MAINE STATE LEGISLATURE

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LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND THIRTEENTH LEGISLATURE

FIRST REGULAR SESSION

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PUBLIC LAWS

OF THE

STATE OF MAINE

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1987

(b) Presents a substantial likelihood that the juvenile will absent himself from the center; and

(3) If the judge finds, by clear and convincing evidence that there is no less restrictive alternative to detention in an adult facility which will meet the purposes of detention.

Sec. 8. 15 MRSA §3203-A, sub-§7, ¶D is enacted to read:

D. Upon the petition of a sheriff or his designee, the District Court may approve the transfer of a juvenile who has been bound over pursuant to section 3101, subsection 4, from a separate juvenile section, which is described in paragraph A, to any section of a jail or another secure facility which is intended for use or used primarily for the detention of adults, if the court finds by clear and convincing evidence that:

(1) The juvenile's behavior presents an imminent danger of harm to himself or to others; and

(2) There is no less restrictive alternative to detention in an adult section which serves the purposes of detention.

That determination shall be made on the basis of evidence, including reliable hearsay evidence, presented in testimony or affidavits. In determining whether the juvenile's behavior presents a danger to himself or others, the court shall consider, among other factors:

(a) The nature of and the circumstances surrounding the offense with which the juvenile is charged, including whether the offense was committed in an aggressive, violent, premeditated or willful manner;

(b) The record and previous history of the juvenile, including his emotional attitude and pattern of living; and

(c) The juvenile's behavior and mental condition during any previous and current period of detention or commitment.

Effective September 29, 1987.

CHAPTER 399

S.P. 620 — L.D. 1821

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

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

Sec. 1. 24-A MRSA §222, sub-§3, ¶A, as repealed and replaced by PL 1975, c. 356, §1, is amended to read:

A. Authorization. Any domestic insurer may invest in or otherwise acquire one or more subsidiaries as authorized in section 1115; or section 1157.

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

4. Furniture, fixtures, furnishings, safes, vehicles, libraries, stationery, literature and supplies, other than data processing, recordkeeping and accounting systems authorized under section 901, subsection 13, except, in the case of title insurers, such materials and plants as the insurer is expressly authorized to invest in under section 1129 and except, in the case of any insurer, such personal property as the insurer is permitted to hold pursuant to chapter 13 or chapter 13-A, or which is reasonably necessary for the maintenance and operation of real estate lawfully acquired and held by the insurer other than real estate used by it for home office, branch office and similar purposes.

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

§1101. Scope of chapter

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

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

4. Any investment limitation or diversification requirement based upon the amount of the insurer's assets or particular funds shall relate to such assets or funds as shown by the insurer's annual statement as of the December 31st next preceding the date of acquisition of the investment by the insurer, or as shown by a current applicable financial statement, prepared on the same basis as that annual statement, resulting from merger ~~of~~ with another insurer, bulk reinsurance, or change in capitalization.

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

1. An insurer shall not make any investment or loan, ~~other than policy loans or annuity contract loans of a life insurer,~~ unless the same is authorized or approved by the insurer's board of directors or by a committee thereof charged with supervision of investments and loans.

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

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

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

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

A. The building in which it has its principal office, the land upon which the building stands, and such other real estate as may be requisite for the insurer's convenient accommodation in the transaction of its business. The amount so invested shall not aggregate more than ~~10% of the insurer's assets, if a life insurer, or more than~~ 15% of the insurer's assets ~~if a property or casualty or surety or other such nonlife insurer~~.

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

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

1. An insurer authorized to transact insurance in a foreign country, or which has outstanding insurance, ~~annuity~~ or reinsurance contracts on ~~lives or~~ risks resident or located in a foreign country may invest in or otherwise acquire or loan upon securities and investments in such foreign country which are substantially of the same kinds, classes and investment grades as those eligible for investment under other sections of this chapter; but the aggregate amount of such investments in a foreign country and of cash in the currency of such country shall not, except as to Canadian investments otherwise authorized under this chapter, exceed 1 1/2 times the amount of its reserves and other obligations under such contracts or the amount which the insurer is required by law to invest in such country, whichever is the greater.

