

MAINE STATE LEGISLATURE

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(New Draft of S.P. 243, L.D. 675)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1821

S.P. 620

In Senate, June 11, 1987

Reported by Senator Collins of Aroostook for the Committee on Banking and Insurance and printed under Joint Rule 2. Original Bill sponsored by Senator Clark of Cumberland. Cosponsored by: Senator Brannigan of Cumberland, Representative Clark of Millinocket, Representative Curren of Westbrook.

JOY J. O'BRIEN, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT to Amend the Investment Provisions and
2 Certain Related Sections of the Maine
3 Insurance Code.
4

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

7 Sec. 1. 24-A MRSA §222, sub-§3, ¶A, as repealed
8 and replaced by PL 1975, c. 356, §1, is amended to
9 read:

10 A. Authorization. Any domestic insurer may in-
11 vest in or otherwise acquire one or more subsidi-
12 aries as authorized in section 1115, or section
13 1157.

14 Sec. 2. 24-A MRSA §902, sub-§4, as enacted by PL
15 1969, c. 132, §1, is amended to read:

1 4. Furniture, fixtures, furnishings, safes, ve-
2 hicles, libraries, stationery, literature and sup-
3 plies, other than data processing, recordkeeping and
4 accounting systems authorized under section 901, sub-
5 section 13, except, in the case of title insurers,
6 such materials and plants as the insurer is expressly
7 authorized to invest in under section 1129 and ex-
8 cept, in the case of any insurer, such personal prop-
9 erty as the insurer is permitted to hold pursuant to
10 chapter 13 or chapter 13-A, or which is reasonably
11 necessary for the maintenance and operation of real
12 estate lawfully acquired and held by the insurer oth-
13 er than real estate used by it for home office,
14 branch office and similar purposes.

15 Sec. 3. 24-A MRSA §1101, as enacted by PL 1969,
16 c. 132, §1, is amended to read:

17 §1101. Scope of chapter

18 Except as provided in section 1137, this chapter
19 applies only to domestic insurers only which transact
20 business other than as described in section 702, life
21 insurance; section 703, annuity; or section 704,
22 health insurance.

23 Sec. 4. 24-A MRSA §1102, sub-§4, as enacted by
24 PL 1969, c. 132, §1, is amended to read:

25 4. Any investment limitation or diversification
26 requirement based upon the amount of the insurer's
27 assets or particular funds shall relate to such as-
28 sets or funds as shown by the insurer's annual state-
29 ment as of the December 31st next preceding the date
30 of acquisition of the investment by the insurer, or
31 as shown by a current applicable financial statement,
32 prepared on the same basis as that annual statement,
33 resulting from merger of with another insurer, bulk
34 reinsurance, or change in capitalization.

35 Sec. 5. 24-A MRSA §1104, sub-§1, as enacted by
36 PL 1969, c. 132, §1, is amended to read:

37 1. An insurer shall not make any investment or
38 loan, ~~other than policy loans or annuity contract~~
39 ~~loans of a life insurer,~~ unless the same is autho-
40 rized or approved by the insurer's board of directors

1 or by a committee thereof charged with supervision of
2 investments and loans.

3 Sec. 6. 24-A MRSA §1105, as amended by PL 1983,
4 c. 442, §§2 and 3, is repealed.

5 Sec. 7. 24-A MRSA §1115, sub-§3, as enacted by
6 PL 1983, c. 759, §2, is repealed.

7 Sec. 8. 24-A MRSA §1122, as enacted by PL 1969,
8 c. 132, §1, is repealed.

9 Sec. 9. 24-A MRSA §1125, sub-§1, ¶A, as enacted
10 by PL 1969, c. 132, §1, is amended to read:

11 A. The building in which it has its principal
12 office, the land upon which the building stands,
13 and such other real estate as may be requisite
14 for the insurer's convenient accommodation in the
15 transaction of its business. The amount so in-
16 vested shall not aggregate more than ~~10% of the~~
17 ~~insurer's assets, if a life insurer, or more than~~
18 ~~15% of the insurer's assets if a property or ca-~~
19 ~~sualty or surety or other such nonlife insurer.~~

20 Sec. 10. 24-A MRSA §1128, as amended by PL 1973,
21 c. 585, §12, is repealed.

22 Sec. 11. 24-A MRSA §1130, sub-§1, as enacted by
23 PL 1969, c. 132, §1, is amended to read:

24 1. An insurer authorized to transact insurance
25 in a foreign country, or which has outstanding insur-
26 ~~ance, annuity~~ or reinsurance contracts on ~~lives or~~
27 risks resident or located in a foreign country may
28 invest in or otherwise acquire or loan upon securi-
29 ties and investments in such foreign country which
30 are substantially of the same kinds, classes and in-
31 vestment grades as those eligible for investment un-
32 der other sections of this chapter; but the aggregate
33 amount of such investments in a foreign country and
34 of cash in the currency of such country shall not,
35 except as to Canadian investments otherwise autho-
36 rized under this chapter, exceed 1 1/2 times the
37 amount of its reserves and other obligations under
38 such contracts or the amount which the insurer is re-
39 quired by law to invest in such country, whichever is
40 the greater.

