

**Maine Revised Statute Title 24-A, Chapter 13: INVESTMENTS**

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## **24-A §1101. SCOPE OF CHAPTER**

1. Subject to subsection 2 and section 1137, this chapter applies to all insurers except life or health insurers that transact business of a type described in section 409, subsection 3.

[ 1991, c. 385, §9 (NEW) . ]

2. Each domestic all lines insurer, as defined in section 409, subsection 2, shall, for accounting and financing purposes, establish and maintain distinct accounts dedicated exclusively to the insurance it transacts under its life or health insurance authority and to the remainder of its business. Each account must include reserves and surplus funds adequate to financially support the underwriting activity. All assets allocated to life accounts and health accounts are subject to chapter 13-A rather than this chapter. The books and records of any insurer writing more than one kind of business must reflect the assets and operations relating to each underwriting activity in detail sufficient to demonstrate compliance with this chapter and chapter 13-A.

[ 1991, c. 385, §9 (NEW) . ]

### SECTION HISTORY

1969, c. 132, §1 (NEW). 1987, c. 399, §3 (AMD). 1989, c. 846, §§B1,E4 (AMD). 1991, c. 385, §9 (RPR).

## **24-A §1102. ELIGIBLE INVESTMENTS**

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

[ 1969, c. 177, §17 (AMD) . ]

2. Any particular investment held by an insurer on January 1, 1970, which was a legal investment at the time it was made, and which the insurer was legally entitled to possess immediately prior to such effective date, shall be deemed to be an eligible investment.

[ 1973, c. 625, §137 (AMD) . ]

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.

[ 1979, c. 458, §1 (AMD) . ]

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 with another insurer, bulk reinsurance or change in capitalization.

[ 1987, c. 399, §4 (AMD) . ]

5. Nothing in this chapter shall be deemed to prohibit 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 such section 3415.

[ 1969, c. 132, §1 (NEW) . ]

### SECTION HISTORY

1969, c. 132, §1 (NEW). 1969, c. 177, §17 (AMD). 1973, c. 625, §137 (AMD). 1979, c. 458, §1 (AMD). 1987, c. 399, §4 (AMD).

## 24-A §1103. GENERAL QUALIFICATIONS

1. No security or investment, other than real and personal property acquired under section 1125 (real estate), shall be eligible for acquisition unless it is interest bearing or interest accruing or entitled to dividends, if declared, or is otherwise income-entitled, is not then in default in any respect, and the insurer is entitled to receive for its exclusive account and benefit the interest or income accruing thereon.

Notwithstanding this subsection, nothing in this chapter may be deemed to prohibit an insurer from effecting or maintaining bona fide hedging transactions in foreign currency in connection with the purchase and sale of securities eligible for investment under this chapter or in contracts for future delivery of options, calls and other rights to purchase and puts and other rights to require another person to purchase, securities eligible for investment under this chapter, provided that those contracts, options, calls, puts and rights are traded on a national securities exchange or board of trade regulated under the laws of the United States and provided that the aggregate amount of those investments, as valued for all purposes in accordance with generally accepted accounting principles, shall not exceed 1% of the insurer's assets. For purposes of this subsection, a "bona fide hedging transaction" means a purchase or sale of foreign currency or of a contract, option, call, put or right, as the case may be, entered into for the purchase of offsetting changes in foreign currency exchange rates or in the market value of a security held or proposed to be acquired by the insurer.

[ 1983, c. 442, §1 (AMD) .]

2. No provision of this chapter shall prohibit the acquisition by an insurer of other or additional securities or property if received as a dividend or as a lawful distribution of assets, or upon a debt or judgment, or under a lawful and bona fide agreement of bulk reinsurance, merger or consolidation. Any security or property so acquired which is not otherwise an eligible investment under this chapter shall be disposed of pursuant to section 1133 if real estate, or pursuant to section 1134 if personal property or securities.

[ 1969, c. 132, §1 (NEW) .]

### SECTION HISTORY

1969, c. 132, §1 (NEW). 1983, c. 442, §1 (AMD).

## 24-A §1104. AUTHORIZATION, RECORD OF INVESTMENTS

1. An insurer shall not make any investment or loan 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.

[ 1987, c. 399, §5 (AMD) .]

2. The insurer shall maintain a full record of each investment, showing, among other pertinent information, 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 such interest.

[ 1969, c. 132, §1 (NEW) .]

### SECTION HISTORY

1969, c. 132, §1 (NEW). 1987, c. 399, §5 (AMD).

## **24-A §1105. DIVERSIFICATION -- LIFE, LIFE/HEALTH INSURERS** *(REPEALED)*

### SECTION HISTORY

1969, c. 132, §1 (NEW). 1969, c. 177, §§18-20 (AMD). 1983, c. 442, §§2,3 (AMD). 1987, c. 399, §6 (RP).

## **24-A §1106. DIVERSIFICATION; PROPERTY, CASUALTY AND OTHER NONLIFE INSURERS**

The investments of an insurer are subject to the following diversification requirements and limitations. [1993, c. 313, §21 (AMD).]

1. Not less than 30% of the insurer's assets in aggregate amount may consist of cash funds, agents' balances less than 90 days past due and investments eligible under the following sections:

- A. 1107 (public obligations); [1969, c. 132, §1 (NEW).]
- B. 1108 (obligations, stock of certain federal and international agencies); [1969, c. 132, §1 (NEW).]
- C. 1109 (investment grade corporate obligations); [1989, c. 846, Pt. B, §3 (AMD); 1989, c. 846, Pt. E, §4 (AFF).]
- D. 1112 (preferred or guaranteed stocks); [1969, c. 132, §1 (NEW).]
- E. 1116 (trustees' or receivers' obligations); [1969, c. 132, §1 (NEW).]
- F. 1117 (equipment trust certificates); [1969, c. 132, §1 (NEW).]
- G. 1118 (acceptances, bills of exchange); [1969, c. 132, §1 (NEW).]
- H. 1119 (savings and loan institutions); [1969, c. 177, §21 (AMD).]
- I. 1120 (common trust funds, mutual funds); [1969, c. 132, §1 (NEW).]
- J. 1124 (mortgage loans); and [1969, c. 132, §1 (NEW).]
- K. 1126 (housing developments). [1969, c. 132, §1 (NEW).]

