

LEGISLATIVE HISTORY CHECKLIST

NJSA: 17B: 20-1 et al

(Life & health  
insures--permit  
more foreign  
investment)

LAWS OF: 1989

CHAPTER: 267

Bill No: S3757

Sponsor(s): Lesniak

Date Introduced: June 30, 1989

Committee: Assembly: -----

Senate: Labor, Industry & Professions

Amended during passage: Yes Amendments during passage  
denoted by asterisks.

Date of Passage: Assembly: December 18, 1989

Senate: December 11, 1989

Date of Approval: January 4, 1989

Following statements are attached if available:

Sponsor statement: Yes (Below)

Committee Statement: Assembly: No

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

Sponsor's statement:

This bill expands the authority of domestic life and health insurer to make foreign investments.

[FIRST REPRINT]  
SENATE, No. 3757

STATE OF NEW JERSEY

INTRODUCED JUNE 30, 1989

By Senator LESNIAK

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1 AN ACT concerning investments by life and health insurers and  
2 amending N.J.S.17B:20-1, N.J.S.17B:20-2, <sup>1</sup>[and]<sup>1</sup>  
3 N.J.S.17B:20-4 <sup>1</sup>, N.J.S.17B:28-7 and N.J.S.17B:28-9<sup>1</sup>.  
4

5 BE IT ENACTED by the Senate and General Assembly of the  
6 State of New Jersey:

7 1. N.J.S.17B:20-1 is amended to read as follows:

8 17B:20-1. Any domestic insurer may invest its capital, surplus  
9 and other funds, or any part thereof, in:

10 a. Bonds, notes, or other evidences of indebtedness or public  
11 stock issued, created, insured or guaranteed by the United States,  
12 any territory or possession thereof, this or any other state of the  
13 United States, the District of Columbia, the Commonwealth of  
14 Puerto Rico, Canada, or any of the provinces thereof, or any  
15 instrumentality, agency or political subdivision of one or more of  
16 the foregoing.

17 b. Real estate which may be improved or which is unimproved  
18 but acquired in accordance with a definite plan for development  
19 within not more than five years, and in the improvement,  
20 development, operation or leasing thereof; provided, that if the  
21 commissioner shall determine that the interest of such insurer's  
22 policyholders requires that any specific real estate so acquired be  
23 disposed of, then such insurer shall dispose of such real estate  
24 within such reasonable time as the commissioner shall direct; and  
25 provided further, that the sum of (1) the aggregate amount  
26 invested in such real estate (including real estate held pursuant to  
27 [section] N.J.S.17B:18-45 of this Title) and (2) the aggregate  
28 amount invested in capital stock of any subsidiary of the insurer  
29 pursuant to [section] N.J.S.17B:20-4, engaged in a business  
30 primarily involving the owning, improving, developing, operating  
31 or leasing of real estate, shall not exceed 10% of the total  
32 admitted assets of such insurer as of December 31 next  
33 preceding. Real estate used primarily for agricultural,  
34 horticultural, ranching, mining, forestry or recreational purposes

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:  
<sup>1</sup> Senate SLI committee amendments adopted November 30, 1989.

1 shall be deemed improved within the meaning of this subsection  
2 b. The term "real estate" as used in this chapter shall include  
3 any real property and any interest therein, including, without  
4 limitation, any interest on, above or below the surface of the  
5 land, any leasehold estate therein, and any such interest held or  
6 to be held by the insurer in cotenancy with one or more other  
7 persons and any partnership interest held by the insurer in any  
8 general or limited partnership engaged in a business primarily  
9 involving the owning, improving, developing, operating or leasing  
10 of real estate. Income produced by investment in any such  
11 leasehold shall be applied in a manner calculated to amortize the  
12 amount invested in such leasehold within a period not exceeding  
13 eight-tenths of the unexpired term of the leasehold, inclusive of  
14 enforceable options, or within 40 years, whichever is the lesser,  
15 or where the peculiar nature of the leasehold involved so  
16 dictates, within such period and subject to such other reasonable  
17 limitations as the commissioner shall by regulation impose. For  
18 the purposes of this subsection b., a mortgage loan shall not be  
19 deemed to be an investment in real estate, notwithstanding the  
20 mortgagor is an institution in which such insurer has an ownership  
21 interest as shareholder, partner, or otherwise. The commissioner  
22 may promulgate a regulation in connection with investments  
23 under this subsection b. which shall, as far as practicable, be  
24 consistent with those regulations of the department which treat  
25 with securities supported by such interests in real estate.