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

1. An insurer may make loans or investments, not otherwise eligible, qualified or expressly permitted under this chapter, in an aggregate amount not over 10% of the insurer's assets and not over 1% of those assets as to any one such loan or investment. The investment limitations contained in this chapter, qualitative or quantitative or otherwise, shall not apply to loans or investments under this section, provided that all loans or investments made or acquired under this section shall meet the following requirements.

A. The loan or investment shall fulfill the requirements of section 1103 and otherwise qualify as a sound investment.

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

(1) Any item described in section 902;

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

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

C. No loan or investment may cause the insurer to exceed the specific diversification requirements enumerated in section 1106.

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

C. Any note or other evidence of indebtedness of any director, officer or controlling stockholder of the insurer or of the spouse or child of any of the foregoing, ~~except as to policy loans authorized under section 1122~~.

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

CHAPTER 13-A

INVESTMENTS OF LIFE INSURERS AND LIFE AND HEALTH INSURERS

§1151. Scope of chapter

Except as provided in section 1161, this chapter applies only to domestic insurers which transact business of a type described in section 702, life insurance; section 703, annuity; section 704, health insurance; or any combination of those types of business.

§1152. Eligibility of investments

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

2. Prior investments. Any particular investment held by an insurer on the effective date of this chapter, which was a legal investment at the time it was made, and which the insurer was legally entitled to possess immediately before the effective date of this chapter, shall be considered an eligible investment.

3. Eligibility date. 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 1153, subsection 3, or in section 1156, subsection 2, paragraph H, subparagraph (4).

4. Basis for limitation or diversification. Any investment limitation or diversification requirement based upon the amount of the insurer's assets or particular funds shall relate to such assets or funds as shown by the insurer's annual statement as of the December 31st next preceding the date of acquisition of the investment by the insurer, or as shown by a current applicable financial statement, prepared on the same basis as that an-

nual statement, resulting from merger with another insurer, bulk reinsurance or change in capitalization.

5. Capital loans. Nothing in this chapter prohibits an insurer from advancing funds to another insurer upon the type of agreement provided for in section 3415, borrowed capital funds, and subject to the terms of that section.

§1153. General qualifications

1. Eligible investments. No investment, other than real property acquired under section 1156, subsection 2, paragraph D, and personal property incident to that real property or acquired under section 1156, subsection 2, paragraph E, and other than investments acquired under section 1156, subsection 2, paragraph H, subparagraph (2), may be eligible for acquisition unless it is interest bearing, interest accruing, entitled to dividends, if declared, or is otherwise income entitled and is not then in default in any respect and the insurer is entitled to receive for its exclusive account and benefit that interest or those dividends or that income.

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

A. Foreign currency in connection with investments eligible for acquisition under this chapter;

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

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

D. Puts and other rights to require another person to purchase investments eligible for acquisition under this chapter; and

E. Options or futures contracts relating to market value indices of investments eligible for acquisition under this chapter, provided that, except with the approval of the superintendent, no insurer may invest in options or futures contracts relating to market value indices of any investments except publicly traded stocks and bonds.

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

The aggregate amount of investments for bona fide hedging purposes in foreign currency and in those contracts, options, calls, puts and rights outstanding at any one time, valued for all purposes in accordance with generally accepted accounting principles, shall not exceed 1% of the issuer's total admitted assets.

