

**Acts****1998****CHAPTER 259** AN ACT INSURING COMMUNITY INVESTMENT AND THE EQUITABLE TAXATION OF INSURANCE COMPANIES IN MASSACHUSETTS.

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. Chapter 63 of the General Laws is hereby amended by inserting after section 29B the following three sections:-

Section 29C. A life insurance company subject to the excise imposed by either sections [20](#) or [22](#) shall be allowed a credit against either such excise equal to 1½ per cent of such company's total capital contribution in excess of their full proportionate share which shall mean an investment in the Massachusetts life insurance company community investment initiative equal to at least the product of the following:-

(1) \$20,000,000;

(2) multiplied by a fraction, the numerator of which shall be the life insurance company's total net investment income tax due and payable under [section 22B of chapter 63](#) for the tax year ending on or before December 31, 1997 and the denominator of which shall be the total net investment tax due and payable under said [section 22B](#) for all life insurance companies doing business in the commonwealth for the tax year ending on or before December 31, 1997. For a company that was not subject to said [section 22B](#) in the tax year ending on or before December 31, 1997, the numerator shall be the life insurance company's total net investment income tax due and payable under said [section 22B](#) for the taxable year two years prior to the current taxable year. The department of revenue shall determine each company's full proportionate share and shall provide such information to said company within 30 days of receipt of a request by said company, for the existence of such initiative, provided, however, in the taxable year beginning on or after the fifth year, the amount of said credit shall be equal to 1.5 per cent of such company's total capital contribution.

Section 29D. A property and casualty insurance company subject to the excise upon premiums imposed by either sections [22](#) or [23](#) shall be allowed a credit against either such excise equal to 1½ per cent of such company's total capital contribution in excess of their full proportionate share which shall mean an investment in the Massachusetts property and casualty insurance company community and economic development initiative equal to at least the product of the following:

(1) \$20,000,000;

(2) multiplied by a fraction, the numerator of which shall be the property and casualty insurance company's total gross investment tax under [section 22A of chapter 63](#) for the tax year ending on or before December 31, 1997 and the denominator of which shall be the total gross investment tax under said [section 22A](#) for all property and casualty insurance companies doing business in the commonwealth for the tax year ending on or before December 31, 1997. For a company that was not subject to said [section 22A](#) in the tax year ending on or before December 31, 1997, the numerator shall be the P&C insurance company's total net investment income tax due and payable under said [section 22A](#) for the taxable year two years prior to the current taxable year. The department of revenue shall determine said company's full proportionate share and shall provide such information to said company within 30 days of receipt of a request by said company, for the existence of such initiative, provided, however, in the taxable year beginning on or after the fifth year, the amount of said credit shall be equal to 1.5 per cent of such company's total capital contribution.

Section 29E. (a) As used in this section, the following words shall have the following meanings:-

"Credit share", a credit amount equal to the product of the following:

(1) \$8,000,000;

(2) multiplied by a fraction, the numerator of which shall be the domestic property and casualties insurer's retaliatory taxes attributable to the surtax which would have been payable for the preceding taxable year, before application of the credit provided by subsection (b) and the denominator of which shall be the total retaliatory taxes attributable to the surtax which would have been payable for the preceding taxable year, before application of the credit provided by subsection (b) for all domestic property and casualty companies that do business in the commonwealth and that have submitted the information required by subsection (d).

"Domestic property and casualty insurer", a property and casualty company organized or domiciled in the commonwealth.

"Foreign property and casualty insurer", a property and casualty company organized or domiciled in another jurisdiction.

"Property and casualty insurer", an insurance company which satisfies the definition of an insurance company in [section 1 of chapter 175](#), except life insurance companies as defined in [section 118 of said chapter 175](#), and which is subject to the provisions of this chapter.

"Retaliatory taxes", those taxes imposed or assessed by and paid to another jurisdiction by any domestic property and casualty insurer due to the surtax imposed by section 18 of chapter 546 of

the acts of 1969. Such term, however, shall not include penalties or interest for late payment of taxes.

(b) Property and casualty insurers which pay retaliatory taxes to other jurisdictions may claim a credit against the tax imposed by [section 22 of chapter 63](#) of the General Laws. Except as provided in subsection (c), the amount of the credit shall equal 100 per cent of the retaliatory taxes attributable to the surtax which would have been payable for the preceding taxable year, before application of any credit. The company seeking the credit must furnish proof of payment of the retaliatory tax to the commissioner as required pursuant to subsection (d).

(c) If the total retaliatory taxes attributable to the surtax payable for the prior tax year as reported pursuant to subsection (d) for all domestic property and casualty companies that do business in the commonwealth exceed \$8,000,000, the amount of each domestic property and casualty company's credit shall be limited to that company's credit share. The commissioner of revenue shall be responsible for reporting to each company its credit share amount by February fifteenth of the current taxable year.

(d) A domestic property and casualty company shall provide the commissioner of revenue with the amount of its retaliatory taxes attributable to the surtax and payable for the preceding taxable year, before application of the credit, by December 31 of the current taxable year.

SECTION 2. (a) Subsections (a) to (g), inclusive shall be known as the Massachusetts Life Insurance Company Community Investment Initiative Act.

(b) In this section the following words shall have the following meaning:

"Admitted assets", the assets of a life insurance company sufficient to meet policyholders claims and obligations of the company valued by the commissioner in accordance with the standards set forth under [chapter 175](#) of the General Laws and as reported in the insurance company's annual statement required to be filed thereunder.

"Aggregate cumulative investment", the sum of the accumulated capital contributions, without reference to investment results, by all life insurance companies participating in the Massachusetts Life Insurance Company Community Investment Initiative Act.

"Base investment share amount", the number obtained by multiplying 25 per cent of the Massachusetts life insurance company community investment initiative's aggregate cumulative investment by a fraction, the numerator of which shall be the sum of the Massachusetts office of business development (MOBD) unemployment factor for a particular MOBD region and the MOBD labor force factor for that region and the denominator of which shall be two.

"Commissioner", the commissioner of insurance.

"Community development lender", a community development financial institution as defined pursuant to 12 USC section 4702,

12 U. S. C. § 4702

a non-profit organization, government agency, quasi-government agency, or any other organization whose mission is community and economic development, or affordable housing.

"Financial intermediary", any non-profit, public or quasi-public organization or agency that assembles public or private capital for the purposes of making qualified investments, as defined herein.

"Full proportionate share", an investment in the Massachusetts life insurance company community investment initiative equal to at least the product of the following:

(1) \$20,000,000;

(2) multiplied by a fraction, the numerator of which shall be the life insurance company's total net investment income tax due and payable under [section 22B of chapter 63](#) of the General Laws for the tax year ending on or before December 31, 1997 and the denominator of which shall be the total net investment tax due and payable under said [section 22B](#) for all life insurance companies doing business in the commonwealth for the tax year ending on or before December 31, 1997. For a company that was not subject to said [section 22B](#) in the tax year ending on or before December 31, 1997, the numerator shall be the life insurance company's total net investment income tax due and payable under said [section 22B](#) for the taxable year two years prior to the current taxable year. The department of revenue shall determine each company's full proportionate share and shall provide such information to said company within 30 days of receipt of a request by said company.