1 Sec. 12. 24-A MRSA §1131, sub-§1, as amended by
2 PL 1983, c. 759, §3, is repealed and the following
3 enacted in its place:

4 1. An insurer may make loans or investments, not
5 otherwise eligible, qualified or expressly permitted
6 under this chapter, in an aggregate amount not over
7 10% of the insurer's assets and not over 1% of those
8 assets as to any one such loan or investment. The
9 investment limitations contained in this chapter,
10 qualitative or quantitative or otherwise, shall not
11 apply to loans or investments under this section,
12 provided that all loans or investments made or ac-
13 quired under this section shall meet the following
14 requirements.

15 A. The loan or investment shall fulfill the re-
16 quirements of section 1103 and otherwise qualify
17 as a sound investment.

18 B. No such loan or investment may be represented
19 by:

20 (1) Any item described in section 902;

21 (2) Any loan or investment expressly pro-
22 hibited under section 1136; or

23 (3) Agents' balances, or amounts advanced
24 to or owing by agents, except as to mortgage
25 loans and collateral loans to those agents
26 otherwise authorized under this chapter.

27 C. No loan or investment may cause the insurer
28 to exceed the specific diversification require-
29 ments enumerated in section 1106.

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

32 C. Any note or other evidence of indebtedness of
33 any director, officer or controlling stockholder
34 of the insurer or of the spouse or child of any
35 of the foregoing, ~~except as to policy loans au-~~
36 ~~thorized under section 1122.~~

37 Sec. 14. 24-A MRSA c. 13-A is enacted to read:

1 CHAPTER 13-A

2 INVESTMENTS OF LIFE INSURERS AND LIFE
3 AND HEALTH INSURERS

4 §1151. Scope of chapter

5 Except as provided in section 1161, this chapter
6 applies only to domestic insurers which transact
7 business of a type described in section 702, life in-
8 surance; section 703, annuity; section 704, health
9 insurance; or any combination of those types of busi-
10 ness.

11 §1152. Eligibility of investments

12 1. Eligible investments. Insurers shall invest
13 in or lend their funds on the security of and shall
14 hold as eligible investments only those as prescribed
15 or permitted in this chapter.

16 2. Prior investments. Any particular investment
17 held by an insurer on the effective date of this
18 chapter, which was a legal investment at the time it
19 was made, and which the insurer was legally entitled
20 to possess immediately before the effective date of
21 this chapter, shall be considered an eligible invest-
22 ment.

23 3. Eligibility date. Eligibility of an invest-
24 ment shall be determined as of the date of its making
25 or acquisition, except as stated in subsection 2, or
26 in section 1153, subsection 3, or in section 1156,
27 subsection 2, paragraph H, subparagraph (4).

28 4. Basis for limitation or diversification. Any
29 investment limitation or diversification requirement
30 based upon the amount of the insurer's assets or par-
31 ticular funds shall relate to such assets or funds as
32 shown by the insurer's annual statement as of the De-
33 cember 31st next preceding the date of acquisition of
34 the investment by the insurer, or as shown by a cur-
35 rent applicable financial statement, prepared on the
36 same basis as that annual statement, resulting from
37 merger with another insurer, bulk reinsurance or
38 change in capitalization.

1 5. Capital loans. Nothing in this chapter pro-
2 hibits an insurer from advancing funds to another in-
3 surer upon the type of agreement provided for in sec-
4 tion 3415, borrowed capital funds, and subject to the
5 terms of that section.

6 §1153. General qualifications

7 1. Eligible investments. No investment, other
8 than real property acquired under section 1156, sub-
9 section 2, paragraph D, and personal property inci-
10 dent to that real property or acquired under section
11 1156, subsection 2, paragraph E, and other than in-
12 vestments acquired under section 1156, subsection 2,
13 paragraph H, subparagraph (2), may be eligible for
14 acquisition unless it is interest bearing, interest
15 accruing, entitled to dividends, if declared, or is
16 otherwise income entitled and is not then in default
17 in any respect and the insurer is entitled to receive
18 for its exclusive account and benefit that interest
19 or those dividends or that income.

20 2. Bona fide hedging transactions. Nothing in
21 this chapter may be considered to prohibit an insurer
22 from effecting or maintaining bona fide hedging
23 transactions in the following:

24 A. Foreign currency in connection with invest-
25 ments eligible for acquisition under this chap-
26 ter;

27 B. Contracts for the future delivery or receipt
28 of any investments eligible for acquisition under
29 this chapter;

30 C. Options, calls and other rights to purchase
31 investments eligible for acquisition under this
32 chapter;

33 D. Puts and other rights to require another per-
34 son to purchase investments eligible for acquisi-
35 tion under this chapter; and

36 E. Options or futures contracts relating to mar-
37 ket value indices of investments eligible for ac-
38 quisition under this chapter, provided that, ex-
39 cept with the approval of the superintendent, no

1 insurer may invest in options or futures con-
2 tracts relating to market value indices of any
3 investments except publicly traded stocks and
4 bonds.