[ 1993, c. 313, §21 (AMD) .]

2. The insurer may not invest in aggregate amount in excess of its surplus as to policyholders in all investments eligible under the following sections:

- A. 1113 (common stocks); [1969, c. 132, §1 (NEW).]
- B. 1114 (insurance stocks); [1969, c. 132, §1 (NEW).]
- C. 1115 (stocks of subsidiaries); and [1993, c. 313, §21 (AMD).]
- D. 1120, subsection 2 (mutual funds). [1993, c. 313, §21 (AMD).]
- E. [1993, c. 313, §21 (RP).]

[ 1993, c. 313, §21 (AMD) .]

3. The insurer may not invest in aggregate amount over 20% of its assets in all investments in real estate eligible under sections 1125 (real estate) and 1127 (leased property).

[ 1993, c. 313, §21 (AMD) .]

4. 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. 1107 (public obligations); [2001, c. 524, §2 (AMD).]

B. 1108 (obligations, stock of certain federal and international agencies); and [2001, c. 524, §2 (AMD).]

C. 1120 (common trust funds, mutual funds), but as to this exception, only with the prior approval of the superintendent and only in index mutual funds in an amount up to 20% of the insurer's assets. [2001, c. 524, §2 (NEW).]

[2001, c. 524, §2 (AMD).]

5. The insurer's investments in common stock, preferred stock, debt obligations and other securities of subsidiaries other than insurance subsidiaries are limited to the lesser of 10% of the insurer's admitted assets or 50% of the insurer's surplus as to policyholders except in instances when a greater investment has been approved by the superintendent.

[1993, c. 313, §21 (NEW).]

6. The assets of an insurer may be invested in obligations issued, assumed, guaranteed or accepted by domestic institutions, or trustees or receivers of those institutions and preferred shares of any of those institutions, except that, without the prior approval of the superintendent, a domestic insurer may not acquire any high-yield or medium grade obligations of any institution if:

A. The aggregate amount of all medium grade obligations and all high-yield obligations then held by the insurer exceeds the lesser of 20% of its admitted assets or its surplus as to policyholders; [1993, c. 313, §21 (NEW).]

B. The aggregate amount of all high-yield obligations then held by the insurer exceeds 10% of its admitted assets; [1993, c. 313, §21 (NEW).]

C. The aggregate amount of all high-yield obligations rated 5 or 6 by the Securities Valuation Office of the National Association of Insurance Commissioners or, if not rated by the National Association of Insurance Commissioners, rated at the equivalent of 5 or 6 by Moody's Investors Service, Inc., Standard and Poor's Corporation, Fitch Investors Service, Inc. or Duff and Phelps, Inc. exceeds 3% of admitted assets; [1993, c. 313, §21 (NEW).]

D. The aggregate amount of all high-yield obligations rated 6 by the Securities Valuation Office of the National Association of Insurance Commissioners or, if not rated by the National Association of Insurance Commissioners, rated the equivalent of 6 by Moody's Investors Service, Inc., Standard and Poor's Corporation, Fitch Investors Service, Inc. or Duff and Phelps, Inc., exceeds 1% of admitted assets; [1993, c. 313, §21 (NEW).]

E. The aggregate amount of medium grade obligations issued, guaranteed or insured by any one institution then held by the insurer exceeds 1% of its admitted assets; or [1993, c. 680, Pt. C, §3 (AMD).]

F. The aggregate amount of high-yield obligations issued, guaranteed, or insured by any one institution then held by the insurer would exceed 1/2 of 1% of its admitted assets. [1993, c. 313, §21 (NEW).]

[1993, c. 680, Pt. C, §3 (AMD).]

#### SECTION HISTORY

1969, c. 132, §1 (NEW). 1969, c. 177, §§21-23 (AMD). 1989, c. 846, §§B2-5, E4 (AMD). 1993, c. 313, §21 (AMD). 1993, c. 680, §C3 (AMD). 2001, c. 524, §2 (AMD).

## 24-A §1107. PUBLIC OBLIGATIONS

An insurer may invest in bonds or other evidences of indebtedness, not in default as to principal or interest, which are valid and legally authorized obligations issued, assumed or guaranteed by the United States or by any state thereof, or by Canada or any of the provinces thereof, or by any county, city, town, village, municipality or district therein or by any political subdivision thereof or by a public instrumentality of one or more of the foregoing, if, by statutory or other legal requirements applicable thereto, such obligations are payable, as to both principal and interest, from: [1969, c. 132, §1 (NEW) .]

1. Taxes levied or by law required to be levied upon all taxable property or all taxable income within the jurisdiction of such governmental unit, or from

[ 1969, c. 132, §1 (NEW) .]

2. Adequate special revenues pledged or otherwise appropriated or by law required to be provided for the purpose of such payment; but not including any obligation payable solely out of special assessments on properties benefited by local improvements unless adequate security is evidenced by the ratio of assessment to the value of the property or the obligation is additionally secured by an adequate guaranty fund required by law.

[ 1969, c. 132, §1 (NEW) .]

### SECTION HISTORY

1969, c. 132, §1 (NEW).

## 24-A §1108. OBLIGATIONS, STOCK OF CERTAIN FEDERAL AND INTERNATIONAL AGENCIES

An insurer may invest in the obligations, or stock where stated, issued, assumed or guaranteed by the following agencies of the government of the United States of America, or in which such government is a participant, whether or not such obligations are guaranteed by such government: [1969, c. 132, §1 (NEW) .]

1. Farm Loan Bank.

[ 1969, c. 132, §1 (NEW) .]

2. Commodity Credit Corporation.

[ 1969, c. 132, §1 (NEW) .]

3. Federal Intermediate Credit Banks.

[ 1969, c. 132, §1 (NEW) .]

4. Federal Land Banks.

[ 1969, c. 132, §1 (NEW) .]

5. Central Bank for Cooperatives.

[ 1969, c. 132, §1 (NEW) .]

**6. Federal Home Loan Banks, and stock thereof.**

[ 1969, c. 132, §1 (NEW) .]

**7. Federal National Mortgage Association, and stock thereof when acquired in connection with sale of mortgage loans to such association.**

[ 1969, c. 132, §1 (NEW) .]

