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Referred to the Committee on Business Legislation. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Jackson of Yarmouth.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED SEVENTY-NINE

AN ACT to Clarify and Amend the Investment Provisions of the Maine Insurance Code.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 24-A MRSA § 1102, sub-§ 3, as enacted by PL 1969, c. 132, § 1, is amended to read:

3. Eligibility of an investment shall be determined as of the date of its making or acquisition, except as stated in subsection 2, **or in section 1131, subsection 2, or section 1134.**

Sec. 2. 24-A MRSA § 1109, sub-§ 2, ¶A, as enacted by PL 1969, c. 132, § 1, is amended to read:

A. The leases are assigned ~~directly~~ to the insurer **or to a trustee acting on behalf of the insurer** and are noncancellable by either party, except under provisions specified in the leases and designed to give adequate protection to the insurer's investment.

Sec. 3. 24-A MRSA § 1109, sub-§ 6 is enacted to read:

6. Fixed interest bearing obligations of financial companies, other than those eligible under subsections 1, 3 and 5, if either:

A.

(1) Net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges during each of the 5 fiscal years next preceding the date of acquisition by that insurer shall not have been less than 1¼ times its fixed charges for that year; and

(2) The liquid assets of that institution as of the end of the fiscal year covered in the latest regular financial statement of that institution prepared as of a date not more than 15 months prior to the date of acquisition by that insurer and as of the end of each of the 4 fiscal years next preceding that fiscal year shall have not been less than 95% of its liabilities, other than deferred income taxes, deferred investment tax credits, capital stock and surplus; or

B.

(1) Net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges during each of the 5 fiscal years next preceding the date of acquisition by that insurer shall have been not less than 1.15 times its fixed charges for that year; and

(2) The liquid assets of that institution as of the end of the fiscal year covered in the latest regular financial statement of that institution prepared as of a date not more than 15 months prior to the date of acquisition by that insurer and as of the end of each of the 4 fiscal years next preceding that fiscal year shall have been not less than 105% of its liabilities, other than deferred income taxes, deferred investment tax credits, capital stock and surplus.

A "financial company" is one having an average of at least 50% of its net income, including income derived from subsidiaries, over its last 5 fiscal years next preceding the date of acquisition by that insurer derived from the business of wholesale, retail, installment, mortgage, commercial, industrial or consumer financing, or from banking or factoring or similar or related lines of business.

For purposes of paragraph A, subparagraph (2) and paragraph B, subparagraph (2), if net earnings are determined in reliance upon consolidated financial statements of parent and subsidiary institutions, "liquid assets" and "liabilities" shall be determined in reliance upon a consolidated financial statement of parent and subsidiary institution after treating any minority stock interest in that subsidiary institution as a liability; and the term "liquid assets" shall mean the sum of cash, receivables or portions thereof, as the case may be, payable on demand or not more than 12 years following the close of the applicable fiscal year, and readily marketable securities, in each case less applicable reserves and unearned income.

Sec. 4. 24-A MRSA § 1110, sub-§ 1, ¶B, as enacted by PL 1969, c. 132, § 1, is amended to read:

B. "Institution" includes a corporation, a joint-stock association and a business trust **and a trust where a bank or trust company duly authorized and licensed therefor is acting as a corporate trustee, with or without a co-trustee, provided that that trust is controlled by any of the foregoing types of institutions and that all of the beneficiaries of that trust are any of the foregoing types of institutions**.

Sec. 5. 24-A MRSA § 1110, sub-§ 1, ¶D, as enacted by PL 1969, c. 132, § 1, is amended to read:

D. "Fixed charges" includes interest on funded and unfunded debt, and amortization of debt discount, **but in the case of a bank or trust company, interest paid by that institution upon any deposit or any certificate or other evidence of a deposit shall not be deemed a fixed charge of such an institution**.