"Life insurance company", a corporation, which satisfies the definition of either a domestic or foreign life insurance company in either [section 118 of chapter 175](#) of the General Laws or [section 19F of said chapter 175](#), and which is subject to the provisions of [chapter 63](#) of the General Laws.

"Low and moderate income community", an economic target area as defined pursuant to [section 3A of chapter 23A](#) of the General Laws, an enhanced economic enterprise community or empowerment zone as designated by the United States Department of Housing and Urban Development, or one or more contiguous census tracts as designated by a city or town, in which either: (1) a majority of the households are low and moderate income households as defined herein; or (2) the unemployment rate is at least 25 per cent higher than the annual statewide average unemployment rate where such statewide unemployment rate is less than or equal to 5 per cent; provided that, if the annual statewide average unemployment rate is greater than 5 per cent, the community's unemployment rate need only be 10 per cent higher to qualify for investment by the life initiative.

"Low and moderate income households", households which have incomes that do not exceed 80 per cent of the median income for the area, with adjustments made for smaller and larger families, as such median shall be determined from time to time by the Secretary of Housing and Urban Development pursuant to 42 USC section 1437(a)(B)(2).

42 U. S. C. § 1437(a)(B)(2)

"Massachusetts life insurance company community investment initiative" or "Life initiative" an entity or its successor, created by life insurance companies, or the successor to any such companies, pursuant to this section for the public purposes described herein.

"Massachusetts office of business development labor force factor" or the "MOBD labor force factor", a fraction, the numerator of which shall be the labor force of a particular MOBD region for the previous 12 months beginning July 1 and ending June 30 as reported by the department of employment and training and the denominator of which shall be the sum of the labor force of each MOBD region for the same period.

"Massachusetts office of business development region" or "MOBD region", one of the five geographic areas of the commonwealth, the boundaries of which may be determined from time to time by the Massachusetts office of business development established pursuant to [section 1 of chapter 23A](#) of the General Laws, or its successor; provided, however, that no region shall be smaller than one county in size; and provided further, that there shall be a western region, a central region, a northeast region, a greater Boston region, and a southeast region.

"Massachusetts office of business development unemployment factor" or "MOBD unemployment factor", a fraction, the numerator of which shall be the annual average unemployment rate of the particular MOBD region for the previous 12 months beginning July 1 and ending June 30 as reported by the department of employment and training and the denominator of which shall be the sum of the annual average unemployment rate of each MOBD region for the same period.

"Minority business enterprise", a business which meets the definition of "Minority business enterprise" in [section 40 of chapter 23A](#) of the General Laws.

"Participating life insurance company", a life insurance company participating in the life initiative.

"Person", an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, trust, unincorporated organization or any similar entity.

"Qualified interim investment", (1) marketable general obligations of the commonwealth, its agencies or political subdivisions thereof; and (2) debt maturing less than one year from the date of its issuance. The total of all such investment at any point in time shall not exceed the greater of: (i) the amount received by the life initiative in cash as contributions from the participating life insurance

companies during the preceding calendar year; or (ii) 10 per cent of the aggregate cumulative investment made in said life initiative. Such investments shall be utilized for the sole purpose of investing the money of said life initiative on an interim basis until such time as the money is invested or reinvested in a qualified investment. In no instance shall the money be in any one qualified interim investment for more than 24 consecutive months during the first five years of said life initiative's existence nor for longer than for 12 consecutive months in any one qualified interim investment thereafter.

"Qualified investment", any investment made, or a commitment to make an investment within the commonwealth which provides a prudent and sound investment opportunity and: (1) provides an investment in minority or women business enterprises; (2) provides an investment in small businesses; (3) provides an investment in rental housing or home ownership opportunities targeted to low and moderate income households or low and moderate income communities; (4) provides an investment that will create jobs for low and moderate income households living in a low and moderate income community; (5) provides an investment in community health centers that serve low and moderate income communities; (6) provides an investment in the Community Development Finance Corporation; or (7) provides an investment in the Massachusetts Housing Partnership Fund.

A qualified investment shall be made directly, through a community development lender, or through a financial intermediary.

A qualified investment shall take the form of one or more of the following instruments:

- (i) original issue debt or equity securities;
- (ii) securities which are derived from the exchange of previously held original issue securities or otherwise acquired by the life initiative in circumstances which make such securities the substantial equivalent of original issue debt or equity securities;
- (iii) credit enhancements;
- (iv) securities backed by Massachusetts affordable mortgage loans; or
- (v) or any combination of the above of any community development lender.

A qualified interim investment shall be considered a qualified investment for purposes of compliance with subparagraph (1) of paragraph (B) of subsection d.

"Small business", shall mean any business whose annual sales are less than \$5,000,000 and which is either located in a low or moderate income community or employs, as a majority of its workforce, members of low or moderate income households.

"Statewide annual average unemployment rate", the commonwealth's average annual unemployment rate for the most recently reported 12 month period, as reported by the division of employment and training.

"Women business enterprise", any business which meets the definition of "Women business enterprise" in [section 40 of chapter 23A](#) of the General Laws.

(c)(1) Notwithstanding paragraph (1) of [section 22B of chapter 63](#) of the General Laws, or any other special or general law to the contrary, and except as provided in paragraphs (2) and (3) of this subsection and subsection (d), every life insurance company which is not subject to tax under [section 22A of chapter 63](#) of the General Laws and which has contributed its full proportionate share to the life initiative for the current taxable year, shall annually pay an investment income tax, determined as a percentage of its net investment income for the taxable year, at the following rates: 12 per cent for tax years beginning on or after the later of January 1, 1999 or the first year in which said company contributes its full proportionate share; 9 6/10 per cent for tax years beginning on or after the second year in which said company contributes its full proportionate share; 7 2/10 per cent for tax years beginning on or after the third year in which said company contributes its full proportionate share; 4 8/10 per cent for tax years beginning on or after the fourth year in which said company contributes its full proportionate share; 2 4/10 per cent for tax years beginning on or after the fifth year in which said company contributes its full proportionate share; and no investment income tax shall be due for tax years beginning after the fifth year in which said company contributes its full proportionate share. The investment income tax shall be adjusted and apportioned to the commonwealth in accordance with the provisions of paragraphs (2), (3) and (4) of said [section 22B of said chapter 63](#).

(2) A life insurance company which does not contribute its full proportionate share of the aggregate cumulative investment for the current taxable year to the life initiative shall pay annually the rate in effect for the most recent taxable year in which said company contributed its full proportionate share.

(3) The provisions of paragraph (1) shall apply to a participating domestic life insurance company when such company files with the commissioner of revenue the return required by paragraph (e) of [section 12 of chapter 62C](#) of the General Laws accompanied by a certificate of contribution issued pursuant to subparagraph (2) of paragraph (B) of subsection (d) of section 3 of this act.

(d)A. The life initiative shall be formed by two or more life insurance companies and take the form of a limited liability company under the provisions of [chapter 156C](#) of the General Laws, a trust, or such other form or forms of a business entity authorized by the General Laws.