26 c. Mortgage loans on unencumbered real estate, located within  
27 the United States, any territory or possession thereof, the  
28 Commonwealth of Puerto Rico or Canada. The amount of any  
29 such loan shall not exceed 80% of the value of the real estate  
30 mortgaged unless (1) the loan is also secured by the mortgagor's  
31 interest in a lease or leases whose aggregate rentals shall be  
32 sufficient, after payment of operating expenses and fixed  
33 charges, to repay 90% of the loan with interest thereon during  
34 the initial term or terms of such lease or leases and shall be  
35 payable directly or indirectly by any governmental units,  
36 instrumentalities, agencies or political subdivisions or an  
37 institution or institutions which meet the credit standards of the  
38 insurer for an unsecured loan to such institution or institutions or  
39 (2) the loan is secured by a purchase money mortgage or like

1 security received by the insurer upon the sale or exchange of real  
2 estate acquired pursuant to any provision of this Title or (3) the  
3 excess over such 80% is insured or guaranteed or to be insured or  
4 guaranteed by the United States, any territory or possession  
5 thereof, this or any other state of the United States, the District  
6 of Columbia, the Commonwealth of Puerto Rico, Canada or any  
7 of the provinces thereof, or any instrumentality, agency or  
8 political subdivision of one or more of the foregoing. Any  
9 mortgage loan so insured or guaranteed or to be insured or  
10 guaranteed shall not be subject to the provisions of any law of  
11 this State prescribing or limiting the interest which may be  
12 charged or taken upon any such loan.

13 Any such insurer may hold a participation in any such mortgage  
14 loan if (1) such participation is senior and gives the holder  
15 substantially the rights of a first mortgagee or (2) the interest of  
16 such insurer in the evidence or evidences of indebtedness is of  
17 equal priority, to the extent of such interest, with other interests  
18 therein.

19 Any such mortgage loan which exceeds two-thirds of the value  
20 of the real estate mortgaged shall provide for such payments of  
21 principal, whatever the period of the loan, that at no time during  
22 the period of the loan shall the aggregate payments of principal  
23 theretofore required to be made under the terms of the loan be  
24 less than would have been necessary to reduce the loan to  
25 two-thirds of such value by the end of 35 years through payments  
26 of interest only for five years and equal payments applicable first  
27 to interest and then to principal at the end of each year  
28 thereafter. The commissioner may promulgate such supplemental  
29 regulations as he deems necessary with regard to particular  
30 classes of such investments, taking into consideration the type of  
31 security and the ratio of the loan to the value of the real estate  
32 mortgaged. No loan may be made on leasehold real estate unless  
33 the terms of such loan provide for payments to be made by the  
34 borrower on the principal thereof in amounts sufficient to  
35 completely repay the loan within a period not exceeding  
36 nine-tenths of the term of the leasehold, inclusive of the term or  
37 terms which may be provided by any enforceable option or  
38 options of extension or of renewal, which is unexpired at the time  
39 the loan is made.

1 Real estate shall not be deemed to be encumbered within the  
2 meaning of this subsection c. by reason of the existence of taxes  
3 or assessments that are not delinquent, or encumbrances that do  
4 not adversely affect the salability of the property to a material  
5 extent or as to which the insurer is insured against loss by title  
6 insurance, or any prior mortgage or mortgages held by such  
7 insurer if the aggregate of the mortgages held shall not exceed  
8 the amount hereinbefore set forth, nor when such real estate is  
9 subject to lease in whole or in part; provided, that the security  
10 created by the mortgage on such real estate is a first lien  
11 thereon. Real estate shall not be deemed to be encumbered and  
12 the security of the mortgage thereon shall be deemed a first lien  
13 within the meaning of this subsection c., notwithstanding the  
14 mortgagor is an institution in which such insurer has an ownership  
15 interest as shareholder, partner or otherwise.

16 No such insurer shall, pursuant to this subsection c., invest  
17 more than 2% of its total admitted assets as of December 31 next  
18 preceding in any mortgage loan secured by any one property, nor  
19 shall its total mortgage investments pursuant to this subsection  
20 c., exclusive of any mortgage loans secured by a purchase money  
21 mortgage or like security received by the insurer upon the sale or  
22 exchange of real estate acquired pursuant to any provision of this  
23 Title or insured or guaranteed or to be insured or guaranteed as  
24 hereinbefore provided, exceed 60% of such admitted assets.

25 d. Tangible personal property, ~~equipment~~ trust obligations or  
26 other instruments evidencing an ownership interest or other  
27 interest in tangible personal property where there is a right to  
28 receive determined portions of rental, purchase or other fixed  
29 obligatory payments for the use or purchase of such personal  
30 property, provided, that the aggregate of such payments,  
31 together with the estimated salvage value of such property at the  
32 end of its minimum useful life and the estimated tax benefits to  
33 the insurer resulting from ownership of such property, is adequate  
34 to return the cost of the investment in such property, and  
35 provided further, that the aggregate net investments therein shall  
36 not exceed 10% of the total admitted assets of such insurer as of  
37 December 31 next preceding; or certificates of receivers of any  
38 institution where such purchase is necessary to protect an  
39 investment in the securities of such institution theretofore made

1 under authority of this chapter; or the capital stock, beneficial  
2 shares or other instruments evidencing an ownership interest,  
3 bonds, securities or evidences of indebtedness issued, assumed or  
4 guaranteed by any institution created or existing under the laws  
5 of the United States, any territory or possession thereof, this or  
6 any other state of the United States, the District of Columbia,  
7 the Commonwealth of Puerto Rico, Canada or any of the  
8 provinces thereof; provided, that no purchase of any evidence of  
9 indebtedness which is in default as to interest shall be made by  
10 such insurer unless such purchase is necessary to protect an  
11 investment theretofore made under statutory authority.