**8. International Bank for Reconstruction and Development.**

[ 1969, c. 132, §1 (NEW) .]

**9. Inter-American Development Bank.**

[ 1969, c. 132, §1 (NEW) .]

**10. Asian Development Bank.**

[ 1969, c. 132, §1 (NEW) .]

**10-A. African Development Bank; and**

[ 1987, c. 405, §36 (NEW) .]

**11. Any other similar agency of, or participated in by, the government of the United States of America and of similar financial quality.**

[ 1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1987, c. 405, §36 (AMD).

## **24-A §1109. INVESTMENT GRADE OBLIGATIONS**

An insurer may invest in obligations, other than those eligible for investment under section 1124 (mortgage loans), issued, assumed or guaranteed by any solvent institution created or existing under the laws of the United States or of Canada, or of any state, province, district or territory thereof, provided that the obligations are not in default as to principal or interest, are investment grade obligations as defined in section 1110, subsection 1-A, paragraph I, and are qualified under any of the following. [1999, c. 715, §2 (AMD) .]

**1.** Obligations secured by adequate collateral security and bearing fixed interest and if during each of any 3, including either of the last 2, fiscal years of a period of not less than 3 nor more than 5 fiscal years next preceding the date of acquisition by the insurer, the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges, as defined in section 1110, shall have been not less than 1 1/4 times the total of its fixed charges for such year, or obligations which, at the date of acquisition by the insurer, are adequately secured and have investment qualities and characteristics wherein the speculative elements are not predominant. In determining the adequacy of collateral security, not more than 1/3 of the total value of such required collateral shall consist of stock other than stock meeting the requirements of section 1112 (preferred or guaranteed stock).

[ 1969, c. 132, §1 (NEW) .]

2. Obligations secured by one or more leases, whether or not additionally secured by one or more mortgages, provided the following conditions are met:

A. The leases are assigned 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. [1979, c. 458, §2 (AMD).]

B. The aggregate rentals due under all such leases are sufficient to provide

(1) For all expenses (including taxes other than the borrower's income tax) of operation of the leased property during the initial term of such leases and

(2) For amortization during the initial term of such leases of not less than 90% of the investment (or 100% thereof if the investment is not also secured by a mortgage) with interest thereon. [1969, c. 132, §1 (NEW).]

C. The leases make suitable provisions for continuation of adequate payments throughout the life of the investment. [1969, c. 132, §1 (NEW).]

D. The lessees under such leases, or any corporation or instrumentality of of government which has assumed or guaranteed the lessees' performance thereunder is such that its obligations would be eligible for investment by an insurer in accordance with section 1107 or the aggregate net earnings of such lessees available for fixed charges, as defined in section 1110, is at least equal to that required by subsection 1. [1969, c. 132, §1 (NEW).]

[ 1979, c. 458, §2 (AMD) .]

3. Fixed interest bearing obligations, other than those described in subsection 1, if the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges for a period of 5 fiscal years next preceding the date of acquisition by the insurer have averaged per year not less than 1 1/2 times its annual fixed charges applicable to such period and if during either of the last 2 years of such period such net earnings have been not less than 1 1/2 times its fixed charges for such year.

[ 1969, c. 132, §1 (NEW) .]

4. Adjustment, income or other contingent interest obligations if the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges for a period of 5 fiscal years next preceding the date of acquisition by the insurer have averaged per year not less than 1 1/2 times the sum of its average annual fixed charges and its average annual maximum contingent interest applicable to such period and if during either of the last 2 years of such period such net earnings have been not less than 1 1/2 times the sum of its fixed charges and maximum contingent interest for such year.

[ 1969, c. 132, §1 (NEW) .]

5. Fixed interest bearing obligations, other than those described in subsections 1 and 3, if:

A. Net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges for a period of 5 fiscal years next preceding the date of acquisition by the insurer have averaged per year not less than 1 1/4 times its average annual fixed charges applicable to such period and if during each of any 4 fiscal years of such period such net earnings have been not less than 1 1/4 times its fixed charges for such year; [1969, c. 132, §1 (NEW).]

B. The net earnings of such institution available for its fixed charges during a period of not less than 7 nor more than 10 fiscal years next preceding the date of acquisition by the insurer have been such that for each of any 7 fiscal years of such period such net earnings have been not less than 1 1/4 times its fixed charges for such year; and [1969, c. 132, §1 (NEW).]

C. The liquid assets of such institution have been not less than 105% of its liabilities, other than capital stock and surplus. For the purposes of this subsection, "liquid assets" and "liabilities" shall be determined in reliance upon the latest regular financial statement of the issuing, assuming or guaranteeing institution prepared as of a date not more than 15 months prior to the date of acquisition by the insurer; if net earnings are determined in reliance upon consolidated earnings statements of parent and subsidiary institutions, "liquid assets" and "liabilities" shall be determined in reliance upon a consolidated financial statement of parent and subsidiary institutions after treating any minority stock interest in such subsidiary institutions 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 10 years after the date as of which the determination thereof is made for the purposes of this subsection, and readily marketable securities, in each case less applicable reserves and unearned income. [1969, c. 132, §1 (NEW).]

[ 1969, c. 132, §1 (NEW) . ]

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

A.

(1) "Headnote=" 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 1 1/4 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 [1979, c. 458, §3 (NEW).]

B.

(1) "Headnote=" 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. [1979, c. 458, §3 (NEW).]

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.

[ 1979, c. 458, §3 (NEW) . ]

#### SECTION HISTORY

1969, c. 132, §1 (NEW). 1979, c. 458, §§2,3 (AMD). 1989, c. 846, §§B6,E4 (AMD). 1993, c. 313, §22 (AMD). 1999, c. 715, §2 (AMD).

## **24-A §1109-A. HIGH-YIELD CORPORATE OBLIGATIONS** *(REPEALED)*

### SECTION HISTORY

1989, c. 846, §§B7,E4 (NEW). 1993, c. 313, §23 (RP).

## **24-A §1110. -- CERTAIN TERMS DEFINED; NET EARNINGS**

### **1.**

[ 1999, c. 715, §3 (RP) . ]

**1-A. Definitions.** As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Admitted assets" means assets recognized by the superintendent pursuant to section 901-A. [2001, c. 72, §11 (AMD).]