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

A. Securities or property received as a dividend or pursuant to a lawful judicial or nonjudicial plan of reorganization or dissolution or pursuant to a lawful and bona fide agreement of bulk reinsurance, merger or consolidation or through the exercise of rights of conversion, stock warrants or stock options received by it in accordance with this subsection or section 1156;

B. An investment permitted under section 1156 because that investment is convertible into other securities or stock in which the insurer is not permitted to invest under this chapter or because the insurer receives in connection with that investment stock warrants, whether detachable or nondetachable, stock options, shares of stock, property interests or other assets of any kind; or

C. Real or personal property or any interest in that property received in satisfaction of a debt previously owing to that insurer. If any securities received by any insurer in accordance with paragraph A consist in whole or in part of stock or shares of any institution, as defined in section 1156, or of bonds or other obligations which do not meet the requirements specified in section 1156, then any of that stock or shares and any bond or obligation of that type so received shall be disposed of within 5 years from the time of its acquisition or before the expiration of any further period or periods of time as may be prescribed in writing by the superintendent or treated as a nonadmitted asset thereafter unless, at any time after acquisition, those securities have met the relevant requirements and the insurer has notified the superintendent of that fact.

§1154. Authorization; record of investments

1. Authorization required. An insurer shall not make any investment or loan, other than policy loans or annuity contract loans, unless it is authorized or approved by the insurer's board of directors or by a committee of the board of directors charged with supervision of investments and loans.

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

§1155. Diversification

Investments of an insurer shall be subject to the following diversification requirements and limitations.

1. Real estate; personal property; equity interests; subsidiaries. Not more than 40% of the insurer's assets

in aggregate amount may consist of investments described in the following subdivisions:

A. Real estate, section 1156, subsection 2, paragraph D, subparagraph (1);

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

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

D. Subsidiaries, section 1157, except as provided in that section.

If, on or after the effective date of this subsection, the insurer makes investments of those types in institutions or property located within the State aggregating 1% or more of its assets, the 40% limitation in this subsection shall be increased by an equal amount up to 45%, exclusive of those investments in institutions or property located within the State, thus providing for a maximum limit on the investments described in those subdivisions of 50% of the insurer's assets.

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

A. Government obligations, section 1156, subsection 2, paragraph A; and

B. Policy loans, section 1158.

3. Other investment limitations shall be as provided in particular sections of this chapter.

§1156. Reserve and other investments

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

2. Investment classes. Subject to section 1155, the assets of an insurer may be invested in the following classes, subject to the percentage limitations contained in this subsection:

A. Obligations issued, assumed, guaranteed or insured by the United States or by any state or by the District of Columbia, or any other governmental unit in the United States, its territories or possessions, or by any agency or instrumentality of any of those, provided that those obligations are by law payable, as to both principal and interest, from taxes upon all property or income within the jurisdiction of that governmental unit, or from adequate special revenues pledged or appropriated or otherwise by law required to be provided for the purpose of that payment, but not including special assessments on properties benefitted by local improvements unless adequate security is evidenced by the ratio of assessment to the value of those properties, or unless the obligation is additionally secured by an adequate guaranty fund required by law;

B. Obligations issued, assumed, guaranteed or accepted by domestic institutions, or trustees or receivers of those institutions, and preferred shares of any of those institutions, provided that, without the prior approval of the superintendent, no domestic insurer may acquire any high-yield obligations of any institution if:

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

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

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

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

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

D. Investments in real property or interests therein located in the United States, held directly or evidenced by partnership interests, stock of corporations, trust certificates or other instruments and acquired:

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

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

After giving effect to any of those types of investment, the aggregate amount of investments made under subparagraph (1) shall not exceed 20% of the insurer's total admitted assets; the aggregate amount of investments made under subparagraph (2) shall not exceed 10% of the insurer's total admitted assets; and the aggregate amount of investments made under this paragraph shall not exceed 25% of the insurer's total admitted assets. Investments under subparagraph (1) in any single property, including improvements on that property, may not in the aggregate exceed 2% of the insurer's total admitted assets;