12 The term "institution" as used in this chapter shall include any  
13 corporation, joint stock association, business trust, business joint  
14 venture, business partnership, savings and loan association, credit  
15 union or other mutual savings institution. No purchase shall be  
16 made of the stock of any class of any corporation, except a  
17 subsidiary of the insurer pursuant to [section] N.J.S.17B:20-4,  
18 unless (1) such corporation has paid cash dividends on such class  
19 of stock during each of the past five years preceding the time of  
20 purchase or (2) such corporation shall have earned during the  
21 period of such five years an aggregate sum available for dividends  
22 upon such stock which would have been sufficient, after all fixed  
23 charges and obligations, to pay dividends upon all shares of such  
24 class of stock outstanding during such period averaging 4% per  
25 annum computed upon the par value (or in the case of stock  
26 having no par value, upon the stated capital in respect thereof) of  
27 such stock. In the case of the stock of a corporation resulting  
28 from or formed by merger, consolidation, acquisition or otherwise  
29 less than five years prior to such purchase, each consecutive year  
30 next preceding the effective date of such merger, consolidation  
31 or acquisition during which dividends or other distributions of  
32 profits shall have been paid by any one or more of its constituent  
33 or predecessor institutions shall be deemed a year during which  
34 dividends have been paid on such class of stock and the earnings  
35 of such constituent or predecessor institutions available for  
36 dividends during each of such years may be included as earnings  
37 of the existing corporation whose stock is to be purchased for  
38 each of such years; provided, however, that nothing herein  
39 contained shall prohibit the purchase of stock of any class which

1 is preferred, as to dividends, over any class the purchase of which  
2 is not prohibited by this section; and provided further, that no  
3 purchase of its own stock shall be made by any insurer except for  
4 the purpose of the retirement of such stock or except as  
5 specifically permitted by any law of this State applicable by its  
6 terms only to insurers.

7 e. Securities, properties and other investments in foreign  
8 countries, in addition to those specified in [section]  
9 N.J.S.17B:20-5, which are substantially of the same character as  
10 prescribed for authorized investments for funds of the insurer  
11 under the preceding subsections of this section, to an amount  
12 valued at cost, not exceeding in the aggregate at any one time  
13 [2%] 5% of the total admitted assets of such insurer as of  
14 December 31 next preceding; provided, however, that the amount  
15 invested pursuant to this subsection e. in authorized investments  
16 <sup>1</sup>[in foreign countries whose sovereign debt obligations are not  
17 rated in one of the two highest rating categories by an  
18 independent, nationally recognized United States rating agency] ,  
19 other than qualified foreign investments,<sup>1</sup> shall not exceed in the  
20 aggregate, at any one time, 2% of such admitted assets; and  
21 provided further that the amount invested in authorized  
22 investments in any one foreign country pursuant to this  
23 subsection e. shall not exceed in the aggregate, at any one time,  
24 [1%] 2% of such admitted assets. For the purposes of this  
25 subsection e., Canada shall not be deemed to be a foreign country.

26 <sup>1</sup>The term "qualified foreign investment" as used in this  
27 subsection e. shall include any investment in a foreign country  
28 where: (1) the issuer or obligor is (a) a jurisdiction which is rated  
29 in one of the two highest rating categories by an independent,  
30 nationally recognized United States rating agency, (b) any  
31 political subdivision or other governmental unit of any such  
32 jurisdiction, or any agency or instrumentality of any such  
33 jurisdiction, political subdivision or other governmental unit, or  
34 (c) an institution which is organized under the laws of any such  
35 jurisdiction, or, in the case of investments which are substantially  
36 of the same character as prescribed for investments under  
37 subsections b. and c. of this section, the real property is located  
38 in any such jurisdiction; and (2) if the investment is denominated  
39 in any currency other than United States dollars, the

1 investment is effectively hedged, substantially in its entirety,  
2 against the United States dollar pursuant to contracts or  
3 agreements which are (a) issued by or traded on a securities  
4 exchange or board of trade regulated under the laws of the  
5 United States or Canada or a province thereof, (b) entered into  
6 with a United States banking institution which has assets in  
7 excess of \$5,000,000,000 and which has obligations outstanding,  
8 or has a parent corporation which has obligations outstanding,  
9 which are rated in one of the two highest rating categories by an  
10 independent, nationally recognized United States rating agency,  
11 or with a broker-dealer registered with the Securities and  
12 Exchange Commission which has net capital in excess of  
13 \$250,000,000, or (c) entered into with any other banking  
14 institution which has assets in excess of \$5,000,000,000 and which  
15 has obligations outstanding, or has a parent corporation which has  
16 obligations outstanding, which are rated in one of the two highest  
17 rating categories by an independent, nationally recognized United  
18 States rating agency and which is organized under the laws of a  
19 jurisdiction which is rated in one of the two highest rating  
20 categories by an independent, nationally recognized United States  
21 rating agency.

22 Any investment qualified pursuant to paragraph (2) of the  
23 preceding definition of "qualified foreign investment" shall  
24 remain so qualified only at such time or times that the hedging  
25 requirements of paragraph (2) are met.<sup>1</sup>

26 f. Bonds, notes, or other evidences of indebtedness, issued,  
27 insured or guaranteed or to be insured or guaranteed by the  
28 International Bank for Reconstruction and Development, or by  
29 the Inter-American Development Bank, or by the Asian  
30 Development Bank, or by the African Development Bank, except  
31 that no funds invested in obligations issued, insured or guaranteed  
32 by the African Development Bank shall be used in or shall go to  
33 South Africa.