B. "Aggregate amount of investments" means the aggregate value of those investments as determined in accordance with statutory accounting principles pursuant to section 901-A and any rules adopted under that section. [2001, c. 72, §11 (AMD).]

C. "Asset value" is that value that may be contained in the annual statement of the corporation filed pursuant to section 423. [1999, c. 715, §4 (NEW).]

D. "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, in the market value of investments held or proposed to be acquired by the insurer or in the market value of liabilities that the insurer has or expects to incur, pursuant to a duly adopted resolution of the insurer's board of directors and written operations procedure submitted to the superintendent before making any such purchases and sales, as long as:

- (1) 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; and
- (2) Books and records regarding all such purchases and sales are maintained by the insurer in accordance with generally accepted accounting principles.

The superintendent may adopt further rules regarding the form and content of resolutions, operation procedures, books and accounts and further accounting treatment and valuation methods necessary to ensure compliance with this definition. [1999, c. 715, §4 (NEW).]

E. "Domestic institution" means an institution created or existing under the laws of the United States or any state, district or territory. [1999, c. 715, §4 (NEW).]

F. "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 may not be deemed a fixed charge of such an institution. [1999, c. 715, §4 (NEW).]

G. "High-yield obligations" means obligations that are neither investment grade nor medium grade obligations. [1999, c. 715, §4 (NEW).]

H. "Institution" means a corporation, a joint-stock association, a business trust, a business partnership, a business joint venture or any other similar entity. [1999, c. 715, §4 (NEW).]

I. "Investment grade obligation" means an obligation that at the time of acquisition by the insurer is rated "1" or "2" by the Securities Valuation Office of the National Association of Insurance Commissioners. If not valued by the Securities Valuation Office of the National Association of Insurance Commissioners, "investment grade obligation" means an obligation that at the time of acquisition by the insurer is rated the equivalent of "1" or "2" by one of the following nationally recognized independent rating agencies: Moody's Investors Service, Inc., Standard and Poor's Division of The McGraw-Hill Companies, Inc., Fitch Investors Service, Inc., or Duff and Phelps Credit Rating Company. [1999, c. 715, §4 (NEW).]

J. "Medium grade obligation" means an obligation that at the time of acquisition by the insurer is rated by the Securities Valuation Office of the National Association of Insurance Commissioners as "Class 3" quality. If not valued by the Securities Valuation Office of the National Association of Insurance Commissioners, "medium grade obligation" means an obligation that at the time of acquisition by the insurer is rated the equivalent of "3" by Moody's Investors Service, Inc., Standard and Poor's Division of The McGraw-Hill Companies, Inc., Fitch Investors Service, Inc., or Duff and Phelps Credit Rating Company. [1999, c. 715, §4 (NEW).]

K. "Net earnings available for fixed charges" means net income after deducting operating and maintenance expenses, taxes other than federal, state and other income taxes, depreciation and depletion, but excluding extraordinary nonrecurring items of income or expense appearing in the regular financial statements of the issuing, assuming or guaranteeing institutions. [1999, c. 715, §4 (NEW).]

L. "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), 15 United States Code, Section 77d(1) or Section 77d(3), as from time to time amended. [1999, c. 715, §4 (NEW).]

M. "Obligations" includes bonds, debentures, notes or other evidences of indebtedness. [1999, c. 715, §4 (NEW).]

N. "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, 15 United States Code, Sections 78a to 78kk and has net capital in excess of \$250,000,000. [1999, c. 715, §4 (NEW).]

O. "Qualified financial institution" 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%. [1999, c. 715, §4 (NEW).]

P. "Qualified for public sale" means registered under the United States Securities Act of 1933, 15 United States Code, Sections 77a to 77aa. [1999, c. 715, §4 (NEW).]

Q. "Subsidiary" has the same meaning as defined in section 222, subsection 2, paragraph F. The term "subsidiary" does not include a separate account established under section 2537. [1999, c. 715, §4 (NEW).]

R. "United States" when used to signify place includes those geographical areas and the lands and waters adjacent to those geographical areas under the jurisdiction of the United States. [1999, c. 715, §4 (NEW).]

[ 2001, c. 72, §11 (AMD) .]

2. If net earnings are determined in reliance upon consolidated earnings statements of parent and subsidiary institutions, such net earnings shall be determined after provisions for income taxes of only those subsidiaries in which the parent institution owns directly or indirectly less than 90% of all classes of voting stock, and after proper allowance for minority stock interest, if any; and the required coverage of fixed charges shall be computed on a basis including fixed charges and preferred dividends of subsidiaries other

than those payable by such subsidiaries to the parent corporation or to any other of such subsidiaries, except that if the minority common stock interest in the subsidiary corporation is substantial, the fixed charges and preferred dividends may be apportioned in accordance with regulations prescribed by the superintendent.

[ 1973, c. 585, §12 (AMD) .]

**3.**

[ 1999, c. 715, §5 (RP) .]

**SECTION HISTORY**

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1979, c. 458, §§4,5 (AMD). 1983, c. 759, §1 (AMD). 1993, c. 313, §§24,25 (AMD). 1999, c. 715, §§3-5 (AMD). 2001, c. 72, §11 (AMD).

**24-A §1111. -- APPLICATION OF EARNINGS TEST**

In applying the earnings tests under this chapter to any institution for any period, whether or not in legal existence at the beginning of such period: [1969, c. 132, §1 (NEW).]

**1.** Earnings from the beginning of such period may include, as determined in accordance with adjusted or pro forma consolidated earnings statements, earnings of any other institution the assets of which have been acquired substantially as an entirety by purchase, merger, consolidation or otherwise after the beginning of such period. If less than substantially all the assets of another institution have been so acquired, and such assets constitute either substantially all the assets of the acquiring institution immediately after such acquisition or substantially all the assets theretofore employed by such other institution in a divisional, branch or other unit operation, the earnings determined to be properly attributable to the assets so acquired may be so included, if certified by an independent accountant approved by the insurer to be earnings so attributable. If any such acquisition of assets has been made from a business enterprise other than an institution, the earnings determined to be attributable to the assets so acquired may likewise be so included if so certified. In the case of any such inclusion of earnings of assets so acquired, fixed charges, contingent interest or dividends for the period of such inclusion shall be either

A. The fixed charges, contingent interest or dividends for such period determined in accordance with adjusted or pro forma consolidated statements for such period giving effect to any additional fixed charges or contingent interest existing or dividends on stock or shares outstanding, immediately after such acquisition, properly attributable to such acquisition, as certified by an independent accountant approved by the insurer to be such fixed charges, contingent interest or dividends so determined, or [1969, c. 132, §1 (NEW).]