E. Investments in personal property or interests in

that property located or used wholly or in part within the United States, held directly or evidenced by partnership interests, stock of corporations, trust certificates or other instruments, provided that, after giving effect to any investment of that type, the aggregate amount of those investments will not exceed 10% of the insurer's total admitted assets and provided that investments under this paragraph in any single item of personal property will not in the aggregate exceed 1% of the insurer's total admitted assets;

F. Investments, other than investments described in paragraph D or E and in addition to investments authorized by section 1157, in common stock, partnership interests, trust certificates or other equity interests, other than preferred shares, of domestic institutions, provided that, after giving effect to any investment of that type under this paragraph, the aggregate amount of those investments will not exceed 20% of the insurer's total admitted assets;

G. The following foreign investments:

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

(2) In the case of any insurer which is authorized to do business in a foreign country or possession of the United States or which has outstanding insurance, annuity or reinsurance contracts on lives or risks resident or located in a foreign country or possession of the United States, securities and investments in that foreign country or possession that are substantially of the same classes as those eligible for investment under paragraphs A to F, but the aggregate amount of such investments in a foreign country or a possession of the United States and of cash in the currency of that country or possession which is at any time held by that insurer shall not, except as provided in paragraph H, exceed 1 1/2 times the amount of its reserves and other obligations under those contracts or the amount which that insurer is required by law to invest in that country or possession, whichever is greater; and

(3) In addition to the foreign investments permitted under subparagraphs (1) and (2), securities and investments in foreign countries which are substantially of the same classes as those eligible for investment under paragraphs A to F, but the aggregate amount of those investments made pursuant to this subparagraph shall not exceed 1% of total admitted assets; and

H. Investments which do not qualify or are not permitted under any other paragraph of this subsection; provided that:

(1) After giving effect to any investment made under this paragraph, the aggregate amount of those investments shall not exceed 14% of total admitted assets, except that investments made under this paragraph in institutions or property not located within the State shall not exceed 10% of total admitted assets; and, if the insurer makes investments described in paragraphs A to G and elects to charge those investments against the quantitative limits in this paragraph instead of the quantitative limits in paragraphs A to G, then the aggregate amount invested under this paragraph in those types of investment shall not exceed 5% of total admitted assets for any one of those types of investment;

(2) Investments that are neither interest bearing nor income entitled, including the cost of outstanding bona fide hedging transactions made under section 1153, subsection 2, shall be subject to all of the provisions of this paragraph; and the aggregate amount of those investments held at any one time shall not exceed 3% of total admitted assets;

(3) The investment limitations contained in this chapter, qualitative or otherwise, shall not apply to loans or investments made or acquired under this paragraph, provided that no loan or investment made or acquired under this paragraph may be represented by any item described in section 902; any loan or investment expressly prohibited under section 1160; or 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 this chapter; or

(4) The insurer shall keep a separate record of all loans and investments made or acquired under this paragraph. Any such loan or investment that, subsequent to the date of making or acquisition, has attained the standard of eligibility and qualifies under any other provision of this chapter may be considered to have been made or acquired under and in compliance with that provision and shall no longer be considered to have been made or acquired under this paragraph.

3. Determination of eligibility. The eligibility of any investment under any paragraph of subsection 2 shall be determined at the time of acquisition, except that investments qualified under subsection 2, paragraph H, may be requalified at a later date under another provision of this chapter, if the relevant conditions are satisfied at the time of such requalification.

§1157. Investment in subsidiaries

1. Investment or acquisition. Subject to the limitations contained in subsection 5, an insurer may invest in, or otherwise acquire, subsidiaries engaged or organized to engage in any businesses lawful under the

laws of the jurisdictions in which those subsidiaries are organized.

2. Authorization. Except as provided in section 1153, subsection 3, investments in subsidiaries authorized by this section may not be authorized under any other section of this chapter.

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

C. Subject to paragraph B, the "net cost of investment" is defined to be the sum of: The total money or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of that subsidiary; and all amounts expended in acquiring additional common stock, preferred stock, debt obligations and other securities, and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation; less returns of capital, repayments of principal and any other payments reducing the investment in the subsidiary.

