



General Assembly

**Amendment**

January Session, 2009

LCO No. 5565

\*SB0076405565SD0\*

Offered by:

SEN. CRISCO, 17<sup>th</sup> Dist.

REP. FONTANA, 87<sup>th</sup> Dist.

To: Subst. Senate Bill No. 764

File No. 48

Cal. No. 116

**"AN ACT CONCERNING DERIVATIVE FINANCIAL TRANSACTION CONTROLS."**

1 Strike everything after the enacting clause and substitute the  
2 following in lieu thereof:

3 "Section 1. Section 38a-102 of the general statutes is repealed and the  
4 following is substituted in lieu thereof (*Effective from passage*):

5 (a) Except as otherwise limited or prohibited by sections 38a-102 to  
6 38a-102h, inclusive, as amended by this act, or by regulation adopted  
7 by the Insurance Commissioner pursuant hereto, a domestic insurance  
8 company may make or acquire such investments as are prudent in  
9 respect of the business of said insurance company and diversification  
10 considerations.

11 (b) Eligibility of an investment shall be determined at the time of its  
12 making or acquisition. Any instrument, including any extension or  
13 modification thereof, or collateral taken by a domestic insurer as a

14 result of adverse financial circumstances affecting an investment shall  
15 not be considered a new investment for purposes of sections 38a-102 to  
16 38a-102h, inclusive, as amended by this act.

17 (c) Any investment limitation based on the amount of an insurance  
18 company's admitted assets or capital and surplus shall relate to such  
19 assets or capital and surplus as shown by the insurance company's  
20 annual statement as of December thirty-first next preceding the date of  
21 acquisition.

22 (d) In the case of a domestic life insurance company, the investment  
23 limitations set forth in section 38a-102c shall apply to a separate  
24 account only to the extent that reserves for guarantees with respect to  
25 (1) benefits guaranteed as to dollar amount and duration or (2) funds  
26 guaranteed as to principal amount or stated rate of interest are held in  
27 a separate account in accordance with subsection (a)(iii) of section 38a-  
28 433. [(a)(iii).]

29 (e) Any limitation or prohibition appearing in sections 38a-102 to  
30 38a-102h, inclusive, as amended by this act, shall apply only with  
31 respect to the section in which it appears and shall not constitute a  
32 general prohibition applicable to any other section unless specifically  
33 stated. The qualification or disqualification of an investment under one  
34 section shall not prevent its qualification in whole or in part under  
35 another section and an investment authorized by more than one  
36 section may be held under whichever authorizing section the company  
37 first elects.

38 (f) (1) A domestic insurance company doing business in this state  
39 may enter into derivative financial transactions, including swaps,  
40 options, forwards, futures, caps, floors and collars or similar  
41 instruments or combinations thereof, in accordance with subsection (a)  
42 of this section. Any such company shall include with its audited  
43 financial report a statement by the independent certified public  
44 accountant conducting such audit that describes such accountant's  
45 assessment of the internal controls of such company relative to such

46 transactions.

47 (2) If the independent certified public accountant determines the  
48 internal controls relative to such derivative financial transactions to be  
49 deficient, such company shall include with the statement set forth in  
50 subdivision (1) of this subsection such accountant's report of such  
51 deficiencies and a description of remedial actions taken or proposed to  
52 be taken to correct such deficiencies, if such actions are not already  
53 described in the accountant's assessment.

54 [(f)] (g) The provisions of sections 38a-102 to 38a-102h, inclusive, as  
55 amended by this act, shall not apply in whole or in part to any activity  
56 which the Insurance Commissioner shall exempt therefrom as  
57 consistent with [his] the purpose of preserving the financial integrity of  
58 insurance companies for their policyholders. The Insurance  
59 Commissioner may adopt such regulations, in accordance with chapter  
60 54, as [he] the commissioner deems necessary [in accordance with  
61 chapter 54] to carry out the purposes of sections 38a-102 to 38a-102h,  
62 inclusive, as amended by this act.