B. The fixed charges or contingent interest existing or dividends on stock or shares outstanding immediately after such acquisition. [1969, c. 132, §1 (NEW).]

**2.** If any institution has been reorganized pursuant to the bankruptcy law after the beginning of such period, earnings prior to such reorganization of the institution so reorganized may be so included. In the case of the inclusion of earnings prior to such a reorganization, fixed charges, contingent interest or dividends for the period of such inclusion shall be fixed charges or contingent interest existing or dividends on stock or shares outstanding immediately after such reorganization.

[ 1969, c. 132, §1 (NEW) .]

**3.** If earnings are determined in reliance on consolidated earnings statements of parent and subsidiary institutions,

A. The provisions of this section may also be applied in determining earnings of any subsidiary institution and [1969, c. 132, §1 (NEW).]

B. Any institution which has become a subsidiary institution after the beginning of such period may be included as a subsidiary institution from the beginning of such period. [1969, c. 132, §1 (NEW).]

In the case of any such inclusion of a subsidiary institution, fixed charges, contingent interest or dividends for the period of such inclusion shall be either

A. The fixed charges, contingent interest or dividends for such period determined in accordance with adjusted or pro forma consolidated statements for such period which give effect to any additional fixed charges or contingent interest existing or dividends on stock or shares outstanding, immediately after such subsidiary institution shall have become a subsidiary, properly attributable to the acquisition of stock or shares of such subsidiary institution, during such period and before it became a subsidiary, as certified by an independent accountant approved by the insurer to be such fixed charges, contingent interest or dividends so determined, or

B. The fixed charges or contingent interest existing or dividends on stock or shares outstanding immediately after such subsidiary institution became a subsidiary. [1969, c. 132, §1 (NEW).]

[ 1969, c. 132, §1 (NEW) .]

#### SECTION HISTORY

1969, c. 132, §1 (NEW). 1969, c. 132, §1 (NEW).

## 24-A §1112. PREFERRED OR GUARANTEED STOCKS

An insurer may invest in the preferred or guaranteed stocks or shares of any solvent institution created or existing under the laws of the United States or of Canada, or of any state, province, district or territory thereof, if all of the prior obligations and prior preferred stocks, if any, of such institution at the date of acquisition by the insurer are eligible as investments under this chapter; and if qualified under subsection 1 or subsection 2 following: [1969, c. 132, §1 (NEW).]

1. Preferred stocks or shares shall be deemed qualified if both of the following requirements are met:

A. The earnings of such institution available for its fixed charges for a period of 5 fiscal years next preceding the date of acquisition by the insurer shall have averaged per year not less than 1 1/2 times the sum of its average annual fixed charges, if any, its average annual maximum contingent interest, if any, and its average annual preferred dividend requirements applicable to such period; and [1969, c. 132, §1 (NEW).]

B. During either of the last 2 years of such period such net earnings shall have been not less than 1 1/2 times the sum of its fixed charges, contingent interest and preferred dividend requirements for such year. The term "preferred dividend requirements" shall be deemed to mean cumulative or noncumulative dividends whether paid or not. [1969, c. 132, §1 (NEW).]

2. Guaranteed stocks or shares shall be deemed qualified if the assuming or guaranteeing institution meets the requirements of section 1109, subsection 3, (corporate obligations), construed so as to include as a fixed charge the amount of guaranteed dividends of such issue or the rental covering the guarantee of such dividends.

[ 1969, c. 132, §1 (NEW) .]

#### SECTION HISTORY

1969, c. 132, §1 (NEW).

## 24-A §1113. COMMON STOCKS

An insurer may invest in nonassessable, except as to bank or trust company stocks, and except for taxes, common stocks, other than insurance stocks, of any solvent corporation organized and existing under the laws of the United States or Canada, or of any state or province thereof, if such corporation has had net earnings available for dividends on such stock in at least 5 of the 7 fiscal years next preceding acquisition by the insurer. If the issuing corporation has not been in legal existence for the whole of such 7 fiscal years but was formed as a consolidation or merger of 2 or more businesses of which at least one was in operation on a date 7 years prior to the investment, eligibility of its common stock under this section shall be based upon consolidated pro-forma statements of the predecessor or constituent institutions. [1969, c. 132, §1 (NEW).]

### SECTION HISTORY

1969, c. 132, §1 (NEW).

## 24-A §1114. INSURANCE STOCKS

1. An insurer may invest in the stocks of other solvent insurers formed under the laws of this or another state, which stocks meet the applicable requirements of section 1112 (preferred or guaranteed stocks) or 1113 (common stocks).

[ 1969, c. 132, §1 (NEW) .]

2. With the superintendent's advance written consent an insurer may acquire and hold the controlling interest in the outstanding voting stock of a stock insurer formed under the laws of this or another state. The superintendent shall not give his consent if he finds that such acquisition would not be in the best interests of the insurers involved, or of their respective policyholders or stockholders, or that it would materially tend to lessen competition or to result in any monopoly in the insurance business.

[ 1973, c. 585, §12 (AMD) .]

### SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

## 24-A §1115. STOCKS OF SUBSIDIARIES

1. An insurer may invest in the stock of its subsidiary insurance corporation formed or acquired by it; or in the stock of its subsidiary business corporation or corporations formed and engaged solely in any one or more of the following businesses:

A. In any business necessary and incidental to the convenient operation of the insurer's insurance business, or to the administration of any of its lawful affairs, or to the service or benefit of its policyholders; [1969, c. 132, §1 (NEW).]

B. Providing any of actuarial, computer, data processing, accounting, claims, appraisal, collection, loss prevention or safety engineering and similar services; [1969, c. 132, §1 (NEW).]

