

HOUSE No. 5134

Substituted by the House, on motion of Ms. Garlick of Needham, for a bill with the same title (House, No. 1222). July 28, 2022.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

1 Paragraph 14G of section 63 of chapter 175 of the General Laws, as appearing in the
2 2020 Official Edition, is hereby amended striking out clauses (2) and (3) and inserting in place
3 thereof the following 3 clauses:-

4 (2) initially rated NAIC 1 or NAIC 2 subsequent to such acquisition, either by the NAIC-
5 SVO or by the insurer pursuant to a filing exemption in accordance with the requirements of the
6 NAIC-SVO;

7 (3) are provisionally rated NAIC 1Z or NAIC 2Z by the insurer in accordance with the
8 requirements of the NAIC-SVO. In the event that the provisionally rated bonds, notes, evidences
9 of indebtedness or contractual obligations for the payment of money or the long-term debt of the
10 institution or institutions issuing, assuming or guaranteeing the bonds, notes, evidences of
11 indebtedness or contractual obligations for the payment of money subsequently fail to qualify
12 under clause (1) or clause (2) after any appeal by the insurer within the applicable time periods
13 specified by the NAIC-SVO, then the bonds, notes, evidences of indebtedness or contractual
14 obligations for the payment of money shall no longer qualify as permitted investments under this
15 paragraph; but no company may invest more than an aggregate of 2 per cent of its admitted

16 assets in bonds, notes, evidences of indebtedness or contractual obligations for the payment of
17 money issued, guaranteed or insured by any one institution pursuant to this paragraph; or

18 (4) are of an exchange-traded fund registered pursuant to the Investment Company Act of
19 1940

20 provided that the criteria set forth in subclauses (a) to (d), inclusive, below are satisfied:

21 (a) the exchange-traded fund is solvent and reported at least \$100 million of net assets in
22 the exchange-traded fund's latest annual or more recent certified audited financial statement;

23 (b) the exchange-traded fund operates as a corporation, trust, or substantially similar legal
24 structure registered with the Securities and Exchange Commission pursuant to the Investment
25 Company Act of 1940 and its offered shares are registered under the Securities Act of 1933.

26 Each exchange-traded fund shall be treated as the issuer of the securities issued by the fund for
27 purposes of this paragraph.

28 (c) the NAIC-SVO has designated the exchange-traded fund as meeting the criteria to be
29 placed on the list promulgated by the NAIC-SVO of exchange-traded funds eligible for reporting
30 as a long-term bond in the purposes and procedures manual of the NAIC-SVO or successor
31 publication; and

32 (d) the amount of the insurance company's investment in the exchange-traded fund does
33 not exceed 15 per cent of the insurance company's capital and surplus.

34 The provisions of subclause (c) do not authorize an insurance company to invest
35 in bond exchange-traded funds that has embedded structural features designed to deliver

36 performance that does not track the full unlevered and positive return of the underlying index or
37 exposure, including a leverage or inverse exchange-traded fund.

38 An insurer may deposit with the department shares of a bond exchange-traded fund
39 described by clause (4) as a statutory deposit if state law requires a statutory deposit from the
40 insurer.