34 g. Collateral loans secured by a pledge of capital stock,  
35 beneficial shares or other instruments evidencing an ownership  
36 interest, bonds, securities or evidences of indebtedness qualified  
37 or permitted for investment under any of the preceding  
38 subsections of this section. The amount of any such loan shall not  
39 exceed 80% of the market value of the security pledged at the

1 date of the loan.

2 h. Loans or investments which are not qualified or permitted  
3 under any of the preceding subsections of this section or which  
4 are not otherwise expressly authorized by law; provided, that the  
5 aggregate amount of such loans and investments, valued at cost,  
6 shall not exceed at any one time [5%] <sup>1</sup>[10%] 7%<sup>1</sup> of the total  
7 admitted assets of such insurer as of December 31 next preceding.

8 For the purposes of subsection c. and this subsection h., the  
9 portion of a mortgage loan on unencumbered real estate which  
10 does not exceed 80% of the value of the real estate mortgaged  
11 shall be deemed to be a permitted investment under subsection c.  
12 and the remainder of said loan may be deemed to be made under  
13 this subsection h. Any investment originally made under this  
14 subsection h. which would subsequently, if it were being made,  
15 qualify as a permitted investment under another subsection of  
16 this section shall thenceforth be deemed to be a permitted  
17 investment under such other subsection.

18 (cf: P.L.1985, c.485, s.1)

19 2. N.J.S.17B:20-2 is amended to read as follows:

20 17B:20-2. The amount (excluding amounts invested in the  
21 common stock of any corporation pursuant to [sections]  
22 N.J.S.17B:20-3 and N.J.S.17B:20-4) invested by a domestic  
23 insurer (a) in the common stock of any one corporation shall not  
24 exceed 2% of the total admitted assets of such insurer as of  
25 December 31 next preceding, or (b) in the common stock of all  
26 corporations valued at cost shall not exceed 15% of such assets  
27 except that to the extent that such aggregate investment in  
28 common stock exceeds 10% of such assets, further investments  
29 shall be subject to regulation by the commissioner under a  
30 formula which shall take into consideration the actual mandatory  
31 securities valuation reserve, as defined by the Subcommittee on  
32 Valuation of Securities of the National Association of Insurance  
33 Commissioners, held by a company which is applicable to such  
34 common stock in the corresponding annual statement filed with  
35 the department. The term "common stock" shall mean any  
36 voting stock of any class of a corporation which shall not be  
37 limited to a fixed sum or percentage of par value in respect to  
38 the rights of the holders thereof to participate in dividends or in  
39 the distribution of assets upon the voluntary or involuntary

1 liquidation, dissolution or winding up of the corporation. Neither  
2 shall the amount invested in the beneficial shares or other  
3 ownership interests (other than common stock), evidences of  
4 indebtedness (excluding amounts invested in mortgage loans  
5 pursuant to subsection c. of [section] N.J.S.17B:20-1), preferred  
6 stock and certificates of receivers of any one institution exceed  
7 5% of such assets of the insurer. Nothing herein contained shall  
8 prevent any such insurer from purchasing, or in any other way  
9 acquiring the voting stock of, or otherwise investing in certain  
10 corporations as hereinafter provided in [sections] N.J.S.17B:20-3  
11 and N.J.S.17B:20-4.

12 The total amount of admitted assets invested in the types of  
13 investments authorized by subsections b. and c. of N.J.S.17B:20-1  
14 shall not, in the aggregate, exceed 60% of the domestic insurer's  
15 total admitted assets.

16 All investments made by any such insurer shall be authorized or  
17 approved by the board of directors, or by a committee [thereof]  
18 designated by the board of directors and charged with the duty of  
19 supervising such investment, or shall be made in conformity with  
20 standards or investment objectives approved by such board of  
21 directors or such committee.

22 No such insurer shall enter into any agreement to withhold  
23 from sale any of its property or jointly or severally enter into any  
24 agreement to purchase the unsold amount of securities which are  
25 the subject of an offering for sale to the public or otherwise to  
26 guarantee the sale of such securities.

27 Nothing contained in this section shall prevent any such insurer  
28 from distributing shares of an investment company within the  
29 meaning of the Investment Company Act of 1940 for which such  
30 insurer or its subsidiary is the investment manager or investment  
31 adviser.

32 The term "Investment Company Act of 1940" as used in this  
33 section shall mean an Act of Congress entitled "Investment  
34 Company Act of 1940," 54 Stat. 847 (15 U.S.C. §80a-1 et seq.) as  
35 amended from time to time, or any similar statute enacted in  
36 substitution therefor.

37 (cf: P.L.1987, c.60, s.1)

38 3. N.J.S.17B:20-4 is amended to read as follows:

39 17B:20-4. In addition to the authority expressly contained in

1 this chapter and notwithstanding any limitation contained in this  
2 Title, any domestic insurer may invest in the voting stock of one  
3 or more subsidiaries, as provided in this section.