C. Real estate management and development; [1969, c. 132, §1 (NEW).]

D. Premium financing; [1969, c. 132, §1 (NEW).]

E. Financing of agents of the insurer; [1969, c. 132, §1 (NEW).]

F. Acting as investment adviser or principal underwriter of an investment company or companies, registered as such under the Investment Companies Act of 1940; [1969, c. 132, §1 (NEW).]

G. Financial and investment counseling services; [1969, c. 132, §1 (NEW).]

H. Administration of self-insurance plans; [1969, c. 132, §1 (NEW).]

I. Administration of self-insured pension and similar plans, or the self-insured portions of such plans; [1969, c. 132, §1 (NEW).]

J. Acting as administrative agent for a government instrumentality which is performing an insurance function; [1969, c. 132, §1 (NEW).]

K. Securities broker-dealer; [1969, c. 132, §1 (NEW).]

L. Escrow services; [1969, c. 132, §1 (NEW).]

M. Trust services with respect to funds payable or paid by it under its insurance contracts; or [1999, c. 715, §6 (AMD).]

N. A depository institution, or any company that controls such an institution, that is subject to the federal Gramm-Leach-Bliley Act, Sections 104(c) and 306(2), 113 Stat. 1338 as long as the insurer's total investment in all such subsidiaries does not exceed 5% of the insurer's admitted assets. [1999, c. 715, §7 (NEW).]

[ 1999, c. 715, §§6, 7 (AMD) .]

2. For the purposes of this section a "subsidiary" is a corporation of which the insurer owns sufficient stock to give it effective control.

[ 1969, c. 132, §1 (NEW) .]

3.

[ 1987, c. 399, §7 (RP) .]

#### SECTION HISTORY

1969, c. 132, §1 (NEW). 1983, c. 759, §2 (AMD). 1987, c. 399, §7 (AMD). 1999, c. 715, §§6,7 (AMD).

## 24-A §1116. TRUSTEES' OR RECEIVERS' OBLIGATIONS

An insurer may invest in certificates, notes or other obligations issued by trustees or receivers of any institution created or existing under the laws of the United States or of any state, district or territory thereof, which, or the assets of which, are being administered under the direction of any court having jurisdiction, if such obligation is adequately secured as to principal and interest. [1969, c. 132, §1 (NEW).]

#### SECTION HISTORY

1969, c. 132, §1 (NEW).

## 24-A §1117. EQUIPMENT TRUST CERTIFICATES

An insurer may invest in equipment trust obligations or certificates which are adequately secured, or in other adequately secured instruments evidencing an interest in transportation equipment wholly or in part within the United States of America and a right to receive determined portions of rental, purchase or other fixed obligatory payments for the use or purchase of such transportation equipment. [1969, c. 132, §1 (NEW).]

#### SECTION HISTORY

1969, c. 132, §1 (NEW).

## 24-A §1118. ACCEPTANCES, BILLS OF EXCHANGE

An insurer may invest in bank and bankers' acceptances and other bills of exchange of the kind and maturities made eligible, pursuant to law, for purchase in the open market by federal reserve banks. [1969, c. 132, §1 (NEW).]

### SECTION HISTORY

1969, c. 132, §1 (NEW).

## 24-A §1119. SAVINGS AND LOAN INSTITUTIONS

An insurer may invest in the shares of savings and loan or buildings and loan associations or in the savings accounts of federal savings and loan associations, to the extent that the investment or account is insured by the Federal Savings and Loan Insurance Corporation pursuant to the National Housing Act of 1934, as amended. [1969, c. 177, §24 (AMD).]

### SECTION HISTORY

1969, c. 132, §1 (NEW). 1969, c. 177, §24 (AMD).

## 24-A §1120. COMMON TRUST FUNDS, MUTUAL FUNDS

An insurer may invest in: [1969, c. 132, §1 (NEW).]

1. A bank's common trust fund as defined in section 584 of the United States Internal Revenue Code of 1954; and

[ 1969, c. 132, §1 (NEW) .]

2. The securities of any open-end management type investment company or investment trust registered with the federal Securities and Exchange Commission under the Investment Company Act of 1940 as from time to time amended, if such investment company or trust, other than one of which a subsidiary of the insurer is investment adviser or principal underwriter, has a net asset value of not less than \$25,000,000 as at the date of investment by the insurer.

[ 1969, c. 132, §1 (NEW) .]

### SECTION HISTORY

1969, c. 132, §1 (NEW).

## 24-A §1121. HYDROCARBON PRODUCTION PAYMENTS

An insurer may invest in production payments, or interests therein evidenced by trust certificates or other instruments, payable from oil, gas or other hydrocarbons in producing properties located in the United States or the adjacent continental shelf if an obligation secured by and payable from such production payment or interest therein would qualify for investment under section 1109, subsection 1, (corporate obligations) as an obligation which is adequately secured and has investment qualities and characteristics wherein the speculative elements are not predominant. "Production payments" means rights to oil, gas or other hydrocarbons in place or as produced which entitle the owner thereof to a specified fraction or percentage of production until a specified sum of money has been received. [1969, c. 132, §1 (NEW).]

### SECTION HISTORY

1969, c. 132, §1 (NEW).

## 24-A §1122. POLICY LOANS

*(REPEALED)*

## SECTION HISTORY

1969, c. 132, §1 (NEW). 1987, c. 399, §8 (RP).

**24-A §1123. COLLATERAL LOANS**

An insurer may lend and thereby invest its funds upon the pledge of securities eligible for investment under this chapter. As at date made, no such loan shall exceed in amount 90% of the market value of such collateral pledged. The amount so loaned shall be included pro rata in determining the maximum percentage of funds permitted under this chapter to be invested in the respective categories of securities so pledged.

[1969, c. 132, §1 (NEW).]

## SECTION HISTORY

1969, c. 132, §1 (NEW).

**24-A §1124. MORTGAGE LOANS**

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 [1979, c. 458, §6 (AMD).]

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. [1969, c. 132, §1 (NEW); 1979, c. 458, §6 (AMD).]

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.

[1979, c. 458, §7 (AMD).]

3. A 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. 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.

[1979, c. 458, §8 (AMD).]

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, provided that this provision shall not be deemed to prohibit an insurer from investing in a nonamortizing mortgage loan so long as the period of nonamortization does not exceed 5 years and

the aggregate amount of nonamortizing mortgage loans made under this subsection shall not exceed 30% of the insurer's assets. Prior to the investment, the value of the property or of the leasehold interest shall be determined, for the purposes of the investment, by a competent appraiser.