5 Those contracts, options, calls, puts and rights
6 shall be traded on a national securities exchange or
7 board of trade regulated under the laws of the United
8 States or directly negotiated with the issuers of
9 those investments or with a qualified broker, dealer
10 or bank.

11 The aggregate amount of investments for bona fide
12 hedging purposes in foreign currency and in those
13 contracts, options, calls, puts and rights outstand-
14 ing at any one time, valued for all purposes in ac-
15 cordance with generally accepted accounting princi-
16 ples, shall not exceed 1% of the issuer's total ad-
17 mitted assets.

18 3. Permitted acquisitions. Nothing in this
19 chapter prohibits the acquisition by an insurer of:

20 A. Securities or property received as a dividend
21 or pursuant to a lawful judicial or nonjudicial
22 plan of reorganization or dissolution or pursuant
23 to a lawful and bona fide agreement of bulk rein-
24 surance, merger or consolidation or through the
25 exercise of rights of conversion, stock warrants
26 or stock options received by it in accordance
27 with this subsection or section 1156;

28 B. An investment permitted under section 1156
29 because that investment is convertible into other
30 securities or stock in which the insurer is not
31 permitted to invest under this chapter or because
32 the insurer receives in connection with that in-
33 vestment stock warrants, whether detachable or
34 nondetachable, stock options, shares of stock,
35 property interests or other assets of any kind;
36 or

37 C. Real or personal property or any interest in
38 that property received in satisfaction of a debt
39 previously owing to that insurer. If any securi-
40 ties received by any insurer in accordance with
41 paragraph A consist in whole or in part of stock

1 or shares of any institution, as defined in sec-
2 tion 1156, or of bonds or other obligations which
3 do not meet the requirements specified in section
4 1156, then any of that stock or shares and any
5 bond or obligation of that type so received shall
6 be disposed of within 5 years from the time of
7 its acquisition or before the expiration of any
8 further period or periods of time as may be pre-
9 scribed in writing by the superintendent or
10 treated as a nonadmitted asset thereafter unless,
11 at any time after acquisition, those securities
12 have met the relevant requirements and the insurer
13 has notified the superintendent of that fact.

14 §1154. Authorization; record of investments

15 1. Authorization required. An insurer shall not
16 make any investment or loan, other than policy loans
17 or annuity contract loans, unless it is authorized or
18 approved by the insurer's board of directors or by a
19 committee of the board of directors charged with su-
20 pervision of investments and loans.

21 2. Records. The insurer shall maintain a full
22 record of each investment, showing, among other
23 things, the name of any officer, director or principal
24 stockholder of the insurer having any direct, in-
25 direct or contingent interest in the securities, loan
26 or property constituting the investment, or in the
27 person in whose behalf the investment is made, and
28 the nature of that interest.

29 §1155. Diversification

30 Investments of an insurer shall be subject to the
31 following diversification requirements and limita-
32 tions.

33 1. Real estate; personal property; equity inter-
34 ests; subsidiaries. Not more than 40% of the
35 insurer's assets in aggregate amount may consist of
36 investments described in the following subdivisions:

37 A. Real estate, section 1156, subsection 2, par-
38 agraph D, subparagraph (1);

39 B. Personal property, section 1156, subsection
40 2, paragraph E;

1 C. Equity interests, section 1156, subsection 2,
2 paragraph F; and

3 D. Subsidiaries, section 1157, except as pro-
4 vided in that section.

5 If, on or after the effective date of this subsection,
6 the insurer makes investments of those types in
7 institutions or property located within the State ag-
8 gregating 1% or more of its assets, the 40% limita-
9 tion in this subsection shall be increased by an
10 equal amount up to 45%, exclusive of those invest-
11 ments in institutions or property located within the
12 State, thus providing for a maximum limit on the in-
13 vestments described in those subdivisions of 50% of
14 the insurer's assets.

15 2. Government obligations; policy loans; other
16 limitations. Except as otherwise expressly provided,
17 an insurer may not invest more than 10% of its assets
18 in the securities of any one person, other than in-
19 vestments eligible under the following sections:

20 A. Government obligations, section 1156, subsec-
21 tion 2, paragraph A; and

22 B. Policy loans, section 1158.

23 3. Other investment limitations shall be as pro-
24 vided in particular sections of this chapter.

25 §1156. Reserve and other investments

26 1. Standard of care. When investing the assets
27 of an insurer, the directors and officers of the in-
28 surer shall perform their duties in good faith and
29 with that degree of care that an ordinarily prudent
30 person in a like position would use under similar
31 circumstances.