D. Investments made or acquired by subsidiaries referred to in paragraph B, subparagraph (1), shall be considered to be made or acquired directly by the insurer, pro rata, in the case of a subsidiary not wholly owned, and shall, to such extent, be subject to all the provisions and limitations on the making of investments specified in this chapter with respect to investments by the insurer; shall be valued in accordance with the provisions of sections 981 to 984 and other applicable provisions of this Title; and shall be located pursuant to section 3408. Those subsidiaries shall be subject to examination by the superintendent under section 221, subsection 1, and section 222, subsection 1.

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

6. Valuation of subsidiary stock. In determining the financial condition of an insurer, all investments made directly or indirectly in the stock of its subsidiaries shall be valued in accordance with section 982, subsection 3, and regulations promulgated under that section.

7. Application of law. Except as provided in section 1155, investments in subsidiaries made pursuant to this section are not subject to any other restrictions or prohibitions contained in this chapter.

§1158. Policy loans

A life insurer may lend to its policyholder, upon pledge of the policy as collateral security, any sum not exceeding the cash surrender value of the policy; or may lend against pledge or assignment of any of its supplementary contracts or other contracts or obligations, as long as the loan is adequately secured by that pledge or assignment. Loans so made are eligible investments of the insurer.

§1159. Special investments; separate accounts

1. Special investments. Except as may be provided with respect to reserves for guaranteed benefits and funds referred to in subsection 2:

A. Amounts allocated to any separate account established by the insurer pursuant to section 2537, separate accounts and accumulations on those accounts may be invested and reinvested without regard to any requirements or limitations prescribed by this chapter except for the provisions of section 1156, subsection 1; and

B. Except as provided in subsection 2, paragraph B, the investments in that separate account or accounts may not be taken into account in applying the investment limitations otherwise applicable to the investments of the insurer.

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

A. To the extent that the applicable agreements provide that the assets in that separate account shall not be chargeable with liabilities arising out of any other business of the insurer, the assets allocated to that separate account are invested subject to the requirements and limitations on investments imposed by section 1156, subsection 2, as though the aggregate assets allocated to that separate account were the insurer's total admitted assets; or

B. The assets allocated to that separate account are invested subject to the requirements and limitations on investments imposed by section 1156, subsection 2, as though they were part of the general assets of the insurer.

§1160. Prohibited transactions and investment underwriting

1. Purchase of own common stock. A stock insurer may not purchase its own common stock, except for the purpose of mutualization under chapter 47; for retirement; or pursuant to a plan for investment or loan submitted in writing by the insurer to the superintendent in advance, and which the superintendent has not disapproved within 20 days after the submission or within any additional reasonable period as the superintendent may request, as being unfair or inequitable to the insurer may not purchase its own common stockholders.

2. Underwriting. No insurer may underwrite or participate in the underwriting of an offering of securities or property of any person. This provision may not be considered to prohibit:

A. The acquisition and ownership by the insurer of its subsidiary corporation acting as an investment adviser or principal underwriter of a management company or investment company registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940, United States Code, Title 11, Section 72 and 102, and Title 15, Sections 80a-1 to 80a-52, as amended;

B. The registration by the insurer, under the United States Securities Act of 1933, United States Code, Title 15, Sections 77a to 77aa or other applicable law, of restricted or other securities acquired and owned by it in the regular course of business; and

C. The underwriting by an insurer individually or on its account jointly with one or more of its subsidiaries of the securities of any company that is engaged primarily in the business of investing in or holding securities or real property and to which the insurer or any of its subsidiaries renders management, investment advisory or sales services nor from participating in sales or purchases of those securities jointly with any person in the insurer's holding company system, as defined in section 222.

