HOUSE DOCKET, NO. 1104 FILED ON: 1/18/2017

HOUSE . . . . No. 476

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*
Rady Mom	*18th Middlesex*

HOUSE DOCKET, NO. 1104   FILED ON: 1/18/2017

HOUSE . . . . No. 476

By Mr. Arciero of Westford, a petition (accompanied by bill, House, No. 476) of James Arciero, Richard Ferry and Rady Mom 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.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *776* OF 2015-2016.]

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

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

Section 4. Applicability

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

Section 5. Regulatory Approval

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

Section 6. Third-Party Guaranty or Reinsurance

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

Section 7. Mandatory Disclosures

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

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

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

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

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

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

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

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

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

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

2. Investment performance summary by asset class;

3. Investment performance detail by asset class;

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

5. Changes in actuarial assumptions, if any; and

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

Section 8. Opt Out Option

Retirees subject to pension de-risking transactions shall receive at least 90 days' prior written notice and an opportunity to opt out from any pension de-risking transaction that attempts to transfer retiree benefits from an ERISA protected plan to a substitute pension benefit provider governed under state law. Retirees choosing to opt out of any de-risking transaction shall be given other options by the annuity provider at least one of which shall include an upfront lump sum payout of the net present value of the individual retiree's future benefits discounted at a rate no greater than 200 basis points over the average for the 10 year United States Treasury Note over the preceding 90 day period.

Section 9. Assets for Benefit of Retirees

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

Section 10. Creditor protections for annuity payments

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

Section 11. Lump sum options for retirees

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

Section 12. Subsequent transfers

No group annuity contract issued in connection with a de-risking transaction can be subsequently transferred by the owner or annuity provider without prior written approval by the

Commissioner which approval shall be conditioned upon a favorable solvency analysis obtained from an independent entity approved by the Commissioner.

Section 13. Retiree Disclosure Notice

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

Section 14. Regulations

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

Section 15. Effective Date

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