4 a. As used in this section the following terms shall have the  
5 following meanings: (1) "voting stock" as used with reference to  
6 any corporation means any shares of capital stock of such  
7 corporation having general voting power under ordinary  
8 circumstances, when voting (together with one or more other  
9 classes, if any) as a class, to elect a majority of the board of  
10 directors of such corporation irrespective of whether or not at  
11 the time stock of any other class or classes shall have, or might  
12 have, voting power by reason of the happening of any  
13 contingency, and shall also include voting trust certificates,  
14 certificates of deposit, interim receipts and other similar  
15 instruments representing such stock and (2) "subsidiary" means a  
16 corporation of which a majority of the voting stock is owned or  
17 controlled by a domestic insurer, or by one or more subsidiaries  
18 of such insurer or by such insurer and one or more subsidiaries of  
19 such insurer, except that "subsidiary" shall not include a  
20 corporation of which a majority of the voting stock is acquired by  
21 the insurer or its subsidiaries pursuant to any other section of this  
22 chapter.

23 b. The business of a subsidiary, whether or not it is organized  
24 under the laws of this State, shall be limited to that authorized  
25 for a corporation organized under any law of this State, except  
26 that "subsidiary" shall not include any bank organized pursuant to  
27 the laws of this State and shall not include any national bank  
28 maintaining its principal office in this State.

29 c. [Except as otherwise specifically permitted by this section,  
30 no investment in the voting stock of any subsidiary shall be  
31 retained by a domestic insurer or by any of its subsidiaries unless  
32 a majority of the voting stock of such subsidiary is owned or  
33 controlled by such insurer or by one or more subsidiaries of such  
34 insurer or by such insurer and one or more subsidiaries of such  
35 insurer.] (Deleted by amendment, P.L. .c. .)

36 d. The investments of any such subsidiary [of the kinds  
37 permitted by subsection b., c., d. or e. of section 17B:20-1,  
38 except a subsidiary engaged primarily in any kind of insurance  
39 business,] engaged exclusively in the ownership and management

1 of assets authorized as investments for the insurer when added,  
2 on a basis proportional to the insurer's interest in such  
3 subsidiary, to the investments of such insurer (referred to herein  
4 as the "controlling insurer") shall not cause the investments of  
5 the controlling insurer to exceed any of the limitations applicable  
6 to domestic insurers contained [therein or] in [section]  
7 N.J.S.17B:20-1 or N.J.S.17B:20-2 of this chapter except as may  
8 be permitted by [section 17B:20-1h.] subsection h. of  
9 N.J.S.17B:20-1 or [section] N.J.S.17B:20-3]; provided that  
10 investments by any subsidiary which if made by the controlling  
11 insurer would be subject to the limitations of section 17B:20-1b.  
12 shall not be included to the extent the controlling insurer's  
13 investment in the capital stock of such subsidiary is subject to  
14 the limitations of section 17B:20-1b. Notwithstanding the  
15 foregoing limitations of this subsection d., any such subsidiary  
16 shall be permitted to invest in the voting stock of one or more  
17 other corporations if:

18 (1) After such investment, such subsidiary, the controlling  
19 insurer and all other subsidiaries of the controlling insurer shall  
20 own a majority of the voting stock of such other corporation and  
21 such other corporation would, within the meaning of this section,  
22 constitute a permitted subsidiary of the controlling insurer, or

23 (2) The proportion of such investment attributable to the  
24 controlling insurer pursuant to this subsection d. could then have  
25 been made in the same manner by the controlling insurer under  
26 any other provision of this chapter].

27 e. The investment in such subsidiary shall not tend  
28 substantially to lessen competition or tend to create a monopoly.

29 f. Such subsidiary shall not be used directly or indirectly to  
30 promote the private interests of any officer or director of such  
31 insurer, except that compensation may be paid by any subsidiary  
32 to officers and directors of such insurer for services rendered  
33 when such compensation is authorized by the board of directors  
34 of such subsidiary and approved by the board of directors of such  
35 insurer.

36 g. The aggregate amount invested by the controlling insurer in  
37 the voting stock of all subsidiaries pursuant to this section  
38 together with the aggregate amount of all other investments of  
39 the controlling insurer in such subsidiaries, valued at cost (less

1 any amount invested by the controlling insurer and such  
2 subsidiaries in any subsidiary which is (1) engaged primarily in the  
3 life insurance business or (2) engaged [in a business primarily  
4 involving the owning, improving, developing, operating or leasing  
5 of real estate] exclusively in the ownership and management of  
6 assets authorized as investments for the controlling insurer) shall  
7 not exceed [5%] 8%[, or with the approval of the commissioner  
8 10%,] of the total admitted assets of such insurer as of December  
9 31 next preceding.