B.(1) Upon the filing with the office of the state secretary of the certificate required to be filed by [section 12 of chapter 156C](#) of the General Laws, or the filing with the office of the state secretary of such other documents as may be required to evidence the creation of a business entity, the

provisions of subsection (c) shall become effective and shall remain effective, at the rate so specified, so long as: the total aggregate cumulative investment for each year is invested in qualified investments in that year.

(2) The life initiative shall, for each taxable year beginning on or after January 1, 1999 and for each taxable year thereafter until the aggregate cumulative investment in said life initiative reaches \$100,000,000, issue a certificate of contribution to each life insurance company that has contributed its full proportionate share as required under this section to the life initiative. This certificate shall be duly executed under oath by the chief executive officer of the life initiative, and shall state: (1) the amount of the contribution of the participating life insurance company for the taxable year; (2) the total amount contributed to the life initiative by all participating life insurance companies in the taxable year; (3) the amount of the participating life insurance company's share of the aggregate cumulative investment; and (4) the amount of the total aggregate cumulative investment. The commissioner shall review each certificate and approve it if satisfied as to its accuracy and completeness. Notwithstanding any provision of the General Laws, including clause 26 of [section 7 of chapter 4](#) of the General Laws and [chapter 66](#) of the General Laws, said certificate of contribution shall not be considered a public record and shall be treated as confidential under the provisions of [section 21 of chapter 62C](#) of the General Laws. The certificate shall be used by the commissioner of revenue solely to determine the proper rate of tax.

C. Except as specified in this subsection, life insurance companies and the life initiative shall be subject to the provisions of this act for a period of not less than 24 years from its effective date. For purposes of this subsection, the "effective date" shall mean the date on which the life initiative is created in accordance with the terms of this section. The life insurance companies may, at their election, choose to no longer be subject to the initiative provisions of this section: (1) at any time after expiration of such 24 year period; or (2) at any time in the event that, during the period of the investment initiative's existence, there has been a statutory amendment which results in an increase in the rate of the annual net investment income tax paid by domestic life insurance companies to the commonwealth or a reenactment of the annual net investment income tax, which rate increase or reenactment is other than a proportional part of a general increase in the taxation of business in the commonwealth.

D. No distribution constituting a return of capital contributed by a participating life insurance company shall be made prior to the twentieth anniversary of the effective date of the life initiative. Distributions of net earnings from the life initiative to the participating life insurance companies shall be permitted at any time. Distributions constituting a return of capital contributed by a participating life insurance company shall be allowed on or after the twentieth anniversary of the effective date of the life initiative. After such twentieth anniversary, in addition to such distribution of net earnings, distributions of capital contributions shall be allowed but shall not exceed 5 per cent per annum of the aggregate cumulative investment made prior to such twentieth anniversary of the organization of the life initiative, provided that on or after the twenty-fifth anniversary of the organization of said

initiative, the remaining capital may be distributed to the participating life companies.

E.(1) The business and investments of such life insurance initiative shall be managed pursuant to the charter documents of the life initiative and conducted, at all times, in compliance with the provisions of this section. The participating life insurance companies shall form an investment committee to review, authorize and act upon specific investments and to establish underwriting guidelines. Such investment committee shall consist of representatives from each of the participating life insurance companies who shall elect no fewer than two individuals, one of whom shall represent a community based organization and one of whom shall either represent a community based organization or have expertise in making or evaluating qualified investments; provided, however, that at least one such representative shall be from the central or western MOBD region; and provided further, that it shall not be a conflict of interest for the organization represented by said community representative to receive funds from such life initiative provided that said representative shall abstain from voting on investments that accrue directly to said organization. Investment decisions shall at all times be within the sole discretion of such life initiative subject to the criteria set forth in this act.

(2) The investment committee shall hold at least one public meeting each year in each of the five MOBD regions in order to receive information from interested parties regarding qualified investments within a particular MOBD region. Said investment committee shall keep an accurate record of each meeting, and shall include such information in the annual report of the life initiative required hereunder.

F. Notwithstanding the provisions of any general or special law to the contrary or any limitations contained in its charter, and in addition to existing authority, any life insurance company: (1) may participate in the life initiative, or any part thereof, pursuant to the provisions of this act; (2) may make loans and contributions to such life initiative, or any part thereof; and (3) may enter into binding agreements with other life insurance companies to make such loans and contributions, either initial or additional, and to restrict the transfer or other disposition of any interest in such life initiative. The authority to make the aforesaid loans or contributions and the authority of such life initiative to make investments shall not be subject to any provision in [chapter 175](#) of the General Laws relating to the control of investments or to any limitation on investment, whether stated as a percentage or otherwise, other than those contained in this act. All such loans and contributions by a participating life insurance company in such life initiative shall be deemed to be admitted assets. No restriction or prohibition contained in [chapter 175](#) shall be deemed violated on account of any investments held by such life initiative.

G. The life initiative may indemnify any of its officers, employees or agents and each life insurance company participating in such life initiative may indemnify any of its officers, employees or agents which serve such life initiative at such life insurance company's request, against any and all liabilities, costs and expenses arising from such service.

(e) On or before June 1 of each year beginning prior to the expiration of the life initiative as set forth in paragraph C of subsection (d), the life initiative shall file for the preceding tax year with the commissioner and the clerk of the senate and the clerk of the house of representatives the following:

(1) A written annual report which shall provide: (i) a list of all participating life insurance companies; (ii) the amount of capital contributions made by each participating life insurance company for the taxable year and in the aggregate; (iii) the amount of qualified investments made by the life initiative for that year; (iv) the total aggregate cumulative investments of the life initiative; (v) a list of all the investments made; (vi) the value of each investment made; (vii) the type of investment; (viii) the recipient's name, address, city and zip code; (ix) the amount, if any, in qualified interim investments; (x) a brief statement reporting how each investment meets the criteria of "qualified investment" as that term is defined in subsection (b) of this section; and (xi) the records of the annual public meetings held in each MOBD region. Such annual report shall be made on a form prescribed by the commissioner and duly executed under oath by the chief executive officer of the life initiative. Such report shall be considered a public document as defined in clause Twenty-sixth of [section 7 of chapter 4](#) of the General Laws.

(2) A financial statement which shall report the financial condition of the life initiative at the end of the preceding taxable year and the investments of the life initiative. The information contained in the financial statement shall be certified by an independent certified public accountant. Such financial statement shall be considered a public document as defined in clause Twenty-sixth of [section 7 of chapter 4](#) of the General Laws.

(3) A certificate, executed by the chief executive officer of the life initiative after due inquiry and based on best information and belief, stating that the investments made by such life initiative during the preceding years comply with the provisions of paragraphs (1) and (2) of subsection (f). Such certificate shall be considered a public document as defined in clause Twenty-sixth of [section 7 of chapter 4](#) of the General Laws. Such certificate shall initially be filed on December 31, 2002 and every year thereafter.

The clerks of the senate and the house of representatives shall forward copies of the report to the chairs of the house and senate committees on ways and means, the joint committee on taxation and the joint committee on insurance.