32 2. Investment classes. Subject to section 1155,
33 the assets of an insurer may be invested in the fol-
34 lowing classes, subject to the percentage limitations
35 contained in this subsection:

36 A. Obligations issued, assumed, guaranteed or
37 insured by the United States or by any state or

1 by the District of Columbia, or any other govern-
2 mental unit in the United States, its territories
3 or possessions, or by any agency or instrumental-
4 ity of any of those, provided that those obliga-
5 tions are by law payable, as to both principal
6 and interest, from taxes upon all property or in-
7 come within the jurisdiction of that governmental
8 unit, or from adequate special revenues pledged
9 or appropriated or otherwise by law required to
10 be provided for the purpose of that payment, but
11 not including special assessments on properties
12 benefitted by local improvements unless adequate
13 security is evidenced by the ratio of assessment
14 to the value of those properties, or unless the
15 obligation is additionally secured by an adequate
16 guaranty fund required by law;

17 B. Obligations issued, assumed, guaranteed or
18 accepted by domestic institutions, or trustees or
19 receivers of those institutions, and preferred
20 shares of any of those institutions, provided
21 that, without the prior approval of the superin-
22 tendent, no domestic insurer may acquire any
23 high-yield obligations of any institution if:

24 (1) The aggregate amount of publicly traded
25 high-yield obligations of that institution
26 then held by the insurer would exceed 1/2 of
27 1% of the insurer's admitted assets;

28 (2) The aggregate amount of all high-yield
29 obligations of that institution then held by
30 the insurer would exceed 1% of its admitted
31 assets;

32 (3) The aggregate amount of all publicly
33 traded high-yield obligations then held by
34 the insurer would exceed 10% of its admitted
35 assets; or

36 (4) The aggregate amount of all high-yield
37 obligations then held by the insurer would
38 exceed 15% of its admitted assets;

39 C. Obligations secured by liens on real property
40 or interests in that property located within the
41 United States and not eligible under paragraph A
42 or B;

1 D. Investments in real property or interests
2 therein located in the United States, held di-
3 rectly or evidenced by partnership interests,
4 stock of corporations, trust certificates or oth-
5 er instruments and acquired:

6 (1) As an investment for the production of
7 income or to be improved or developed for
8 that investment purpose; or

9 (2) For the convenient accommodation of the
10 insurer's business.

11 After giving effect to any of those types of in-
12 vestment, the aggregate amount of investments
13 made under subparagraph (1) shall not exceed 20%
14 of the insurer's total admitted assets; the ag-
15 gregate amount of investments made under subpara-
16 graph (2) shall not exceed 10% of the insurer's
17 total admitted assets; and the aggregate amount
18 of investments made under this paragraph shall
19 not exceed 25% of the insurer's total admitted
20 assets. Investments under subparagraph (1) in
21 any single property, including improvements on
22 that property, may not in the aggregate exceed 2%
23 of the insurer's total admitted assets;

24 E. Investments in personal property or interests
25 in that property located or used wholly or in
26 part within the United States, held directly or
27 evidenced by partnership interests, stock of cor-
28 porations, trust certificates or other instru-
29 ments, provided that, after giving effect to any
30 investment of that type, the aggregate amount of
31 those investments will not exceed 10% of the
32 insurer's total admitted assets and provided that
33 investments under this paragraph in any single
34 item of personal property will not in the aggre-
35 gate exceed 1% of the insurer's total admitted
36 assets;

37 F. Investments, other than investments described
38 in paragraph D or E and in addition to invest-
39 ments authorized by section 1157, in common
40 stock, partnership interests, trust certificates
41 or other equity interests, other than preferred
42 shares, of domestic institutions, provided that,

1 after giving effect to any investment of that
2 type under this paragraph, the aggregate amount
3 of those investments will not exceed 20% of the
4 insurer's total admitted assets;

5 G. The following foreign investments:

6 (1) Canadian securities and investments
7 substantially of the same classes as those
8 eligible for investment under paragraphs A
9 to F, but the aggregate amount of those in-
10 vestments which are held at any time by any
11 insurer shall not exceed 10% of total admit-
12 ted assets, except where a greater amount is
13 permitted pursuant to subparagraph (2), in
14 which case this subparagraph shall not be
15 applicable;

16 (2) In the case of any insurer which is au-
17 thorized to do business in a foreign country
18 or possession of the United States or which
19 has outstanding insurance, annuity or rein-
20 surance contracts on lives or risks resident
21 or located in a foreign country or posses-
22 sion of the United States, securities and
23 investments in that foreign country or pos-
24 session that are substantially of the same
25 classes as those eligible for investment un-
26 der paragraphs A to F, but the aggregate
27 amount of such investments in a foreign
28 country or a possession of the United States
29 and of cash in the currency of that country
30 or possession which is at any time held by
31 that insurer shall not, except as provided
32 in paragraph H, exceed 1 1/2 times the
33 amount of its reserves and other obligations
34 under those contracts or the amount which
35 that insurer is required by law to invest in
36 that country or possession, whichever is
37 greater; and

38 (3) In addition to the foreign investments
39 permitted under subparagraphs (1) and (2),
40 securities and investments in foreign coun-
41 tries which are substantially of the same
42 classes as those eligible for investment un-
43 der paragraphs A to F, but the aggregate

1 amount of those investments made pursuant to
2 this subparagraph shall not exceed 1% of to-
3 tal admitted assets; and

4 H. Investments which do not qualify or are not
5 permitted under any other paragraph of this sub-
6 section; provided that:

