applicable state laws that will
42 govern their future annuity payments;

43 2. The amount, scope and conditions precedent for state guaranty association
44 coverage or any supplemental coverage provided under state law in the event of an insurance
45 company insolvency;

46 3. The extent to which annuity payments may become subject to creditor claims or
47 avoidance actions by bankruptcy trustees;

48 4. Disclosure of any change in the tax treatment of retiree benefits under an annuity
49 contract or other funding vehicle that replaces pension benefits under an ERISA protected plan;

50 5. Detailed information on the group annuity contract structure, including a schedule
51 of all costs and expenses paid in connection with the transaction; and

52 6. A copy of any fairness opinions or solvency analysis done in connection with the
53 choice of annuity or other benefit provider.

54 B. Require mandatory annual disclosures by the benefit provider to all retirees whose
55 benefits are transferred to an insurance company or alternative benefit provider in a de-risking
56 transaction of at least the following:

57 1. Funding levels of all assets relative to expected liabilities under the assumed
58 pension benefit schedules;

59 2. Investment performance summary by asset class;

60 3. Investment performance detail by asset class;

61 4. Expenses associated with any group annuity contract which shall include
62 payments made to retirees and administrative expenses;

63 5. Changes in actuarial assumptions, if any; and

64 6. A list of all disclosure materials filed with the state Insurance Department and
65 procedures for obtaining copies of any such materials at a reasonable cost to retirees.

66 Section 8. Opt Out Option

67 Retirees subject to pension de-risking transactions shall receive at least 90 days' prior
68 written notice and an opportunity to opt out from any pension de-risking transaction that attempts
69 to transfer retiree benefits from an ERISA protected plan to a substitute pension benefit provider
70 governed under state law. Retirees choosing to opt out of any de-risking transaction shall be
71 given other options by the annuity provider at least one of which shall include an upfront lump

72 sum payout of the net present value of the individual retiree's future benefits discounted at a rate
73 no greater than 200 basis points over the average for the 10 year United States Treasury Note
74 over the preceding 90 day period.

75 Section 9. Assets for Benefit of Retirees

76 Insurance companies, annuity providers, and other benefit providers that replace pension
77 plans in de-risking transactions shall hold retiree assets in trust for the benefit of the retirees.

78 Section 10. Creditor protections for annuity payments

79 Annuity payments under group annuity contracts that replace pension benefits under
80 ERISA protected defined benefit plans shall be exempt from the claims of creditors and
81 bankruptcy trustees other than claims arising under a qualified domestic relations order.

82 Section 11. Lump sum options for retirees

83 Retirees subject to pension de-risking transactions shall have the right to request a lump
84 sum cash out option at transfer and at regular intervals thereafter provided the retiree can certify
85 that they received independent legal or financial advice regarding the tax consequences and
86 dissipation risks associated with lump sum distributions.

87 Section 12. Subsequent transfers

88 No group annuity contract issued in connection with a de-risking transaction can be
89 subsequently transferred by the owner or annuity provider without prior written approval by the
90 Commissioner which approval shall be conditioned upon a favorable solvency analysis obtained
91 from an independent entity approved by the Commissioner.

92 Section 13. Retiree Disclosure Notice

93 Every insurer or other benefit provider to which this Act applies shall mail or cause to be
94 mailed to every annuitant, retiree, policyholder or subscriber, within 90 days of the effective date
95 of this Act, a notice regarding the Act's provisions. The form of such notice shall be prescribed
96 by the Commissioner.

97 Section 14. Regulations

98 The Commissioner is empowered to promulgate regulations necessary for the
99 implementation of this Act, including fines, assessments or penalties for failure to comply with
100 this Act.

101 Section 15. Effective Date

102 This Act shall take effect 90 days subsequent to its enactment and shall apply to any
103 pension de-risking or annuitization transaction that has the effect of divesting retirees of ERISA
104 protections.