(f)(1) At least 25 per cent of the funds invested by the life initiative shall be credited and distributed to qualified investments in the five MOBD regions in the commonwealth. Each MOBD region shall receive a base investment share amount. The life initiative may execute after due inquiry a certificate reporting that there are insufficient qualified investments within a particular MOBD region to enable the life initiative to meet the base investment share amount in a particular year. This certificate shall be filed with the commissioner of insurance and with the clerks of the senate and house of representatives. The clerks of the senate and house of representatives shall forward

copies of said certificate to the joint committee on taxation and the joint committee on insurance. Upon the filing of the certificate, such life initiative may credit and distribute that region's portion of such life initiative's proceeds to qualified investments in other MOBD regions.

(2) The life initiative shall invest and reinvest the amount specified in subsection (f)(1) in qualified investments in the five MOBD regions for the period it remains subject to the provisions of this section; provided, however, that the life initiative shall not be required to meet the distribution requirement specified under paragraph (1) of subsection (f) until December 31, 2002.

(g)(1) The commissioner shall have the power to inspect and examine the affairs of the life initiative, and to require such statements and reports as he may reasonably deem necessary, to determine its financial condition, its ability to fulfill its obligations and whether it is in compliance with this act. The life initiative shall pay the reasonable charges incurred in such examination, including the expenses of the commissioner or his deputy or examiners and the expenses and compensation of any disinterested experts which the commissioner shall reasonably deem advisable to complete the examination. The commissioner or the person authorized by said commissioner to make examinations provided for by this section shall have free access to all of the assets of the life initiative for purpose of verification and to all of the books and papers relating to its business. The commissioner or the person authorized by said commissioner may summon and examine under oath any person who he believes has knowledge of the affairs, transactions or circumstances being examined. Whoever without justifiable cause neglects upon due summons to appear or testify before the commissioner or his authorized representative, and whoever unlawfully obstructs said commissioner or said representative in making examinations hereunder, shall be punished by a fine of not more than \$1,000.

(2) If the commissioner, upon review of the annual report submitted to him pursuant to subsection (e), and upon an examination of the books of the life initiative, or upon request, shall have reasonable cause to believe that any investment reported by the life initiative as a qualified investment is, in fact, not properly characterized as a qualified investment as defined in subsection (b), the commissioner may hold a public hearing, conducted in accordance with the provisions of [chapter 30A](#) of the General Laws, to determine whether such investment is a qualified investment. Any such action brought by the commissioner to determine the status of an investment as a qualified investment shall be commenced no later than six months following the receipt of the certificate required by said subsection (e).

(3) Upon a final determination, which shall be the later of the commissioner's order or a final judicial determination, that an investment is not a qualified investment, the following remedial action shall be taken: (A) the commissioner shall promptly notify the commissioner of revenue of such final determination; (B) the commissioner of revenue, upon receipt of such notice shall subtract the amount of such investment from the sum of the aggregate cumulative investment of the life initiative; (C) the life initiative shall, within 90 days following such final determination: (i) dispose of any investment finally determined not to be a qualified investment to one or more of the participating

domestic life insurance companies or to any outside party; (ii) deposit the proceeds of such disposition into the life initiative; and (iii) in the event of disposition as aforesaid, to the extent that the amount of funds received by the life initiative is less than the face amount of all outstanding debt and the cost of all equity securities involved, such differences shall be restored to the life initiative by the participating life insurance companies as additional contributions within 90 days of such disposition; provided, however, that any final determination shall affect the reduction in the rate of additional excise payable only in the taxable years subsequent to the year in which such final determination was made.

(4) The commissioner may issue, in accordance with the provisions of [chapter 30A](#) of the General Laws and after a public hearing, such rules and regulations as are reasonably necessary to carry out the provisions of subsection (e).

(5) At the request of the commissioner, the attorney general may maintain and prosecute, in the name of the commonwealth, an action against the life initiative, its officers, directors, partners, stockholders, members, trustees, or agents, for the purpose of obtaining an injunction restraining such person or persons from doing any acts in violation of the provisions of this act or any lawful orders of the commissioner.

(6) Any finding, ruling, order or decision of the commissioner under authority of this section shall be subject to review by appeal directly to the supreme judicial court at the request of the life initiative or the attorney general within 20 days after receipt of such finding, ruling, order or decision, which appeal shall be on the basis of the record of the proceedings before the commissioner. The filing of such an appeal shall act as a stay of any such finding, ruling, order or decision unless the court shall determine otherwise. The court shall review all questions of fact and of law involved in said proceedings and may modify, amend, annul, reverse or affirm such finding, ruling, order or decision or make any other appropriate order or decree.

SECTION 3. (a) Subsections (a) to (g), inclusive, shall be known as the Massachusetts Property and Casualty Insurance Company Community and Economic Development Initiative Act.

(b) In this act the following words or terms shall have the following meanings:

"Admitted assets", the assets of a property and casualty insurance company sufficient to meet policyholders claims and obligations of the company valued by the commissioner in accordance with the standards set forth under [chapter 175](#) of the General Laws and as reported in the insurance company's annual statement required to be filed thereunder.

"Aggregate cumulative investment", the sum of the accumulated capital contributions, without reference to investment results, by all property and casualty insurance companies participating in the Massachusetts property and casualty insurance company community and economic development investment initiative.

"Base investment share amount", the number obtained by multiplying 25 per cent of the Massachusetts property and casualty insurance company community and economic development investment initiative's aggregate cumulative investment by a fraction, the numerator of which shall be the sum of the Massachusetts office of business development unemployment factor for a particular Massachusetts office of business development region and the Massachusetts office of business development labor force factor for that region and the denominator of which shall be two.

"Commissioner", the commissioner of insurance.

"Community development lender", a community development financial institution as defined pursuant to 12 USC section 4702,

12 U. S. C. § 4702

a non-profit organization, government agency, quasi-government agency, or any other organization whose mission is community and economic development, or affordable housing.

"Credit share", a credit amount equal to the product of the following:

(1) \$8,000,000;

(2) multiplied by a fraction, the numerator of which shall be the participating property and casualties insurer's retaliatory taxes attributable to the surtax and payable for the preceding taxable year, before application of the credit provided by section 4(c) (B)(1) and the denominator of which shall be the total retaliatory taxes attributable to the surtax and payable for the preceding taxable year, before application of the credit provided by section 4(c) (B)(1) for all participating domestic property and casualty companies that do business in the commonwealth and that have submitted the information required by subparagraph 3 of paragraph (B) of subsection (c).

"Domestic property and casualty insurer", a property and casualty company organized or domiciled in this commonwealth.

"Financial intermediary", any non-profit, public or quasi-public organization or agency that assembles public or private capital for the purposes of making qualified investments, as defined herein.

"Foreign property and casualty insurer", a property and casualty company organized or domiciled in another jurisdiction.