10 h. [No investment in voting stock of any subsidiary shall be  
11 made by such insurer or any subsidiary thereof pursuant to this  
12 section unless a notice of intention to make such proposed  
13 investment is filed with the commissioner not less than 30 days,  
14 or such shorter period as may be permitted by the commissioner,  
15 in advance of such proposed investment, nor shall any such  
16 investment be made if the commissioner at any time prior  
17 thereto finds that the proposed investment does not meet the  
18 requirements of this section or determines, in his sole discretion,  
19 that such proposed investment would be contrary to the best  
20 interests of policyholders or the public] Within 30 days, or such  
21 longer period as may be permitted by the commissioner, after an  
22 investment in voting stock of any subsidiary has been made by the  
23 controlling insurer or any subsidiary thereof pursuant to this  
24 section, the controlling insurer shall file notice of such  
25 investment with the commissioner; provided, that after an  
26 investment in voting stock has been made pursuant to this  
27 section, no notice of [intention to make] further investments in  
28 the voting stock or other securities of the same subsidiary shall  
29 be required[, and such further investments may be made subject  
30 to the limitations contained in subsection d. and subsection g. of  
31 this section]. The commissioner shall have the power to conduct  
32 periodic examinations and require reports in connection with the  
33 operation of subsidiaries and, if he shall determine either that the  
34 interests of policyholders or the public so [requires] require or  
35 that the investments of any subsidiary do not comply with the  
36 requirements of this section, to order that a domestic insurer or  
37 any subsidiary thereof dispose of its investment in any subsidiary  
38 or that any subsidiary dispose of any noncomplying investments,  
39 in each case within a reasonable period of time.

1 i. [In addition to the authority contained in the preceding  
2 subsections of this section, a domestic insurer and its subsidiaries  
3 may invest in and retain more than 8% but less than a majority of  
4 the voting stock of any alien corporation engaged in any kind of  
5 insurance business or in a business of providing services of a kind  
6 the domestic insurer might itself perform independently of any  
7 insurance or annuity contract; provided that no such investment  
8 shall be made unless notice of intention to make such proposed  
9 investment is filed as provided in subsection h. of this section. A  
10 domestic insurer may retain less than a majority of the voting  
11 stock of any such alien corporation originally acquired as a  
12 majority owned subsidiary pursuant to this section without  
13 further notice under subsection h. of this section. For the  
14 purposes of this section the term "subsidiary" shall include any  
15 such alien corporation of which more than 8% of the voting stock  
16 is acquired pursuant to this section and is owned or controlled as  
17 provided in subsection a., except that subsection d. shall not  
18 apply to any such subsidiary of which less than a majority of the  
19 voting stock is so owned or controlled]. Each domestic insurer  
20 that has made investments in one or more subsidiaries shall  
21 annually, on or before May 1, file a subsidiary information report  
22 with the commissioner. The report shall set forth the name of  
23 each subsidiary in which such insurer has made an investment, the  
24 aggregate amount invested by the controlling insurer in each such  
25 subsidiary, valued at cost, and such other information with  
26 respect to each such subsidiary as the commissioner may  
27 prescribe.

28 j. The aggregate amount invested by the controlling insurer  
29 pursuant to this section in the voting stock of all subsidiaries  
30 engaged primarily in the life insurance business, together with  
31 the aggregate amount of all other investments of the controlling  
32 insurer in such subsidiaries, valued at cost, shall not exceed 5% of  
33 the total admitted assets of such insurer as of December 31 next  
34 preceding.

35 (cf: P.L.1987, c.60, s.2)

36 14. N.J.S. 17B:28-7 is amended to read as follows:

37 17B:28-7. Separate accounts; approval by commissioner. Any  
38 present or future domestic insurer shall have authority to  
39 establish and operate one or more separate accounts and to issue

1 separate account contracts, whether or not contracts on a  
2 variable basis, with the approval of the commissioner, and the  
3 issuance or delivery of such contracts in this State by any foreign  
4 or alien insurer, shall be subject to like approval. The  
5 commissioner, in granting or withholding any such approval, shall  
6 consider in addition to the matters referred to in N.J.S. 17B:28-2,  
7 17B:28-5, and 17B:28-15, if applicable, the following:

8 a. The type or types of contracts the funds from which will be  
9 placed in the separate accounts;

10 b. The extent to which, if any, the dollar amount of benefits or  
11 other contractual payments or values under such contracts will be  
12 guaranteed;

13 c. The investment limitations that will be applicable to the  
14 separate account;

15 d. The manner of valuing the assets of the account and the  
16 method or methods to be used to compute the liabilities arising  
17 from the contracts described in [(a)] subsection a. of this section;

18 e. If such contracts are annuity contracts, whether or not they  
19 will be participating; and

20 f. Such other matters as the commissioner shall deem relevant.

21 Any such approval by the commissioner may be subject to such  
22 conditions as he may impose as being necessary for the protection  
23 of the public or of such insurer's policyholders. Any approval by  
24 the commissioner pursuant to this section may be granted with  
25 respect to a single separate account or a class of separate  
26 accounts having common characteristics.

27 For any separate account established and maintained solely for  
28 one or more employer group contracts sold to fund an employee  
29 benefit plan, which contracts constitute group contracts for the  
30 purposes of paragraph (v) of subsection a. of N.J.S. 17B:28-9, an  
31 insurer may establish and maintain such account 45 days after  
32 filing its request for the commissioner's approval, unless within  
33 that time the commissioner shall have approved or disapproved  
34 the account, provided that neither the insurer nor any such  
35 contract shall provide a guaranty, including any index guaranty,  
36 of the dollar amount of benefits or other contractual payments or  
37 values under such contract. Any disapproval shall state in writing  
38 the grounds therefor in such detail as reasonable to inform the  
39 insurer thereof. The disapproval by the commissioner

1 of any such account may be on the ground that the account is  
2 contrary to law or the public policy of this State. Any  
3 disapproval shall be subject to review in accordance with the  
4 procedure set forth in the "Administrative Procedure Act," P.L.  
5 1968, c. 410 (C. 52:14B-1 et seq.), and any rules or regulations  
6 adopted thereunder.<sup>1</sup>

7 (cf: P.L.1977, c.37, s.5)

8 <sup>1</sup>5. N.J.S. 17B:28-9 is amended to read as follows:

9 17B:28-9. Investment of assets; eligibility; definition.