Sec. 6. 24-A MRSA § 1124, sub-§ 1, as enacted by PL 1969, c. 132, § 1, is amended to read:

1. An insurer may invest in bonds, notes or evidences of indebtedness other than those described in section 1109 (corporate obligations), which are secured by first **or 2nd** mortgages, or deeds of trust upon improved real property located in the United States or Canada, including leasehold estates having an unexpired term of not less than 21 years, inclusive of the term or terms which may be provided by enforceable options of renewal, if the underlying real property is not subject to any prior lien, and subject to the following requirements.

A. The security for the loan must be a first **or 2nd** lien upon such real property; and

B. In the case of leaseholds, there must not be any condition or right of reentry or forfeiture not insured against under which the insurer is unable to continue the lease in force for the duration of the loan.

Sec. 7. 24-A MRSA § 1124, sub-§ 2, as enacted by PL 1969, c. 132, § 1, is amended to read:

2. Nothing herein shall prohibit any investment by reason of the existence of any prior lien for ground rents, taxes, assessments, **common area maintenance charges** or other similar charges not yet delinquent.

Sec. 8. 24-A MRSA § 1124, sub-§ 3, as enacted by PL 1969, c. 132, § 1, is amended to read:

3. A ~~mortgage shall nevertheless be deemed to be a first lien for purposes of this section~~ **loan secured by a 2nd mortgage or deed of trust may be made or acquired** if, although junior in lien to a prior existing mortgage covering the same real property **or leasehold interest thereof**, the net amount actually advanced by the insurer under its mortgage plus the balance of principal and accrued interest then remaining unpaid under such prior mortgage does not exceed the amount which the insurer otherwise could have invested in such mortgage loan ~~and if the investing insurer administers the payments and other performances required~~

~~under such prior mortgage~~. **The total loans or investments made under this subsection by an insurer shall not exceed 2% of its total admitted assets, and no such loan or investment shall be made or acquired by an insurer if the mortgagor, without the approval of the insurer, may increase the principal amount of the indebtedness secured by the prior mortgage except to the extent that the amount of that increase is applied in reduction of the loan or investment held by the insurer.**

Sec. 9. 24-A MRSA § 1124, sub-§ 4, first sentence, as enacted by PL 1969, c. 132, § 1, is amended to read:

4. Such a mortgage loan or loans made or acquired by an insurer on any one property shall not at time of investment by the insurer be in amount in excess of 80% of the fair market value of the property or permit amortization over a period in excess of 40 years, or, in the case of leasehold interest, be in excess of 75% of the fair market value of such interest or permit amortization over a period exceeding 4/5 of the lease term remaining at the time of the loan **inclusive of the term or terms which may be provided by enforceable options of renewal.**

Sec. 10. 24-A MRSA § 1124, sub-§ 7 is enacted to read:

7. An insurer may invest in a mortgage participation, which for this purpose shall mean a bond, note or other evidence of indebtedness forming part of an issue of bonds, notes or other evidences of indebtedness which are secured by the same mortgage or deed of trust and shall also mean an instrument evidencing a participation in a bond, note or other evidence of indebtedness so secured, provided that the following requirements are met:

A. The underlying mortgage or deed of trust otherwise qualifies for investment as a mortgage loan under this section; and

B. Either:

(1) The entire indebtedness secured by the same mortgage or deed of trust is held by the insurer;

(2) The insurer holds a senior participation giving it substantially the rights of a first or 2nd mortgagee, and a position of priority over the other holders of participations in that indebtedness; or

(3) Each participation is of equal rank.

Sec. 11. 24-A MRSA § 1127, as enacted by PL 1969, c. 132, § 1, is repealed and the following enacted in its place:

§ 1127. Leased property and noncorporate obligations

1. An insurer may invest in personal or real property owned either by the insurer, or a trustee, while under lease to a lessee able to meet any one of the earnings tests provided by section 1109.