"Full proportionate share", an investment in the Massachusetts property and casualty insurance company community and economic development initiative equal to at least the product of the following:

(1) \$20,000,000;

(2) multiplied by a fraction, the numerator of which shall be the property and casualty insurance company's total gross investment tax under [section 22A of chapter 63](#) of the General Laws for the tax year ending on or before December 31, 1997 and the denominator of which shall be the total gross investment tax under said [section 22A of said chapter 63](#) for all property and casualty insurance companies doing business in the commonwealth for the tax year ending on or before December 31, 1997. For a company that was not subject to [section 22A of chapter 63](#) in the tax year ending on or before December 31, 1997, the numerator shall be the P&C insurance company's total net investment income tax due and payable under [section 22A of chapter 63](#) of the General Laws for the taxable year two years prior to the current taxable year. The department of revenue shall determine said company's full proportionate share and shall provide such information to said company within 30 days of receipt of a request by said company.

"Low and moderate income community", an economic target area as defined pursuant to [section 3A of chapter 23A](#) of the General Laws, an enhanced economic enterprise community or empowerment zone as designated by the United States Department of Housing and Urban Development, or one or more contiguous census tracts as designated by a city or town, in which either: (i) a majority of the households are low and moderate income households as defined herein, or (ii) the unemployment rate is at least 25 per cent higher than the annual statewide average unemployment rate where such statewide unemployment rate is less than or equal to 5 per cent; provided that, if the annual statewide average unemployment rate is greater than 5 per cent, the community's unemployment rate need only be 10 per cent higher to qualify for investment by the P&C initiative.

"Low and moderate income households", those households which have incomes that do not exceed 80 per cent of the median income for the area, with adjustments made for smaller and larger families, as such median shall be determined from time to time by the Secretary of Housing and Urban Development pursuant to 42 USC section 1437(a)(B)(2).

42 U. S. C. § 1437(a)(B)(2)

"Massachusetts office of business development labor force factor" or "MOBD labor force factor", a fraction, the numerator of which shall be the labor force of a particular Massachusetts office of business development region for the previous 12 months beginning July 1 and ending June 30 as reported by the department of employment and training and the denominator of which shall be the sum of the labor force of each Massachusetts office of business development region for the same period.

"Massachusetts office of business development region" or "MOBD region", one of the five geographic areas of the commonwealth, the boundaries of which may be determined from time to time by the Massachusetts office of business development established pursuant to [section 1 of](#)

[chapter 23A](#) of the General Laws, or its successor; provided, however, that no region shall be smaller than one county in size; and provided further, that there shall be a western region, a central region, a northeast region, a greater Boston region, and a southeast region.

"Massachusetts office of business development unemployment factor" or "MOBD unemployment factor", a fraction, the numerator of which shall be the annual average unemployment rate of the particular MOBD region for the previous 12 months beginning July 1 and ending June 30 as reported by the department of employment and training and the denominator of which shall be the sum of the annual average unemployment rate of each MOBD region for the same period.

"Massachusetts property and casualty insurance company community and economic development initiative" or "P&C initiative", an entity or its successor, created by property and casualty insurance companies, or the successor to any such companies, pursuant to this section for the public purposes described herein.

"Minority business enterprise", any business which meets the definition of "minority business enterprise" in [section 40 of chapter 23A](#) of the General Laws.

"Participating property and casualty insurance company", a property and casualty insurance company participating in the P&C initiative.

"Person", an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, trust, unincorporated organization or any similar entity.

"Property and casualty insurance company", an insurance company which satisfies the definition of either a domestic or a foreign insurance company in [section 1 of chapter 175](#) of the General Laws, except life insurance companies as defined in [section 118 of said chapter 175](#), and which is subject to the provisions of [chapter 63](#) of the General Laws.

"Qualified interim investment", (1) marketable general obligations of the commonwealth, its agencies or political subdivisions thereof; and (2) debt maturing less than one year from the date of its issuance. The total of all such investments at any one time shall not exceed the greater of: (i) the amount received by the P&C initiative in cash as contributions from the participating property and casualty insurance companies during the preceding calendar year; or (ii) 10 per cent of the aggregate cumulative investment made in the P&C initiative. Such investments shall be utilized for the sole purpose of investing the money of the P&C initiative on an interim basis until such time as the money is invested or reinvested in a qualified investment. In no instance shall the money be in any one qualified interim investment for more than 24 consecutive months during the first five years of the P&C initiative's existence nor for longer than 12 consecutive months in any one qualified interim investment thereafter.

"Qualified investment", any investment made, or a commitment to make an investment in

Massachusetts which provides a prudent and sound investment opportunity and: (1) provides an investment in minority or women business enterprises; (2) provides an investment in small businesses; (3) provides an investment in rental housing or home ownership opportunities targeted to low and moderate income households; (4) provides an investment that will create jobs for low and moderate income households living in a low and moderate income community; (5) provides an investment in community health centers that serve low and moderate income communities; (6) provides an investment in the Community Development Finance Corporation, or (7) provides an investment in the Massachusetts Capital Access Program.

A qualified investment shall be made directly, through a community development lender, or through a financial intermediary.

A qualified investment shall take the form of one or more of the following instruments:

(1) original issue debt or equity securities;

(2) securities which are derived from the exchange of previously held original issue securities or otherwise acquired by the P&C initiative in circumstances which make such securities the substantial equivalent of original issue debt or equity securities;

(3) credit enhancements;

(4) securities backed by Massachusetts affordable mortgage loans; or

(5) any combination of the above of any community development lender.

A qualified interim investment shall be considered a qualified investment for purposes of compliance with subparagraph 1 of paragraph (B) of subsection (d).

"Retaliatory taxes", those taxes imposed or assessed by and paid to another jurisdiction by any participating domestic property and casualty insurer due to the surtax imposed by section 18 of chapter 546 of the acts of 1969. Such term, however, shall not include penalties or interest for late payment of taxes.

"Small business", a business whose annual sales are less than \$5,000,000 and which is either located in a low or moderate income community or employs, as a majority of its workforce, members of low or moderate income households.

"Statewide annual average unemployment rate", the commonwealth's average annual unemployment rate for the most recently reported 12 month period, as reported by the department of employment and training.

"Women business enterprise", a business which meets the definition of "Women business enterprise" in [section 40 of chapter 23A](#) of the General Laws.

(c)A(1) Notwithstanding the provisions of [section 22A of chapter 63](#) of the General Laws, or any other special or general law to the contrary, upon the organization and funding by two or more participating property and casualty insurers of the P&C initiative in accordance with the provisions of this section, and except as provided in subparagraphs (C) and (D), the rate of excise imposed upon the gross investment income earned during the preceding calendar year, as such gross investment income is reported in the annual statement filed for said year with the commissioner of insurance pursuant to [section 25 of chapter 175](#) of the General Laws, and as shown on line 10, Column 8, Part 1 of the Underwriting and Investment Exhibit for property and casualty, shall be as follows for participating property and casualty insurance companies: 0.8 per cent for tax years beginning on or after the later of January 1, 1999 or the first year in which said company contributes its full proportionate share; 0.6 per cent for tax years beginning on or after the second year in which said company contributes its full proportionate share; 0.4 per cent for tax years beginning on or the third year in which said company contributes its full proportionate share; 0.2 per cent for tax years beginning on or after fourth year in which said company contributes its full proportionate share; and no gross investment income tax shall be due for tax years beginning on or after the fifth year in which said company contributes its full proportionate share.