63 Sec. 2. Section 38a-102b of the general statutes is repealed and the  
64 following is substituted in lieu thereof (*Effective from passage*):

65 For the purposes of sections 38a-102 to 38a-102h, inclusive, as  
66 amended by this act:

67 [(a)] (1) "Cap" means an option contract wherein the seller, in return  
68 for a premium, agrees to limit the purchaser's risk associated with an  
69 increase in a reference rate or index.

70 (2) "Collar" means a contract that combines a cap and a floor.

71 (3) "Exempted country" means a foreign jurisdiction rated in one of  
72 the two highest rating categories by an independent, nationally  
73 recognized United States rating agency.

74 (4) "Floor" means an option contract wherein the seller, in return for  
75 a premium, agrees to limit the purchaser's risk associated with a

76 decline in a reference rate or index.

77 [(b)] (5) "Foreign obligations and investments" with respect to any  
78 single country means the obligations of the government of such  
79 country and political subdivisions, agencies and instrumentalities  
80 thereof together with obligations of and investments in entities created  
81 under the laws of that country, or a political subdivision thereof, and  
82 real estate and other tangible assets located in that country.  
83 Obligations issued, assumed or guaranteed by any institution created  
84 under the laws of the United States or any state thereof are not foreign  
85 obligations and investments.

86 (6) "Forward" means a contract, other than a future, between two  
87 parties that commits one party to purchase and the other to sell the  
88 instrument or commodity underlying the contract on a specified future  
89 date.

90 (7) "Future" means a standardized forward contract traded on a  
91 United States or qualified foreign exchange.

92 [(c)] (8) "High yield obligations" means obligations [which] that are  
93 not rated as investment grade by any nationally recognized United  
94 States rating agency or the National Association of Insurance  
95 Commissioners.

96 [(d)] (9) "Institution" [includes] means business trusts, corporations,  
97 joint stock associations, partnerships and other legal entities organized  
98 under the laws of the United States, or any state or territory of the  
99 United States, but [it shall] does not include agencies, authorities, or  
100 instrumentalities of or entities sponsored by the United States, its  
101 possessions or territories.

102 [(e)] (10) "Insurance company" [shall have the] has the same  
103 meaning as [set forth] provided in section 38a-1 and [shall include]  
104 includes fraternal benefit societies as defined in section 38a-595 and  
105 health care centers as defined in section 38a-175, but [it shall] does not  
106 include agencies, authorities or instrumentalities of the United States,

107 its possessions and territories, the Commonwealth of Puerto Rico, the  
108 District of Columbia or a state or political subdivision of a state.

109 [(f)] (11) "Nonadmitted investment assets" means nonadmitted  
110 assets excluding real and personal property used in insurance business  
111 operations.

112 [(g)] (12) "Obligations" includes bonds, debentures, notes and other  
113 evidences of indebtedness.

114 (13) "Option" means a contract that gives the purchaser the right,  
115 but not the obligation, to enter into a transaction with the seller for  
116 option rights on terms specified in the contract.

117 [(h)] (14) "Subsidiary" or "subsidiaries" [shall have the] has the same  
118 meaning as [set forth] provided in section 38a-1 [but] except that the  
119 term "controlled by", as used in said section, [shall have] has the same  
120 meaning as [set forth] provided in section 38a-129. [, provided,  
121 however, that for] For the purposes of sections 38a-102 to 38a-102h,  
122 inclusive, as amended by this act, a person may rebut the presumption  
123 of control used to define a subsidiary by providing written notice to  
124 the commissioner of [its] such person's intent to disavow control  
125 notwithstanding the direct or indirect ownership, control or holding  
126 with the power to vote, or holding of proxies representing ten per cent  
127 or more but less than a majority of the voting securities or voting  
128 power of any other person. Control shall be conclusively presumed to  
129 exist under [said] sections 38a-102 to 38a-102h, inclusive, as amended  
130 by this act, if any person, directly or indirectly, owns, controls, holds  
131 with the power to vote, or holds proxies representing over fifty per  
132 cent of the voting securities or voting power of any other person.

133 (15) "Swap" means a contract to exchange, for a period of time, the  
134 investment performance of one underlying instrument for the  
135 investment performance of another underlying instrument without  
136 exchanging the instruments themselves."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	38a-102
Sec. 2	<i>from passage</i>	38a-102b