2. In addition to investments otherwise permitted under this chapter, an insurer may invest in obligations, other than those of institutions as defined in section 110, subsection 1, paragraph B, which are secured by:

A. An assignment of a right to receive rental, charter, hire, purchase or other payments for the use or purchase of real or personal property adquate to return the investments and payable or guaranteed by one or more governmental units or instrumentalities, whose obligations would qualify for investment under section 1107 or section 1108, or by one or more institutions whose obligations would qualify for investment under section 1109. The aggregate amount of investments made or acquired under this subsection shall not exceed 2% of an insurer's total admitted assets; and

B. A mortgage or a security interest in that real or personal property.

Sec. 12. 24-A MRSA § 1131, as enacted by PL 1969, c. 132, § 1, is repealed and the following enacted in its place:

§ 1131. Miscellaneous investments

1. An insurer may make loans or investments, not otherwise eligible, qualified or expressly permitted under this chapter, in aggregate amount not over 5% of the insurers assets if a life insurer, and in aggregate amount not over 10% of the insurer's assets if a property or casualty or surety or other such nonlife insurer, and not over 1% of those assets as to any one such loan or investment. None of the investment limitations contained in this chapter, qualitative or quantitative or otherwise, shall apply to loans or investments under this section, provided that all loans or investments made or acquired hereunder shall meet the following requirements.

A. The loan or investment shall fulfill the requirements of section 1103, and otherwise qualifies as a sound investment. The superintendent may by regulation determine on a prospective basis that certain categories of loans or investments shall not qualify as sound investments under this section if it can reasonably be determined that there is significant risk of loss of a substantial amount of the principal associated with that category of loans or investments.

B. No such loan or investment shall be represented by:

(1) Any item described in section 902;

(2) Any loan or investment expressly prohibited under section 1136; or

(3) Agent's balances, or amounts advanced to or owing by agents, except as to policy loans, mortgage loans and collateral loans to those agents otherwise authorized under any provision of this chapter.

2. The insurer shall keep a separate record of all loans and investments made under this section. Any such loan or investment that subsequent to the date of making or acquisition thereof has attained the standard of eligibility and qualifies

under any other section of this chapter may thereupon be deemed to have been made or acquired under and in compliance with that section and shall no longer be considered to have been made or acquired under this section.

Sec. 13. 24-A MRSA § 1136, sub-§ 3, as enacted by PL 1969, c. 132, § 1, is amended to read:

3. No insurer shall enter into any agreement to withhold from sale any of its securities or property, and the disposition of its assets shall at all times be within the control of the insurer. This provision shall not be deemed to affect any right or obligation of the insurer under a contract or agreement referred to in section 2537 (separate accounts), **and shall not be deemed to prohibit an insurer from lending any of its publicly traded portfolio securities or bond investments to a financial institution, to a securities broker or securities dealer under a program which provides adequate collateral security for the return of the value of the loaned portfolio securities or bond investments and which provides that any such loan of securities may be terminated by the insurer on not more than 10 days' notice.**

STATEMENT OF FACT

The purpose of this bill is to revise certain portions of the investment provisions of the Maine Insurance Code to protect the position of Maine insurance companies in competing for sound investment opportunities.

The existing investment provisions of the Maine Insurance Code were enacted in 1969 and were virtually identical to similar provisions of the New York Insurance Code which must be substantially complied with by all insurance companies doing business in New York (therefore by almost all major companies in the United States). Since 1969, New York has revised its investment statutes several times, while those similar provisions of the Maine Insurance Code have been left unchanged. This has resulted in a situation where, by law, Maine insurance companies may have to pass up certain sound investments which most other insurance companies in the United States can freely make. This can have an important impact on Maine insurance companies' ultimate invest yield which can translate into higher net costs for insurance to consumers and employers, and loss of business to out-of-state companies.

This legislation seeks to keep Maine insurance companies competitive in the types and quality of investments which they can make. It amends and revises provisions similar to those of the New York Insurance Code, which is clearly recognized as the most stringent and consumer-oriented insurance codes in the United States. In addition, the bill seeks to clarify certain existing sections in the Maine investment provisions as well as codify existing interpretations thereof.