B(1) Except as provided in subparagraph 2 of paragraph (B) of subsection (c) and subsection (d), upon the organization and funding by two or more participating property and casualty insurance companies of the P&C initiative in accordance with the provisions of this section, for each year in which a participating property and casualty insurance company contributes its full and proportionate share, said company may receive a permanent incremental credit against the tax imposed by [section 22](#) of the General Laws equal to increasing percentages of the retaliatory taxes paid during the preceding taxable year and attributable to the surtax, before application of the credit, as follows: 20 per cent for the tax year beginning on or after the later of January 1, 1999 or the first year in which a participating P&C company contributes its full proportionate share; 40 per cent for the tax year beginning on or after the later of January 1, 2000 or the second year in which a participating P&C company contributes its full proportionate share; 60 per cent for the tax year beginning on or after the later of January 1, 2001 or the third year in which a participating P&C company contributes its full proportionate share; 80 per cent for the tax year beginning on or after the later of January 1, 2002 or the fourth year in which a participating P&C company contributes its full proportionate share; 100 per cent for the tax year beginning on or after the later of January 1, 2003 or the fifth year in which a participating P&C company contributes its full proportionate share. In no instance shall this credit be a refundable credit. Such credit shall not exceed 100 per cent of the retaliatory taxes paid during the preceding taxable year and attributable to the surtax, before application of the credit for any particular tax year. The company seeking the credit must furnish proof of payment of the retaliatory tax to the commissioner as required pursuant to subparagraph 3 of paragraph (B) of subsection (c).

(B)(2) If the total retaliatory taxes attributable to the surtax payable for the prior tax year as reported pursuant to subparagraph 3 of paragraph (B) of subsection (c) for all participating domestic property and casualty companies that do business in the commonwealth exceed \$8,000,000, the amount of each participating domestic property and casualty company's credit shall be limited to the lesser of: (1) the credit allowed pursuant to subparagraph 1 of paragraph (B) of subsection (c); or (2) that company's credit share. The commissioner of revenue shall be responsible for reporting to each company its credit share by February fifteenth of the current taxable year.

(B)(3) In order to receive the credit provided in subparagraph 1 of paragraph (B) of subsection (c), participating domestic property and casualty company must provide the Commissioner of Revenue with the amount of its retaliatory taxes attributable to the surtax and payable for the preceding taxable year, before application of the credit, by December 31 of the current taxable year.

C Notwithstanding any other provision of this section, a property and casualty insurance company which does not contribute its full proportionate share for the current taxable year to the P&C initiative shall annually pay the gross investment income tax rate in effect for the most recent taxable year in which said company contributed its full proportionate share.

D The provisions of subparagraph (1) of paragraph A of this subsection shall apply to a property and casualty insurance company when such a company files with the commissioner of revenue the return required by paragraph (e) of [section 12 of chapter 62C](#) of the General Laws accompanied by a certificate of contribution issued pursuant to subparagraph 2 of paragraph B of subsection (d) of this section.

(d)A The P&C initiative shall be formed by two or more property and casualty insurance companies and shall take the form of a limited liability company under the provisions of [chapter 156C](#) of the General Laws, or such other form or forms of a business entity authorized by the General Laws.

B(1) Upon the filing with the office of the state secretary of the certificate required to be filed by [section 12 of chapter 156C](#) of the General Laws, or the filing with the office of the state secretary of such documents as may be required to evidence the creation of a business entity, the provisions of subsections (c)(A)(1) and (c)(B)(1) shall become effective and shall remain effective, at the rate so specified, so long as: the total aggregate cumulative investment for each year is invested in qualified investments for that year.

(2) The P&C initiative shall, for each taxable year beginning on or after January 1, 1999 and for each taxable year thereafter until the aggregate cumulative investment in the P&C initiative reaches \$100,000,000 issue a certificate of contribution to each participating property and casualty insurance company that has contributed to the P&C initiative. This certificate shall be duly executed by the chief executive officer of the P&C initiative, and shall state: (i) the amount of the contribution of the participating domestic property and casualty insurance company for the taxable year; (ii) the total amount contributed by the participating property and casualty insurance companies to the P&C

initiative in the taxable year; (iii) the amount of the participating property and casualty insurance company's share of the aggregate cumulative investment; and (iv) the amount of the total aggregate cumulative investment. The commissioner shall review each certificate and approve it if satisfied as to its accuracy and completeness. Notwithstanding any provision of the General Laws, including clause Twenty-sixth of [section 7 of chapter 4](#) of the General Laws and [chapter 66](#) of the General Laws, said certificate of contribution shall not be considered a public record and shall be treated as confidential under the provisions of [section 21 of chapter 62C](#) of the General Laws. The certificate shall be used by the commissioner of revenue solely to determine the proper rate of tax.

C Except as specified in this subsection, participating property and casualty insurance companies and the P&C initiative shall be subject to the provisions of this section for a period of not less than 24 years from its effective date. For the purpose of this subsection, "effective date" shall mean the date on which the P&C initiative is created in accordance with the terms of this section. The property and casualty insurance companies may, at their election, choose to no longer be subject to the initiative provisions of this act (i) at any time after expiration of such 24 year period, or (ii) at any time in the event that, during the period of the investment initiative's existence, there has been a statutory amendment which results in an increase in the rate of the annual gross investment income tax paid by domestic property and casualty insurance companies to the commonwealth or a reenactment of the annual gross investment income tax, which rate increase or reenactment is other than a proportional part of a general increase in the taxation of business in the commonwealth.

D No distribution constituting a return of capital contributed by a participating property and casualty insurance company shall be made prior to the twentieth anniversary of the effective date of the P&C initiative. Distributions of net earnings from the P&C initiative to the participating property and casualty insurance companies shall be permitted at any time. Distributions constituting a return of capital contributed by a participating property and casualty insurance company shall be allowed on or after the twentieth anniversary of the effective date of the P&C initiative. After such twentieth anniversary, in addition to such distribution of net earnings, distributions of capital contributions shall be allowed but shall not exceed 5 per cent per annum of the aggregate cumulative investment made prior to such twentieth anniversary of the organization of the P&C initiative, provided that on or after the twenty-fourth anniversary of the organization of said initiative, the remaining capital may be distributed to the participating P&C companies.

E(1) The business and investments of each property and casualty insurance company comprising the P&C initiative shall be managed pursuant to the charter documents of the P&C initiative and conducted, at all times, in compliance with the provisions of this section. The participating property and casualty insurance companies shall form an investment committee to review, authorize and act upon specific investments and to establish underwriting guidelines. The committee shall consist of representatives from each of the participating property and casualty insurance companies who shall elect no fewer than two individuals, one of whom shall represent a community based organization and one of whom shall either represent a community based organization or have expertise in

making or evaluating qualified investments; provided, however, that at least one such representative shall be from the central or western MOBD region; and provided further, that it shall not be a conflict of interest for the organization represented by said community representative to receive funds from the P&C initiative; provided, however, that said representative shall abstain from voting on investments that accrue directly to said organization. Investment decisions shall at all times be within the sole discretion of the P&C initiative subject to the criteria set forth in this section.