7 (1) After giving effect to any investment
8 made under this paragraph, the aggregate
9 amount of those investments shall not exceed
10 14% of total admitted assets, except that
11 investments made under this paragraph in in-
12 stitutions or property not located within
13 the State shall not exceed 10% of total ad-
14 mitted assets; and, if the insurer makes in-
15 vestments described in paragraphs A to G and
16 elects to charge those investments against
17 the quantitative limits in this paragraph
18 instead of the quantitative limits in para-
19 graphs A to G, then the aggregate amount in-
20 vested under this paragraph in those types
21 of investment shall not exceed 5% of total
22 admitted assets for any one of those types
23 of investment;

24 (2) Investments that are neither interest
25 bearing nor income entitled, including the
26 cost of outstanding bona fide hedging trans-
27 actions made under section 1153, subsection
28 2, shall be subject to all of the provisions
29 of this paragraph; and the aggregate amount
30 of those investments held at any one time
31 shall not exceed 3% of total admitted as-
32 sets;

33 (3) The investment limitations contained in
34 this chapter, qualitative or otherwise,
35 shall not apply to loans or investments made
36 or acquired under this paragraph, provided
37 that no loan or investment made or acquired
38 under this paragraph may be represented by
39 any item described in section 902; any loan
40 or investment expressly prohibited under
41 section 1160; or agent's balances, or
42 amounts advanced to or owing by agents, ex-
43 cept as to policy loans, mortgage loans and

1 collateral loans to those agents otherwise
2 authorized under this chapter; or

3 (4) The insurer shall keep a separate
4 record of all loans and investments made or
5 acquired under this paragraph. Any such
6 loan or investment that, subsequent to the
7 date of making or acquisition, has attained
8 the standard of eligibility and qualifies
9 under any other provision of this chapter
10 may be considered to have been made or ac-
11 quired under and in compliance with that
12 provision and shall no longer be considered
13 to have been made or acquired under this
14 paragraph.

15 3. Determination of eligibility. The eligibili-
16 ty of any investment under any paragraph of subsec-
17 tion 2 shall be determined at the time of acquisi-
18 tion, except that investments qualified under subsec-
19 tion 2, paragraph H, may be requalified at a later
20 date under another provision of this chapter, if the
21 relevant conditions are satisfied at the time of such
22 requalification.

23 §1157. Investment in subsidiaries

24 1. Investment or acquisition. Subject to the
25 limitations contained in subsection 5, an insurer may
26 invest in, or otherwise acquire, subsidiaries engaged
27 or organized to engage in any businesses lawful under
28 the laws of the jurisdictions in which those subsidi-
29 aries are organized.

30 2. Authorization. Except as provided in section
31 1153, subsection 3, investments in subsidiaries au-
32 thorized by this section may not be authorized under
33 any other section of this chapter.

34 3. Superintendent; order of disposition. At any
35 time after the acquisition by the insurer of any sub-
36 sidary, other than a holding company engaged solely
37 in the ownership or control of other subsidiaries, or
38 a subsidiary referred to in subsection 5, paragraph
39 B, subparagraphs (1) or (2), the superintendent may
40 order its disposition if he finds, after notice and
41 an opportunity to be heard, that its continued reten-

tion is materially adverse to the interests of the insurer's policyholders. The insurer shall have at least 36 months to effect the disposition. If that disposition is not so effected, the subsidiary may not thereafter be allowed as an asset of the insurer.

4. Name. The name of any subsidiary may not be such as to mislead or deceive the public.

5. Limitations. Subject to the exceptions in paragraph B, investments in subsidiaries of an insurer are limited as follows.

A. Except with the approval of the superintendent, such insurer may not make, directly or indirectly, an investment in any subsidiary if that investment would bring the aggregate net cost of investments in all subsidiaries to an amount in excess of 10% of the insurer's total admitted assets or if that investment would bring the aggregate net investment in that subsidiary to an amount in excess of 2% of those total admitted assets.

B. Investments made directly or indirectly in the following subsidiaries are not subject to the limitations contained in paragraph A, or in section 1155 or 1156, nor are these investments to be counted in determining compliance with those limitations:

(1) Subsidiaries engaged or organized to engage exclusively in the ownership or management of assets authorized under this chapter as investments for the insurer; and

(2) Subsidiaries engaged or organized to engage in the kinds of business in which the insurer may engage, provided that the aggregate net cost of the insurer's investments in all such subsidiaries may not exceed 50% of its surplus as to policyholders.

Any investment described in section 3415 shall not be counted as an investment in a subsidiary in determining compliance with the limitations of this paragraph.

1 C. Subject to paragraph B, the "net cost of in-
2 vestment" is defined to be the sum of: The total
3 money or other consideration expended and obliga-
4 tions assumed in the acquisition or formation of
5 a subsidiary, including all organizational ex-
6 penses and contributions to capital and surplus
7 of that subsidiary; and all amounts expended in
8 acquiring additional common stock, preferred
9 stock, debt obligations and other securities, and
10 all contributions to the capital or surplus, of a
11 subsidiary subsequent to its acquisition or for-
12 mation; less returns of capital, repayments of
13 principal and any other payments reducing the in-
14 vestment in the subsidiary.