[ 1981, c. 257, (AMD) . ]

5. In applying the limitations under subsection 4, there may be excluded from the amount invested that portion guaranteed by the Administrator of Veterans' Affairs pursuant to the Servicemen's Readjustment Act of 1944, as amended, or insured by the Federal Housing Administration under the National Housing Act, as amended, or by other United States or Canadian government agency.

[ 1969, c. 132, §1 (NEW) . ]

6. An insurer may invest in purchase money mortgages or like securities received by it upon the sale or exchange of real property acquired pursuant to section 1125. Subsection 4 shall not apply as to such investments.

[ 1969, c. 132, §1 (NEW) . ]

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 [1979, c. 458, §10 (NEW) . ]

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. [1979, c. 458, §10 (NEW) . ]

#### SECTION HISTORY

1969, c. 132, §1 (NEW). 1979, c. 458, §§6-10 (AMD). 1981, c. 257, (AMD) .

## 24-A §1125. REAL ESTATE

1. Except as provided in section 1127 (leased property), a domestic insurer may invest in real estate only if used for the purposes or acquired in the manners, and within the limits, as follows:

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 15% of the insurer's assets. [1987, c. 399, §9 (AMD) . ]

B. Real estate acquired in satisfaction of loans, mortgages, liens, judgments, decrees or debts previously owing to the insurer in the due course of its business. [1969, c. 132, §1 (NEW) . ]

C. Real estate acquired in part payment of the consideration on the sale of other real estate owned by it, if such transaction shall have effected a net reduction in the insurer's investments in real estate. [1969, c. 132, §1 (NEW) . ]

D. Real estate acquired by gift or devise, or through merger, consolidation or bulk reinsurance of another insurer under this Title. [1969, c. 132, §1 (NEW).]

E. The seller's interest in real estate subject to an agreement of purchase or sale, but the sum invested in any such interest shall not exceed 2/3 of the fair value of such parcel. [1969, c. 132, §1 (NEW).]

F. Additional real estate and equipment incident thereto, if necessary or convenient for the purpose of enhancing the sale or other value of real estate previously acquired or held under this section. Such real estate and equipment, together with the real estate for the enhancement of which it was acquired, shall be included, for the purpose of applicable investment limits, and shall be subject to disposal under section 1133 at the same time and under the same conditions as apply to such enhanced real estate. [1969, c. 132, §1 (NEW).]

G. Improved real estate, or any interest therein, acquired or held by purchase, lease or otherwise, acquired as an investment for production of income, or acquired to be improved or developed for such investment purposes pursuant to an existing program therefor. The insurer may hold, mortgage, improve, develop, maintain, manage, lease, sell, convey and otherwise dispose of real estate acquired by it under this provision. [1969, c. 132, §1 (NEW); 1987, c. 399, §9 (AMD).]

2. For the purposes of section 1124 (mortgage loans) and this section, "improved" real property means:

A. Farmland used for tillage, crop or pasture; [1969, c. 132, §1 (NEW).]

B. Real estate on which permanent improvements, or improvements under construction or in process of construction, suitable for residence, residential, recreational, institutional, commercial or industrial use, are situated; and [1969, c. 132, §1 (NEW).]

C. Real estate to be developed for the use or uses set forth in paragraph B, on which improvements, or improvements under construction or in process of construction, such as streets, sidewalks, sewers and utilities which will become an integral part of such development, are situated or abut. [1969, c. 132, §1 (NEW).]

#### SECTION HISTORY

1969, c. 132, §1 (NEW). 1987, c. 399, §9 (AMD).

## 24-A §1126. HOUSING DEVELOPMENTS

To the extent and upon such conditions as may be authorized by the superintendent, an insurer may invest in stock and evidences of indebtedness of any housing company or redevelopment company organized under the private housing finance law of this or any other state, or of any corporation organized for the purpose of owning and operating any housing project under laws expressly designed to promote the provision of housing for persons of low and moderate income, or in the securities of any corporation organized under the laws of this or any other state for the purpose of owning, acquiring or holding real property or any interest therein as an investment for the production of income or to be developed or improved for such investment purpose, if all of the stock other than directors' qualifying shares of such housing company, redevelopment company or corporation has been or is to be originally issued to one or more insurers, whether domestic or foreign. [1973, c. 585, §12 (AMD).]

#### SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

## 24-A §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.

[ 1979, c. 458, §11 (NEW) .]

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 1110, subsection 1-A, paragraph H, 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 adequate 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 may not exceed 2% of an insurer's total admitted assets; and [2001, c. 471, Pt. B, §13 (AMD).]

B. A mortgage or a security interest in that real or personal property. [1979, c. 458, §11 (NEW).]

[ 2001, c. 471, Pt. B, §13 (AMD) .]

#### SECTION HISTORY

1969, c. 132, §1 (NEW). 1979, c. 458, §11 (RPR). 2001, c. 471, §B13 (AMD).

### **24-A §1128. SPECIAL INVESTMENTS; SEPARATE ACCOUNTS** *(REPEALED)*

#### SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1973, c. 560, §1 (RPR). 1987, c. 399, §10 (RP).

### **24-A §1129. SPECIAL INVESTMENTS OF TITLE INSURERS**

1. A title insurer may also have invested funds in an amount not exceeding 50% of its paid-in capital stock and its surplus, in its abstract plant and equipment and in stocks of abstract companies.

[ 1969, c. 132, §1 (NEW) .]

2. Investments authorized under subsection 1 shall not be credited against required reserves.

[ 1969, c. 132, §1 (NEW) .]

#### SECTION HISTORY

1969, c. 132, §1 (NEW).

### **24-A §1130. INVESTMENTS IN FOREIGN COUNTRIES**

1. An insurer authorized to transact insurance in a foreign country or which has outstanding insurance or reinsurance contracts on 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.

[ 1987, c. 399, §11 (AMD) .]

2. In addition to the foreign investments otherwise permitted under this chapter, an insurer may invest in or otherwise acquire or loan upon securities and investments in foreign countries which are substantially of the same kinds, classes and investment grades as those otherwise eligible for investment under this chapter; but the aggregate amount of such investments under this subsection shall not exceed 1% of the insurer's assets.