(2) The investment committee shall hold at least one public meeting each year in each of the five MOBD regions in order to receive information from interested parties regarding qualified investments within a particular MOBD region. Said investment committee shall keep an accurate record of each meeting, and shall include such information in the annual report of the P&C initiative required hereunder.

F Notwithstanding any limitations contained in the laws of the commonwealth or in its charter, and in addition to existing authority, a property and casualty insurance company may: (1) participate in the P&C initiative, or any part thereof, pursuant to the provisions of this section; (2) may make loans and contributions to the P&C initiative, or any part thereof; and (3) may enter into binding agreements with other property and casualty insurance companies to make such loans and contributions, either initial or additional, and to restrict the transfer or other disposition of any interest in the P&C initiative. The authority to make the aforesaid loans or contributions and the authority of the P&C initiative to make investments shall not be subject to any provision in [chapter 175](#) of the General Laws relating to the control of investments or to any limitation on investment, whether stated as a percentage or otherwise, other than those contained in this section. All such loans and contributions by a participating property and casualty insurance company in the P&C initiative shall be deemed to be admitted assets. No restriction or prohibition contained in said [chapter 175](#) shall be deemed violated on account of any investments held by the P&C initiative.

G The P&C initiative may indemnify any of its officers, employees or agents and each property and casualty insurance company participating in the P&C initiative may indemnify any of its officers, employees or agents which serve the P&C initiative at such property and casualty insurance company's request, against any and all liabilities, costs and expenses arising from such service.

(e) On or before June 1 of each year beginning prior to the expiration of the P&C initiative as set forth in paragraph C of subsection (d), the P&C initiative shall file for the preceding tax year with the commissioner and the clerks of the senate and house of representatives the following:

(1) A written annual report which shall provide: (i) a list of all participating P&C insurance companies; (ii) the amount of capital contributions made by each participating property and casualty insurance company for the taxable year and in the aggregate; (iii) the amount of qualified investments made by the P&C initiative for that year; (iv) the total aggregate cumulative investments of the P&C initiative; (v) a list of all the investments made; (vi) the value of each investment made; (vii) the type of investment; (viii) the recipient's name, address, city and zip code; (ix) the amount, if

any, in qualified interim investments; (x) a brief statement reporting how each investment meets the criteria of "qualified investment" as that term is defined in subsection (b); and (xi) the records of the annual public meetings held in each MOBD region. Such annual report shall be made on a form prescribed by the commissioner and duly executed under oath by the chief executive officer of the P&C initiative. Such report shall be considered a public document as defined in clause Twenty-sixth of [section 7 of chapter 4](#) of the General Laws.

(2) A financial statement which shall report the financial condition of the P&C initiative at the end of the preceding taxable year and the investments of the P&C initiative. The information contained in the financial statement shall be certified by an independent certified public accountant. Such financial statement shall be considered a public document as defined in clause Twenty-sixth of [section 7 of chapter 4](#) of the General Laws.

(3) A certificate, executed by the chief executive officer of the P&C initiative after due inquiry and based on best information and belief, stating that the investments made by the P&C initiative during the preceding years comply with the provisions of paragraph (1) of subsection (f). Such certificate shall be considered a public document as defined in clause Twenty-sixth of [section 7 of chapter 4](#) of the General Laws. Such certificate shall initially be filed on December 31, 2002 and then every year thereafter.

The clerks of the senate and house of representatives shall forward copies of the report to the chairs of the house and senate committees on ways and means and to the joint committee on taxation and the joint committee on insurance.

(f)(1) At least 25 per cent of the aggregate cumulative investment of the P&C initiative shall be credited and distributed to qualified investments in the five MOBD regions in the commonwealth. Each MOBD region shall receive its base investment share amount. The P&C initiative may execute after due inquiry a certificate reporting that a lack of qualified investments exists in a MOBD region. This certificate shall be filed with the commissioner of insurance and with the clerks of the senate and house of representatives. The clerks of the senate and house of representatives shall forward copies of said certificate to the joint committee on taxation and the joint committee on insurance. Upon the filing of this certificate, the P&C initiative may credit and distribute that region's portion of the P&C initiative's proceeds to qualified investments in other MOBD regions.

(2) The P&C initiative shall invest and reinvest the amount specified in subsection (f)(1) in qualified investments in the five MOBD regions for the period it remains subject to the provisions of this section; provided, however, that the P&C initiative shall not be required to meet the distribution requirement specified under subsection (f)(1) until December 31, 2002.

(g)(1) The commissioner shall have the power to inspect and examine the affairs of the P&C initiative, and to require such statements and reports as he may reasonably deem necessary, to determine its financial condition, its ability to fulfill its obligations and whether it is in compliance with

this section. The P&C initiative shall pay the reasonable charges incurred in such examination, including the expenses of the commissioner or his deputy or his examiners and the expenses and compensation of any disinterested experts which the commissioner shall reasonably deem advisable to complete his examination. The commissioner or the person authorized by him to make examinations provided for by this section shall have free access to all of the assets of the P&C initiative for purpose of verification and to all of the books and papers relating to its business. The commissioner or the person authorized by him may summon and examine under oath any person, who, he believes has knowledge of the affairs, transactions or circumstances being examined. Whoever without justifiable cause neglects upon due summons to appear or testify before the commissioner or his authorized representative, and whoever unlawfully obstructs said commissioner or said representative in making examinations hereunder, shall be punished by a fine of not more than \$1,000.

(2) If the commissioner, upon review of the annual report submitted to him pursuant to subsection (e) of section 4, and upon an examination of the books of the P&C initiative, or upon request, shall have reasonable cause to believe that any investment reported by the P&C initiative as a qualified investment is, in fact, not properly characterized as a qualified investment as defined in subsection (b) of this section, the commissioner may hold a public hearing, conducted in accordance with the provisions of [chapter 30A](#) of the General Laws, to determine whether such investment is a qualified investment. Any such action brought by the commissioner to determine the status of an investment as a qualified investment shall be commenced no later than six months following the receipt of the certificate required by said subsection (e) of said section 4.

(3) Upon a final determination, which shall be the later of the commissioner's order or a final judicial determination, that an investment is not a qualified investment, the following remedial action shall be taken: (i) the commissioner shall promptly notify the commissioner of revenue of such final determination; (ii) the commissioner of revenue, upon receipt of such notice shall subtract the amount of such investment from the sum of the aggregate cumulative investment of the P&C initiative; (iii) the P&C initiative shall, within 90 days following such final determination: dispose of any investment finally determined not to be a qualified investment to one or more of the participating domestic property and casualty insurance companies or to any outside party; deposit the proceeds of such disposition into the P&C initiative; and, in the event of disposition as aforesaid, to the extent that the amount of funds received by the P&C initiative is less than the face amount of all outstanding debt and the cost of all equity securities involved, such differences shall be restored to the P&C initiative by the participating property and casualty insurance companies as additional contributions within 90 days of such disposition. However, any final determination shall affect the reduction in the rate of additional excise payable only in the taxable years subsequent to the year in which such final determination was made.