15 D. Investments made or acquired by subsidiaries
16 referred to in paragraph B, subparagraph (1),
17 shall be considered to be made or acquired di-
18 rectly by the insurer, pro rata, in the case of a
19 subsidiary not wholly owned, and shall, to such
20 extent, be subject to all the provisions and lim-
21 itations on the making of investments specified
22 in this chapter with respect to investments by
23 the insurer; shall be valued in accordance with
24 the provisions of sections 981 to 984 and other
25 applicable provisions of this Title; and shall be
26 located pursuant to section 3408. Those subsidi-
27 aries shall be subject to examination by the su-
28 perintendent under section 221, subsection 1, and
29 section 222, subsection 1.

30 E. There shall be excluded from all computations
31 under paragraph A any investment by an insurer in
32 any subsidiary, or by one subsidiary in another
33 subsidiary, to the extent that such investment is
34 reinvested in another subsidiary, but amounts so
35 reinvested shall thereafter be included in such
36 computations unless further excluded or exempted
37 by this chapter.

38 6. Valuation of subsidiary stock. In determin-
39 ing the financial condition of an insurer, all in-
40 vestments made directly or indirectly in the stock of
41 its subsidiaries shall be valued in accordance with
42 section 982, subsection 3, and regulations promul-
43 gated under that section.

1 7. Application of law. Except as provided in
2 section 1155, investments in subsidiaries made pursu-
3 ant to this section are not subject to any other re-
4 strictions or prohibitions contained in this chapter.

5 §1158. Policy loans

6 A life insurer may lend to its policyholder, upon
7 pledge of the policy as collateral security, any sum
8 not exceeding the cash surrender value of the policy;
9 or may lend against pledge or assignment of any of
10 its supplementary contracts or other contracts or ob-
11 ligations, as long as the loan is adequately secured
12 by that pledge or assignment. Loans so made are eli-
13 gible investments of the insurer.

14 §1159. Special investments; separate accounts

15 1. Special investments. Except as may be pro-
16 vided with respect to reserves for guaranteed bene-
17 fits and funds referred to in subsection 2:

18 A. Amounts allocated to any separate account es-
19 tablished by the insurer pursuant to section
20 2537, separate accounts and accumulations on
21 those accounts may be invested and reinvested
22 without regard to any requirements or limitations
23 prescribed by this chapter except for the provi-
24 sions of section 1156, subsection 1; and

25 B. Except as provided in subsection 2, paragraph
26 B, the investments in that separate account or
27 accounts may not be taken into account in apply-
28 ing the investment limitations otherwise applica-
29 ble to the investments of the insurer.

30 2. Separate accounts. Except with the approval
31 of the superintendent and under such conditions as to
32 investments and other matters as he may prescribe,
33 which shall recognize the guaranteed nature of the
34 benefits provided, no insurer may guarantee the value
35 of the assets allocated to a separate account, or any
36 interest in that account, or the investment results
37 of that account, or the income from that account, to
38 a contract holder, without limitation of liability
39 under all those guarantees to the extent of the in-
40 terest of the contract holder in assets allocated to
41 that separate account, unless:

1 A. To the extent that the applicable agreements
2 provide that the assets in that separate account
3 shall not be chargeable with liabilities arising
4 out of any other business of the insurer, the as-
5 sets allocated to that separate account are in-
6 vested subject to the requirements and limita-
7 tions on investments imposed by section 1156,
8 subsection 2, as though the aggregate assets al-
9 located to that separate account were the
10 insurer's total admitted assets; or

11 B. The assets allocated to that separate account
12 are invested subject to the requirements and lim-
13 itations on investments imposed by section 1156,
14 subsection 2, as though they were part of the
15 general assets of the insurer.

16 §1160. Prohibited transactions and investment under-
17 writing

18 1. Purchase of own common stock. A stock insur-
19 er may not purchase its own common stock, except for
20 the purpose of mutualization under chapter 47; for
21 retirement; or pursuant to a plan for investment or
22 loan submitted in writing by the insurer to the su-
23 perintendent in advance, and which the superintendent
24 has not disapproved within 20 days after the submis-
25 sion or within any additional reasonable period as
26 the superintendent may request, as being unfair or
27 inequitable to the insurer may not purchase its own
28 common stockholders.

29 2. Underwriting. No insurer may underwrite or
30 participate in the underwriting of an offering of se-
31 curities or property of any person. This provision
32 may not be considered to prohibit:

33 A. The acquisition and ownership by the insurer
34 of its subsidiary corporation acting as an in-
35 vestment adviser or principal underwriter of a
36 management company or investment company regis-
37 tered with the United States Securities and Ex-
38 change Commission under the Investment Company
39 Act of 1940, United States Code, Title 11, Sec-
40 tion 72 and 102, and Title 15, Sections 80a-1 to
41 80a-52, as amended;

1 B. The registration by the insurer, under the
2 United States Securities Act of 1933, United
3 States Code, Title 15, Sections 77a to 77aa or
4 other applicable law, of restricted or other se-
5 curities acquired and owned by it in the regular
6 course of business; and

7 C. The underwriting by an insurer individually
8 or on its account jointly with one or more of its
9 subsidiaries of the securities of any company
10 that is engaged primarily in the business of in-
11 vesting in or holding securities or real property
12 and to which the insurer or any of its subsidi-
13 aries renders management, investment advisory or
14 sales services nor from participating in sales or
15 purchases of those securities jointly with any
16 person in the insurer's holding company system,
17 as defined in section 222.