10 a. The assets held in a separate account, or any part thereof,  
11 may be invested in:

12 (i) Common stock or shares of any investment company  
13 specified in the contract or contracts participating in such  
14 separate account, and registered under the Investment Company  
15 Act of 1940, whether or not such stock or shares satisfy the  
16 dividend or earnings history requirements now or hereafter  
17 contained in the provisions of this Title that regulate investments  
18 by domestic insurers; provided that at the time of the first  
19 purchase of such stock or shares of any such investment company,  
20 the insurer which maintains such account, or a subsidiary or  
21 affiliate of such insurer, shall be the investment manager or  
22 investment adviser of such investment company and, as long as  
23 such insurer which maintains such account, or any subsidiary or  
24 affiliate of such insurer, shall continue as such investment  
25 manager or investment adviser, the investments acquired by such  
26 investment company shall be such as would be eligible for  
27 investment of separate account assets by domestic insurers under  
28 the provisions of this section excluding this [clause] paragraph (i);

29 (ii) Other investments made eligible for investment by  
30 domestic insurers by the provisions of this Title that regulate  
31 investments by domestic insurers, except for investments made  
32 eligible by the provision of chapter 20 of this Title which permits  
33 a domestic insurer to make loans or investments not otherwise  
34 expressly qualified or permitted up to 5% of total admitted  
35 assets, as such provision may be amended from time to time, or  
36 any similar or superseding provision corresponding in substance  
37 thereto;

38 (iii) Investments authorized, specifically or by classes or  
39 otherwise, by the commissioner as appropriate to the nature and

1 purpose of such separate account; and  
2 (iv) Investments not otherwise eligible under the preceding  
3 clauses of this subsection, provided that at the time of making  
4 any such investment, and immediately after giving effect  
5 thereto, the aggregate cost of all investments held in such  
6 separate account pursuant to this [clause] paragraph (iv) shall not  
7 exceed 5% of the aggregate market value of the assets held in  
8 such separate account;  
9 provided that (A) any common stock or shares, other than  
10 common stock or shares referred to in [clause] paragraph (i) of  
11 this subsection issued by an open-end investment company, shall  
12 be (1) common stock or shares which are listed or admitted to  
13 trading on a securities exchange in the United States of America  
14 or Canada, or (2) common stock or shares which are included on  
15 the National Association of Securities Dealers' national price  
16 listings of "over-the-counter" securities, or (3) other common  
17 stock or shares which the commissioner shall have determined are  
18 publicly held and traded and as to which market quotations shall  
19 be available; (B) the quantitative investment limitations now or  
20 hereafter contained in this Title regulating investments by  
21 domestic insurers shall not be applicable to investments for  
22 separate account, subject to the qualification that the provision  
23 contained in this Title limiting the percentage of voting stock of  
24 any one corporation that may be purchased or acquired by a  
25 domestic insurer, as such provision may be amended from time to  
26 time, or any similar or superseding provision corresponding in  
27 substance thereto, shall apply (subject to the provisions of  
28 [section] N.J.S. 17B:20-3 as such provisions may be amended from  
29 time to time, or any similar or superseding provisions  
30 corresponding in substance thereto), with respect to the  
31 aggregate of the voting stock of any one corporation held in all  
32 accounts of such insurer, except for all such stock that may be  
33 voted at the direction of a person or persons, other than such  
34 insurer or any subsidiary or affiliate of such insurer; and provided  
35 further that, subject to the next succeeding paragraph of this  
36 subsection, no domestic insurer shall purchase for any separate  
37 account any security (other than common stock or shares referred  
38 to in [clause] paragraph (i) of this subsection issued by an  
39 open-end investment company) of any corporation, if after such

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1 purchase more than 10% of the market value of the assets of such  
2 separate account would be invested in the securities of such  
3 corporation.

4 (v) Notwithstanding the foregoing provisions of this section or  
5 any other provision of law, a domestic insurer may invest the  
6 assets, or any part thereof, held in a separate account established  
7 and maintained solely for one or more group contracts in any  
8 investment or investments authorized by the contract or  
9 contracts participating in such account, subject only to [clause]  
10 subparagraph (B) of [the proviso in the next preceding] paragraph  
11 (iv) of this subsection relating to the percentage of voting stock  
12 of any one corporation that may be purchased or acquired. For  
13 the purpose of this paragraph, a group contract shall not include,  
14 (1) a contract which provides benefits to individuals based upon  
15 the investment results of such an account unless such contract  
16 implements a plan (a) which covers at least 100 individuals at the  
17 time of execution of such contract and (b) under which, if the  
18 crediting to such an account of the contributions made by any  
19 individual would affect his benefits under the plan, no portion of  
20 his contributions in excess of 50% is so credited, unless he is  
21 offered an alternative to having such portion so credited or, (2)  
22 except with the consent of the commissioner, a contract the  
23 holder of which is an association of individuals or the  
24 representative thereof.