3. Investments in affiliates. No insurer may purchase the stock of or otherwise invest in or lend its funds upon the security of any note or other evidence of indebtedness of any affiliate in the insurer's holding company system, as defined in section 222, or lend its funds to any director or officer of the insurer or the spouse or child of any director or officer. This provision may not be considered to prohibit:

A. Policy loans authorized under section 1158;

B. Investments in subsidiaries under section 1157; or

C. Purchases of stock, investments or loans made in accordance with section 222 from, in or to controlling shareholders or affiliates, provided that any of those purchases, investments or loans which exceed 1/2 of 1% of the insurer's admitted assets shall be subject to the prior approval of the superintendent, which approval shall be considered given unless the superintendent objects to that transaction within 45 days of receipt of written notice of that transaction.

4. Encumbrance of securities. No insurer may pledge or transfer any of its securities as collateral for a loan if that loan with all other outstanding loans secured by pledge or deposit of its securities aggregates, or will aggregate if the loan is made, more than 5% of its total admitted assets as shown by its last sworn statement to the superintendent, unless the superintendent shall first give his written permission for the loan as necessary in the conduct of the business of that insurer; but in no event may the pledge or transfer of securities for a loan be made by that insurer if the insurer does not benefit from that loan. This subsection may not be considered to prohibit an insurer from selling investments subject to an obligation to repurchase them, upon fair and reasonable terms.

5. Disposition of property. An insurer may enter into any agreement to sell or withhold from sale any of its property, as long as the insurer is not participating in a prohibited underwriting. The disposition of an insurer's property shall be the responsibility of its board of directors, in accordance with its charter and bylaws.

§1161. Investments of foreign insurers

The investment portfolio of a foreign or alien insurer shall be as permitted by the laws of its domicile, if of a quality substantially equal to that required under this chapter for similar funds of like domestic insurers.

§1162. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.

1. Aggregate amount of investments. "Aggregate amount of investments" means the aggregate value of those investments, as determined under sections 981 to 984, except as provided in section 1157, subsection 5.

2. Bona fide hedging transaction. "Bona fide hedging transaction" means a purchase or sale of foreign currency or of a contract, option, call, put or right entered into for the purpose of offsetting changes in foreign currency exchange rates, or in the market value of investments held or proposed to be acquired by the insurer, or in the market value of liabilities which the insurer has or expects to incur, pursuant to a duly adopted resolution of the insurer's board of directors and a written operations procedure submitted to the superintendent prior to making any such purchases and sales, provided that:

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

B. Books and records regarding all such purchases and sales shall be maintained by the insurer in accordance with generally accepted accounting principles; and

C. The superintendent is empowered to promulgate such further regulations regarding the form and content of such resolutions, operation procedures, books and accounts and further accounting treatment and valuation methods as may be necessary to ensure compliance with these limitations.

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

4. High-yield obligations. "High-yield obligations" means obligations which are either publicly traded obligations or obligations issued in a transaction involving the acquisition of substantially all the stock or assets of a corporation or substantially all of the assets of a division of a corporation and are not investment grade obligations.

5. Institution. "Institution" means corporations, joint-stock associations, business trusts, business partnerships, business joint ventures and any similar entity.

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

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

8. Obligations. "Obligations" means bonds, debentures, notes and other evidences of indebtedness, whether or not liability for payment extends beyond the security for them as well as participation interests in any of those.

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

10. Qualified bank. "Qualified bank" means a bank or a trust company that is organized under the laws of a state or the United States, has assets in excess of $5,000,000,000, has, or its parent corporation has, senior obligations outstanding rated AA or better, and has a ratio of primary capital to total assets of at least 5 1/2% and a ratio of total capital to total assets of at least 6%.

11. Qualified broker or dealer. "Qualified broker or dealer" means a broker or dealer that is organized under the laws of a state, is registered under the United States Securities Exchange Act of 1934, United States Code, Title 15, Sections 78a to 78kk and has net capital in excess of $250,000,000.