18 3. Investments in affiliates. No insurer may
19 purchase the stock of or otherwise invest in or lend
20 its funds upon the security of any note or other evi-
21 dence of indebtedness of any affiliate in the
22 insurer's holding company system, as defined in sec-
23 tion 222, or lend its funds to any director or offi-
24 cer of the insurer or the spouse or child of any di-
25 rector or officer. This provision may not be consid-
26 ered to prohibit:

27 A. Policy loans authorized under section 1158;

28 B. Investments in subsidiaries under section
29 1157; or

30 C. Purchases of stock, investments or loans made
31 in accordance with section 222 from, in or to
32 controlling shareholders or affiliates, provided
33 that any of those purchases, investments or loans
34 which exceed 1/2 of 1% of the insurer's admitted
35 assets shall be subject to the prior approval of
36 the superintendent, which approval shall be con-
37 sidered given unless the superintendent objects
38 to that transaction within 45 days of receipt of
39 written notice of that transaction.

40 4. Encumbrance of securities. No insurer may
41 pledge or transfer any of its securities as collater-

1 al for a loan if that loan with all other outstanding
2 loans secured by pledge or deposit of its securities
3 aggregates, or will aggregate if the loan is made,
4 more than 5% of its total admitted assets as shown by
5 its last sworn statement to the superintendent, un-
6 less the superintendent shall first give his written
7 permission for the loan as necessary in the conduct
8 of the business of that insurer; but in no event may
9 the pledge or transfer of securities for a loan be
10 made by that insurer if the insurer does not benefit
11 from that loan. This subsection may not be consid-
12 ered to prohibit an insurer from selling investments
13 subject to an obligation to repurchase them, upon
14 fair and reasonable terms.

15 5. Disposition of property. An insurer may en-
16 ter into any agreement to sell or withhold from sale
17 any of its property, as long as the insurer is not
18 participating in a prohibited underwriting. The
19 disposition of an insurer's property shall be the re-
20 sponsibility of its board of directors, in accordance
21 with its charter and bylaws.

22 §1161. Investments of foreign insurers

23 The investment portfolio of a foreign or alien
24 insurer shall be as permitted by the laws of its dom-
25 icile, if of a quality substantially equal to that
26 required under this chapter for similar funds of like
27 domestic insurers.

28 §1162. Definitions

29 As used in this chapter, unless the context indi-
30 cates otherwise, the following terms have the follow-
31 ing meanings.

32 1. Aggregate amount of investments. "Aggregate
33 amount of investments" means the aggregate value of
34 those investments, as determined under sections 981
35 to 984, except as provided in section 1157, subsec-
36 tion 5.

37 2. Bona fide hedging transaction. "Bona fide
38 hedging transaction" means a purchase or sale of for-
39 ign currency or of a contract, option, call, put or
40 right entered into for the purpose of offsetting

1 changes in foreign currency exchange rates, or in the
2 market value of investments held or proposed to be
3 acquired by the insurer, or in the market value of
4 liabilities which the insurer has or expects to in-
5 cur, pursuant to a duly adopted resolution of the
6 insurer's board of directors and a written operations
7 procedure submitted to the superintendent prior to
8 making any such purchases and sales, provided that:

9 A. There is a high correlation between changes
10 in the market value of those hedging purchases
11 and sales and the market value of the assets and
12 liabilities to be hedged;

13 B. Books and records regarding all such pur-
14 chases and sales shall be maintained by the in-
15 surer in accordance with generally accepted ac-
16 counting principles; and

17 C. The superintendent is empowered to promulgate
18 such further regulations regarding the form and
19 content of such resolutions, operation proce-
20 dures, books and accounts and further accounting
21 treatment and valuation methods as may be neces-
22 sary to ensure compliance with these limitations.

23 3. Domestic institution. "Domestic institution"
24 means an institution created or existing under the
25 laws of the United States or of any state, district
26 or territory.

27 4. High-yield obligations. "High-yield obliga-
28 tions" means obligations which are either publicly
29 traded obligations or obligations issued in a trans-
30 action involving the acquisition of substantially all
31 the stock or assets of a corporation or substantially
32 all of the assets of a division of a corporation and
33 are not investment grade obligations.

34 5. Institution. "Institution" means corpora-
35 tions, joint-stock associations, business trusts,
36 business partnerships, business joint ventures and
37 any similar entity.

