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By: **Delegate Feldman**

Introduced and read first time: February 11, 2005

Assigned to: Economic Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Financial Guaranty Insurance**

3 FOR the purpose of defining certain terms for purposes of financial guaranty  
4 insurance; providing that these definitions apply notwithstanding any other  
5 provision of law regarding assets, liabilities, reserves, and investments of  
6 financial guaranty insurers; requiring a financial guaranty insurer's  
7 outstanding total liability for certain bonds to be investment grade to a certain  
8 extent; altering the authority of the Insurance Commissioner to adopt certain  
9 regulations; and generally relating to financial guaranty insurance.

10 BY repealing and reenacting, without amendments,  
11 Article - Insurance  
12 Section 5-1003  
13 Annotated Code of Maryland  
14 (2003 Replacement Volume and 2004 Supplement)

15 BY repealing and reenacting, with amendments,  
16 Article - Insurance  
17 Section 5-1005  
18 Annotated Code of Maryland  
19 (2003 Replacement Volume and 2004 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
21 MARYLAND, That the Laws of Maryland read as follows:

22 **Article - Insurance**

23 5-1003.

24 (a) (1) Subject to § 5-1004 of this subtitle and except as provided under §  
25 5-1005 of this subtitle, an insurer may not retain a risk on any one subject of  
26 insurance, whether located or to be performed in the State or outside of the State, in  
27 an amount exceeding 10% of the insurer's surplus to policyholders.

1 (2) An insurer's surplus to policyholders shall be determined at the time  
2 a risk is assumed from the more recent of:

3 (i) the last sworn statement of the insurer on file with the  
4 Commissioner; or

5 (ii) the last examination report of the insurer.

6 (b) In determining the amount of risk retained by an insurer, a deduction shall  
7 be made for reinsurance ceded by the insurer for which credit is allowed under §  
8 5-904 of this title.

9 5-1005.

10 (A) (1) FOR PURPOSES OF FINANCIAL GUARANTY INSURANCE, AND  
11 NOTWITHSTANDING ANY OTHER PROVISION OF LAW REGARDING ASSETS,  
12 LIABILITIES, RESERVES, AND INVESTMENTS OF FINANCIAL GUARANTY INSURERS,  
13 THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

14 (2) "ASSET-BACKED SECURITY" INCLUDES A POOL OF CREDIT DEFAULT  
15 SWAPS OR CREDIT DEFAULT SWAPS REFERENCING A POOL OF OBLIGATIONS IF:

16 (I) THE SWAP COUNTERPARTY WHOSE OBLIGATIONS ARE  
17 INSURED UNDER THE CREDIT DEFAULT SWAP IS A SPECIAL PURPOSE CORPORATION,  
18 SPECIAL PURPOSE TRUST, OR OTHER SPECIAL PURPOSE LEGAL ENTITY;

19 (II) NO REFERENCE OBLIGATION IN THE POOL, OTHER THAN AN  
20 OBLIGATION DIRECTLY PAYABLE BY, GUARANTEED BY, OR BACKED BY THE FULL  
21 FAITH AND CREDIT OF THE UNITED STATES GOVERNMENT OR THAT OTHERWISE  
22 QUALIFIES AS COLLATERAL UNDER REGULATIONS ADOPTED BY THE COMMISSIONER  
23 UNDER THIS SECTION, HAS A NOTIONAL AMOUNT EXCEEDING 10% OF THE POOL'S  
24 AGGREGATE NOTIONAL AMOUNT; AND

25 (III) THE INSURER HAS THE BENEFIT OF A DEDUCTIBLE OR OTHER  
26 FIRST LOSS CREDIT PROTECTION AGAINST CLAIMS UNDER ITS INSURANCE POLICY.