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

13. Subsidiary. "Subsidiary" has the meaning as prescribed in section 222, subsection 2, paragraph F. The term "subsidiary" does not include a separate ac-

count established under section 2537.

14. United States. "United States," when used to signify place, includes those geographical areas and the lands and waters adjacent to those geographical areas as are under the jurisdiction of the United States.

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

2. The amounts allocated to each ~~such~~ account of that type and accumulations thereon may be invested and reinvested as provided in ~~section 1128~~ section 1159 (special investments: separate accounts). Amounts allocated to a separate account in the exercise of the power granted by this section shall be owned by the insurer, and the insurer shall not be, nor hold itself out to be, a trustee with respect to ~~such~~ those amounts.

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

4. Unless otherwise approved by the superintendent, assets allocated to a separate account shall be valued at their market value on the date of that valuation, or if there is no readily available market, then in accordance with the terms of the contract or the rules or other written agreement applicable to ~~such~~ that separate account; except, that, unless otherwise approved by the superintendent, the portion of the assets of ~~such~~ that separate account at least equal to the insurer's reserve liability with regard to the guaranteed benefits and funds referred to in ~~section 1128~~ section 1159, if any, shall be valued in accordance with rules otherwise applicable to the insurer's assets.

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

C. An insurer may own subsidiaries or subsidiaries owning other subsidiaries which may engage in such businesses all as provided for in section 1115 (stocks of subsidiaries) or in section 1157 (investment in subsidiaries); ~~and~~

D. An insurer may utilize its facilities to perform administrative services for any governmental body, unit or agency; ; and

Sec. 18. 24-A MRSA §3311, sub-§2, ¶E is enacted to read:

E. An insurer transacting business of a type described in section 702, life insurance; section 703, annuity; or section 704, health insurance; or any combination of those types of business, may engage in any other business in which it is otherwise qualified to engage to the extent and in the manner approved by the superintendent.

Effective September 29, 1987.

CHAPTER 400

H.P. 1331 — L.D. 1816

AN ACT to Amend the Maine Juvenile Code.

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

Sec. 1. 15 MRSA §3312, sub-§2, as enacted by PL 1977, c. 520, §1, is amended to read:

2. Examination of adjudicated juvenile. The court may have the juvenile examined by a physician or psychologist, and may place the juvenile in a hospital or other suitable facility or nonresidential program for this purpose. The cost of such examinations and placements shall be paid ~~by the court ordering them~~ in whole or in part by the juvenile's parents. The court shall pay the costs if it finds that the parents are unable to pay or that it is not in the best interest of the juvenile to have the juvenile's parents pay.

Sec. 2. 15 MRSA §3314, sub-§1, ¶A, as amended by PL 1977, c. 664, §34, is further amended to read:

A. The court may allow the juvenile to remain in the legal custody of his parents or a guardian under such conditions as the court may impose. Conditions may include participation by the juvenile, his parents or legal guardian in treatment services aimed at the rehabilitation of the juvenile and improvement of the home environment.

Sec. 3. 15 MRSA §3314, sub-§5 is enacted to read:

5. Support orders. Whenever the court commits a juvenile to the Department of Human Services or to a relative or other person, the court may order either or both parents of the juvenile to pay a reasonable amount of support for the juvenile. A parent may not be required to pay support for a juvenile during any period when the juvenile resides in the Maine Youth Center or a county jail.

Sec. 4. 15 MRSA §3317, as amended by PL 1985, c. 439, §17, is further amended to read:

§3317. Disposition after return to Juvenile Court

In instances of commitment of a juvenile to the Department of Corrections, the Department of Human Services or the Maine Youth Center, the commissioner of either department or the superintendent of the youth center following the commitment may for good cause petition the Juvenile Court having original jurisdiction in the case for a judicial review of the disposition, including extension of the period of commitment. In all cases in which a juvenile is returned to a Juvenile Court, the Juvenile Court may make any of the dispositions otherwise provided in section 3314. When reviewing a commitment to the