38 6. Investment grade obligation. "Investment
39 grade obligation" means an obligation which at the
40 time of acquisition by the insurer has been placed in

1 one of the top 4 rating categories by an independent
2 nationally recognized rating agency acceptable to the
3 superintendent or, if the obligation has not been
4 rated by any such rating agency, on which the average
5 annual yield to maturity at the time of acquisition
6 by the insurer is not more than 300 basis points
7 higher than that of obligations of comparable maturity
8 issued by the United States.

9 7. Not acquired by the insurer from an issuer,
10 underwriter or dealer. "Not acquired by the insurer
11 from an issuer, underwriter or dealer" means acquired
12 by the insurer in an exempt transaction described in
13 the United States Securities Act of 1933, Section
14 4(1) or Section 4(3), United States Code, Title 15,
15 Section 77d(1) or Section 77d(3), as from time to
16 time amended.

17 8. Obligations. "Obligations" means bonds, de-
18 bentures, notes and other evidences of indebtedness,
19 whether or not liability for payment extends beyond
20 the security for them as well as participation inter-
21 ests in any of those.

22 9. Publicly traded obligations. "Publicly
23 traded obligations" means obligations which are not
24 acquired by the insurer from an issuer, underwriter
25 or dealer or which are qualified for public sale at
26 the time of the insurer's acquisition.

27 10. Qualified bank. "Qualified bank" means a
28 bank or a trust company that is organized under the
29 laws of a state or the United States, has assets in
30 excess of \$5,000,000,000, has, or its parent corpora-
31 tion has, senior obligations outstanding rated AA or
32 better, and has a ratio of primary capital to total
33 assets of at least 5 1/2% and a ratio of total capital
34 to total assets of at least 6%.

35 11. Qualified broker or dealer. "Qualified broker
36 or dealer" means a broker or dealer that is or-
37 ganized under the laws of a state, is registered un-
38 der the United States Securities Exchange Act of
39 1934, United States Code, Title 15, Sections 78a to
40 78kk and has net capital in excess of \$250,000,000.

1 12. Qualified for public sale. "Qualified for
2 public sale" means registered under the United States
3 Securities Act of 1933, United States Code, Title 15,
4 Sections 77a to 77aa.

5 13. Subsidiary. "Subsidiary" has the meaning as
6 prescribed in section 222, subsection 2, paragraph F.
7 The term "subsidiary" does not include a separate ac-
8 count established under section 2537.

9 14. United States. "United States," when used
10 to signify place, includes those geographical areas
11 and the lands and waters adjacent to those geographi-
12 cal areas as are under the jurisdiction of the United
13 States.

14 **Sec. 15. 24-A MRSA §2537, sub-§2, as amended by**
15 **PL 1973, c. 560, §4, is further amended to read:**

16 **2. The amounts allocated to each such account of**
17 **that type and accumulations thereon may be invested**
18 **and reinvested as provided in ~~section--1128~~ section**
19 **1159 (special investments: separate accounts).**
20 **Amounts allocated to a separate account in the exer-**
21 **cise of the power granted by this section shall be**
22 **owned by the insurer, and the insurer shall not be,**
23 **nor hold itself out to be, a trustee with respect to**
24 **such those amounts.**

25 **Sec. 16. 24-A MRSA §2537, sub-§4, as amended by**
26 **PL 1973, c. 585, §12, is further amended to read:**

27 **4. Unless otherwise approved by the superintend-**
28 **ent, assets allocated to a separate account shall be**
29 **valued at their market value on the date of that val-**
30 **uation, or if there is no readily available market,**
31 **then in accordance with the terms of the contract or**
32 **the rules or other written agreement applicable to**
33 **such that separate account; except, that, unless oth-**
34 **erwise approved by the superintendent, the portion of**
35 **the assets of such that separate account at least**
36 **equal to the insurer's reserve liability with regard**
37 **to the guaranteed benefits and funds referred to in**
38 **~~section--1128~~ section 1159, if any, shall be valued in**
39 **accordance with rules otherwise applicable to the**
40 **insurer's assets.**

1 Sec. 17. 24-A M RSA §3311, sub-§2, ¶¶C and D, as
2 enacted by PL 1969, c. 132, §1, is amended to read:

3 C. An insurer may own subsidiaries or subsidi-
4 aries owning other subsidiaries which may engage
5 in such businesses all as provided for in section
6 1115 (stocks of subsidiaries) or in section 1157
7 (investment in subsidiaries); and

8 D. An insurer may utilize its facilities to per-
9 form administrative services for any governmental
10 body, unit or agency; and

11 Sec. 18. 24-A M RSA §3311, sub-§2, ¶E is enacted
12 to read:

13 E. An insurer transacting business of a type de-
14 scribed in section 702, life insurance; section
15 703, annuity; or section 704, health insurance;
16 or any combination of those types of business,
17 may engage in any other business in which it is
18 otherwise qualified to engage to the extent and
19 in the manner approved by the superintendent.

20 STATEMENT OF FACT

21 This new draft reflects agreements reached on
22 substantive issues with the Bureau of Insurance and
23 the resolution of numerous issues of drafting style
24 raised by the Office of the Revisor of Statutes.

25 3198061087