27 (3) (I) "CREDIT DEFAULT SWAP" MEANS AN AGREEMENT THAT  
28 REFERENCES THE CREDIT DERIVATIVE DEFINITIONS PUBLISHED FROM TIME TO  
29 TIME BY THE INTERNATIONAL SWAP AND DERIVATIVES ASSOCIATION, INC. OR  
30 OTHERWISE ACCEPTABLE TO THE COMMISSIONER, UNDER WHICH A PARTY AGREES  
31 TO COMPENSATE ANOTHER PARTY IN THE EVENT OF A PAYMENT DEFAULT BY,  
32 INSOLVENCY OF, OR OTHER ADVERSE CREDIT EVENT WITH RESPECT TO, AN ISSUER  
33 OF A SPECIFIED SECURITY OR OTHER OBLIGATION.

34 (II) HOWEVER, THE AGREEMENT DOES NOT CONSTITUTE AN  
35 INSURANCE CONTRACT AND THE MAKING OF A CREDIT DEFAULT SWAP DOES NOT  
36 CONSTITUTE DOING INSURANCE BUSINESS.

37 (4) "INVESTMENT GRADE" MEANS THAT EITHER THE OBLIGATION OR  
38 PARITY OBLIGATION OF THE SAME ISSUER:

1 (I) IS DETERMINED TO BE IN ONE OF THE TOP FOUR GENERIC  
2 LETTERED RATING CLASSIFICATIONS BY THE SECURITIES RATING AGENCY  
3 ACCEPTABLE TO THE COMMISSIONER;

4 (II) IS EITHER IDENTIFIED IN WRITING BY A SECURITIES RATING  
5 AGENCY ACCEPTABLE TO THE COMMISSIONER, OR OTHERWISE SUPPORTED BY  
6 APPLICATION OF SECURITIES RATING AGENCY MODELS, AS AN INSURABLE RISK,  
7 DEEMED TO BE OF INVESTMENT GRADE QUALITY FOR PURPOSES OF INSURANCE  
8 AND THE FINANCIAL GUARANTY INSURER IS SUBJECT TO A CAPITAL CHARGE WITH  
9 RESPECT TO THE INSURABLE RISK BY THE SECURITIES RATING AGENCY AS AN  
10 INVESTMENT GRADE EXPOSURE; OR

11 (III) IS DETERMINED TO BE INVESTMENT GRADE, AS INDICATED BY  
12 A RATING IN CATEGORY 1 OR 2, BY THE SECURITIES VALUATION OFFICE OF THE  
13 NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.

14 (B) FOR PURPOSES OF FINANCIAL GUARANTY INSURANCE, AND  
15 NOTWITHSTANDING ANY OTHER PROVISION OF LAW REGARDING ASSETS,  
16 LIABILITIES, RESERVES, AND INVESTMENTS OF FINANCIAL GUARANTY INSURERS, A  
17 FINANCIAL GUARANTY INSURER'S OUTSTANDING TOTAL LIABILITY FOR MUNICIPAL  
18 OBLIGATION BONDS, SPECIAL REVENUE BONDS, AND INDUSTRIAL DEVELOPMENT  
19 BONDS SHALL BE INVESTMENT GRADE TO THE FOLLOWING EXTENT:

20 (1) IF RATED AAA BY A NATIONALLY RECOGNIZED RATING AGENCY, AT  
21 LEAST 90% OF THE TOTAL LIABILITY;

22 (2) IF RATED AA BY A NATIONALLY RECOGNIZED RATING AGENCY, AT  
23 LEAST 70% OF THE TOTAL LIABILITY; AND

24 (3) IF RATED A BY A NATIONALLY RECOGNIZED RATING AGENCY, AT  
25 LEAST 50% OF THE TOTAL LIABILITY.

26 (C) [The] SUBJECT TO SUBSECTIONS (A) AND (B) OF THIS SECTION, THE  
27 Commissioner may establish by regulation limits on the risk retained by an insurer  
28 for a subject of financial guaranty insurance, including requirements for contingency  
29 reserves used in determining compliance with the applicable risk limits.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
31 June 1, 2005.