[ 1969, c. 132, §1 (NEW) .]

#### SECTION HISTORY

1969, c. 132, §1 (NEW). 1987, c. 399, §11 (AMD).

## 24-A §1131. MISCELLANEOUS INVESTMENTS

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 must fulfill the requirements of section 1103 and otherwise qualify as a sound investment. [2001, c. 72, §12 (AMD).]

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

(1) Any asset determined to be nonadmitted pursuant to section 901-A or rules adopted under that section;

(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. [2001, c. 72, §12 (AMD).]

C. No loan or investment may cause the insurer to exceed the specific diversification requirements enumerated in section 1106. [1987, c. 399, §12 (RPR).]

[ 2001, c. 72, §12 (AMD) .]

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.

[ 1979, c. 458, §12 (RPR) .]

#### SECTION HISTORY

1969, c. 132, §1 (NEW). 1979, c. 458, §12 (RPR). 1983, c. 759, §3 (AMD). 1987, c. 399, §12 (AMD). 2001, c. 72, §12 (AMD).

## 24-A §1132. CONVERSION AND INCIDENTAL RIGHTS

Nothing in this chapter shall be deemed to prohibit an insurer from making an investment otherwise authorized under this chapter, because the investment is convertible into other securities in which the insurer is not permitted to invest under this chapter, or because the insurer receives in connection with such

investment stock warrants, whether or not detachable, stock options, stock, property interests or other assets of any kind. Anything so received by the insurer and in which the insurer is otherwise not authorized to invest shall be carried on its books at no value. [1969, c. 132, §1 (NEW).]

#### SECTION HISTORY

1969, c. 132, §1 (NEW).

### **24-A §1133. TIME LIMIT FOR DISPOSAL OF REAL ESTATE**

1. Except as stated in subsection 2, or unless the insurer elects to hold the real estate as an investment under section 1125, subsection 1, paragraph G:

A. An insurer shall dispose of real estate acquired under section 1125, subsection 1, paragraph A, within 5 years after it has ceased to be necessary for the convenient accommodation of the insurer in the transaction of its business. [1969, c. 132, §1 (NEW).]

B. An insurer shall dispose of real estate acquired under section 1125, subsection 1, paragraphs B, C or E, within 5 years after the date of acquisition, unless used or to be used for the insurer's accommodation under section 1125, subsection 1, paragraph A. [1969, c. 132, §1 (NEW).]

2. Upon proof satisfactory to him that the interests of the insurer will suffer materially by the forced sale thereof, the superintendent may by order grant a reasonable extension of the period, as specified in such order, within which the insurer shall dispose of any particular parcel of such real estate.

[ 1973, c. 585, §12 (AMD) .]

#### SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

### **24-A §1134. TIME LIMIT FOR DISPOSAL OF OTHER INELIGIBLE PROPERTY AND SECURITIES**

Any personal property or securities lawfully acquired by an insurer which it could not otherwise have invested in or loaned its funds upon at the time of such acquisition, shall be disposed of within 3 years from date of acquisition unless within such period the security has attained to the standard of eligibility; except, that any security or personal property acquired under any agreement of bulk reinsurance, merger or consolidation, may be retained for a longer period if so provided in the plan for such reinsurance, merger, or consolidation as approved by the superintendent under chapter 47. Upon application by the insurer and proof that forced sale of any such property or security would materially injure the interests of the insurer, the superintendent may extend the disposal period for an additional reasonable time. [1973, c. 585, §12 (AMD) .]

#### SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

### **24-A §1135. FAILURE TO DISPOSE OF REAL ESTATE OR SECURITIES; EFFECT, PENALTY**

1. Any real estate, personal property or securities lawfully acquired, and held by an insurer after expiration of the period for disposal thereof or any extension of such period granted by the superintendent as provided in sections 1133 and 1134 shall not be allowed as an asset of the insurer.

[ 1973, c. 585, §12 (AMD) .]

2. The insurer shall forthwith dispose of any ineligible investment unlawfully acquired by it, and the superintendent shall suspend or revoke the insurer's certificate of authority if the insurer fails to dispose of the investment within such reasonable time as the superintendent may, by his order, specify.

[ 1973, c. 585, §12 (AMD) . ]

#### SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

## 24-A §1136. PROHIBITED INVESTMENTS AND INVESTMENT UNDERWRITING

1. In addition to investments excluded pursuant to other provisions of this Title, an insurer shall not invest in or lend its funds upon the security of:

A. Issued shares of its own capital stock, except:

(1) For the purpose of mutualization under chapter 47, or

(2) For retirement, or

(3) Pursuant to a plan for such investment or loan submitted in writing by the insurer to the superintendent in advance, and which the superintendent has not, within 20 days after such submission or within such additional reasonable period as the superintendent may request, disapproved as being unfair or inequitable to the insurer's policyholders or stockholders. [ 1973, c. 585, §12 (AMD) . ]

B. Securities issued by any corporation or enterprise the controlling interest of which is, or will after such acquisition by the insurer be, held directly or indirectly by the insurer or any combination of the insurer and the insurer's directors, officers, subsidiaries, or controlling stockholders, and the spouses and children of any of the foregoing individuals. Investments in controlled insurance corporations or subsidiaries under sections 1114 and 1115 are not subject to this provision. [ 1969, c. 132, §1 (NEW) . ]

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. [ 1987, c. 399, §13 (AMD) . ]

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

A. The acquisition and ownership by the insurer of its subsidiary corporation acting as investment adviser or principal underwriter of a management company or investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as amended. [ 1969, c. 132, §1 (NEW) . ]

B. The registration by the insurer, under the Securities Act of 1933 or other applicable law, of restricted or other securities acquired and owned by it in regular course of business. [ 1969, c. 132, §1 (NEW) . ]

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. These programs shall conform to provisions contained in a regulation promulgated by the Superintendent of Insurance on a prospective basis covering those programs and which sets consistent standards for the collateral security deposits.

[ 1979, c. 458, §13 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1979, c. 458, §13 (AMD). 1987, c. 399, §13 (AMD).

## **24-A §1137. 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. [1969, c. 132, §1 (NEW).]

SECTION HISTORY

1969, c. 132, §1 (NEW).

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