(4) The commissioner may issue, in accordance with the provisions of [chapter 30A](#) of the General Laws and after a public hearing, such rules and regulations as are reasonably necessary to carry

out the provisions of subsection (h).

(5) At the request of the commissioner, the attorney general may maintain and prosecute, in the name of the commonwealth, an action against the P&C initiative, its officers, directors, partners, stockholders, members, trustees, or agents, for the purpose of obtaining an injunction restraining such person or persons from doing any acts in violation of the provisions of this act or any lawful orders of the commissioner.

(6) Any finding, ruling, order or decision of the commissioner under authority of this section shall be subject to review by appeal directly to the supreme judicial court of the commonwealth at the request of the P&C initiative or the attorney general within 20 days after receipt of such finding, ruling, order or decision, which appeal shall be on the basis of the record of the proceedings before the commissioner. The filing of such appeal shall act as a stay of any such finding, ruling, order or decision unless the court shall determine otherwise. The court shall review all questions of fact and of law involved in said proceedings and may modify, amend, annul, reverse or affirm such finding, ruling, order or decision or make any other appropriate order or decree.

SECTION 4. Chapter 816 of the acts of 1977 is hereby amended by striking out section 11 and inserting in place thereof the following section:-

Section 11. There shall be allowed as a credit against the tax imposed by sections 20 and 22 of chapter 63 of the General Laws and by section 2 of chapter 531 of the acts of 1943 with respect to each taxable year an amount equal to 1½ per cent of any domestic life insurance company's proportionate share of the cost of equity securities and the outstanding principal balance of debt securities which constitute qualified investments of the Capital Resource Company as of the last day of the previous taxable year; provided, however, that such life insurance company is an equal opportunity employer and makes available annually to the Massachusetts commission against discrimination copies of its reports to the federal equal employment opportunity commission. As used in this section, each such company's "proportionate share" shall be a fraction, the numerator of which is the amount of its aggregate contributed capital in the Capital Resource Company and the denominator of which is the amount of the aggregate cumulative investment in the Capital Resource Company as of the last day of such taxable year.

SECTION 5. Section 13 of said chapter 816 is hereby further amended by striking out subsection (c) and inserting in place thereof the following subsection:-

(c) Upon the organization of the Capital Resource Company as provided herein and throughout the period contained in section 14 of this act, the terms of the limited partnership agreement shall at all times be consistent with the certificate and this act; provided, however, that amendments to the certificate may be submitted to the commissioner for approval as provided in the case of the original certificate, pursuant to subsection (b) which shall, after such approval, be filed with the state secretary; and provided further, that if the partners elect to continue the Capital Resource Company

beyond the 45 year period contained in subsection (b) of section 14, submission to and approval by said commissioner shall not be required prior to the filing of any amended certificate with the state secretary.

SECTION 6. Said chapter 816 is hereby further amended by striking out section 14 and inserting in place thereof the following section:-

Section 14. The certificate referred to in subsection (b) of section 13 shall contain the following provisions, restrictions and limitations:

(a) The character of the partnership business shall consist of the investment and reinvestment of partnership assets exclusively in debt and equity securities conforming to the investment criteria set forth in sections 15 and 16.

(b) Except as specified in this subsection, the Capital Resource Company shall be subject to the provisions of this act for a period of not less than 45 years from the date of its organization. The Capital Resource Company may, at its election, choose to no longer be subject to the provisions of this act by filing a certificate to such effect with the commissioner and the state secretary (i) at any time after expiration of such 45 year period, or (ii) at any time in the event there has been a statutory amendment which results in an increase in the total level of direct taxes paid by domestic life insurance companies to the commonwealth, which increase is other than attributable to business growth and other than a proportional part of a general increase in the taxation of business in the commonwealth.

(c) Funds shall be provided to the partnership only in cash, and the amount so provided by each partner in such partner's capacity as a general partner shall be stated separately from any amounts provided by such partner as a limited partner.

(d) At least 25 per cent of the capital funds of the partnership shall be provided by life insurance companies acting in their capacity as general partners, the balance shall be provided by such companies in their capacity as limited partners.

(e) No distribution constituting a return of capital contributed by a person as a general partner shall be made prior to the filing of the certificate referred to in subsection (b). Prior to the fortieth anniversary of the organization, no distribution from the Capital Resource Company to the partners shall be permitted other than distributions of partnership net earnings. After such fortieth anniversary, in addition to such distribution of net earnings, distributions of capital contributions shall be allowed but shall not exceed 5 per cent per annum of the aggregate cumulative investment made prior to such fortieth anniversary of the organization of the Capital Resource Company, provided that on or after the forty-sixth anniversary of the organization of said initiative, the remaining capital may be distributed to the participating life companies.

(f) The general partners may from time to time admit additional domestic life insurance companies as partners.

(g) Upon such terms and conditions as are necessary to assure compliance with the public purpose set out in section 1, the Capital Resource Company may form one or more wholly owned subsidiaries through which funds of the Capital Resource Company may be invested; provided, however, that such subsidiary shall be subject to all appropriate provisions of this act consistent, in the case of any subsidiary which is a small business investment company, with requirements of federal law.

(h) With the prior written approval of the commissioner and upon such terms and conditions as may be deemed necessary to assure compliance with the public purpose set out in section 1, to assure the continuation of the Capital Resource Company and to assure the continuation of the investment policies and restrictions set forth in this act, the Capital Resource Company may incorporate under [chapter 156B](#) or may be formed under [chapter 156C](#) of the General Laws.

The Capital Resource Company may enter into one or more agreements with the life initiative, or the P&C initiative, or any part thereof, pursuant to which the Capital Resource Company would provide management, advisory, consultative and other incidental services to such life initiative, or such P&C initiative, regarding its business affairs and which enable such life and P&C initiatives to comply with the provisions of this act. The Capital Resource Company may enter into one or more agreements whereby it would receive management, advisory, consulting and other incidental services regarding its business.

SECTION 7. The commissioner of revenue shall promulgate regulations necessary to carry out the provisions of this act. Such regulations shall include, but shall not be limited to, situations involving mergers, acquisitions, divestitures or reorganizations or any other corporate restructuring that impact the ability of a company to comply with the provisions of this act.

SECTION 8. Sections [22B](#), [22C](#) and [22D](#) of chapter 63 of the General Laws, shall not apply when the aggregate cumulative investment by domestic life insurance companies in the life initiative reaches \$100,000,000, such aggregate amount to be certified by the commissioner of revenue, or the tax year 2004, whichever is later.

SECTION 9. [Section 22A of said chapter 63](#) shall not apply when the aggregate cumulative investment by domestic property and casualty companies in the P&C initiative reaches \$100,000,000, such aggregate amount to be certified by the commissioner of revenue, or the tax year 2004, whichever is later.

SECTION 10. Section 1 of this act shall become effective for the tax years beginning after the date on which the aggregate cumulative investment by domestic property and casualty companies in the Massachusetts property and casualty company community investment initiative reaches

\$100,000,000.

Approved August 10, 1998.