25 Except as otherwise provided in this subsection, the  
26 investments held in the separate accounts of any domestic insurer  
27 shall be disregarded in determining whether the other  
28 investments of such insurer comply with the provisions of this  
29 Title that regulate investments by domestic insurers as such  
30 provisions may be amended from time to time, or any similar or  
31 superseding provisions corresponding in substance thereto.

32 b. Notwithstanding any other provision of law, a domestic  
33 insurer may, with respect to any separate account or any portion  
34 thereof

35 (i) Exercise any voting rights of any stock or shares in  
36 accordance with instructions from the person or persons specified  
37 in, or designated pursuant to, the contract or contracts  
38 participating in such account, or

39 (ii) Establish a committee for such account, the members of

1 which may be directors or officers or other employees of such  
2 insurer, or persons having no such relationship to such insurer, or  
3 any combination thereof, who may be elected to such membership  
4 by the vote of the persons having the beneficial interests in such  
5 account ratably according to their respective interests in such  
6 account or in such other manner as the insurer shall deem  
7 appropriate. Such committee may have the power, which may be  
8 exercisable alone or in conjunction with others, or which may be  
9 delegated to such insurer or any other person, as investment  
10 manager or investment adviser, to authorize purchases and sales  
11 of investments for such account and to take such other action  
12 with respect to account investments as it shall deem appropriate,  
13 provided that as long as such insurer or any subsidiary or affiliate  
14 of such insurer shall be the investment manager or investment  
15 adviser of such account, the investments of such account shall be  
16 eligible under the provisions of subsection [(a)] a. of this section.  
17 Such insurer may establish such a committee for only a portion of  
18 a separate account, and its members may be similarly elected.  
19 Any such committee for only a portion of a separate account may  
20 be given the further power to require the subdivision of such  
21 account into two accounts so that the portion with respect to  
22 which such committee shall be acting shall constitute a separate  
23 account. If such committee shall so require, the insurer shall  
24 segregate from the account being so subdivided, a portion of the  
25 assets held with respect to the reserve liabilities of such account.  
26 Such portion shall be in the same proportion to the total of such  
27 asset as the reserve liability for the portion of the account with  
28 respect to which such committee is acting bears to the total  
29 reserve liability of such account; and notwithstanding any other  
30 provision of law, the assets so segregated shall be transferred to  
31 a separate account with respect to which such committee shall  
32 act.

33 c. The investments held in a separate account and the  
34 liabilities chargeable against it shall at all times be clearly  
35 identifiable and distinguishable from the other investments and  
36 liabilities of the insurer. To the extent provided in the applicable  
37 contract or contracts, assets held in a separate account shall not  
38 be chargeable with liabilities arising out of any other business of  
39 the corporation.

1 No sale, transfer or exchange of investments may be made  
2 between a separate account and any other investment account of  
3 the insurer, except with the prior consent of the commissioner,  
4 and no investments held in a separate account, other than an  
5 account of the kind described in [the penultimate] paragraph (v)  
6 of subsection [(a)] a. of this section, shall be pledged or  
7 transferred as collateral for a loan.

8 d. The term "Investment Company Act of 1940" as used in this  
9 section shall mean an act of Congress approved August 22, 1940  
10 entitled "Investment Company Act of 1940" as amended from  
11 time to time, or any similar statute enacted in substitution  
12 therefor.<sup>1</sup>

13 (cf: P.L.1977, c.37, s.7)

14 <sup>1</sup>[4.] 6.<sup>1</sup> This act shall take effect immediately.

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#### INSURANCE

18

#### Insurance - Life

19

20 Allows greater foreign investments by life and health insurers.

SENATE LABOR, INDUSTRY, AND PROFESSIONS COMMITTEE

STATEMENT TO

SENATE, No. 3757

with committee amendments

STATE OF NEW JERSEY

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DATED: NOVEMBER 30, 1989

The Senate Labor, Industry and Professions Committee reports favorably and with committee amendments Senate, No. 3757.

This bill changes certain provisions relating to investments by domestic life and health insurers.

The bill: (1) increases from 2% to 5% the percentage of admitted assets that a domestic life and health insurer is permitted to invest in foreign countries, subject to the limitation that the additional 3% of admitted assets may be invested only in foreign countries whose sovereign debt obligations are rated in one of the two highest rating categories by a nationally recognized United States rating agency and, if the investment is denominated in any currency other than United States dollars, the investment is effectively hedged; and (2) increases from 1% to 2% the percentage of admitted assets that a domestic life and health insurer is permitted to invest in any one foreign country.

Subsection h. of N.J.S. 17B:20-1 is amended to increase from 5% to 7% the percentage of admitted assets that a domestic life and health insurer is permitted to invest in investments not qualified or permitted by other subsections of that section.

The current law provides that all investments made by a domestic life or health insurer must be approved by the board of directors or a committee thereof or must be made in conformity with standards approved by such board or committee. The bill amends this provision to provide that the board of directors may delegate authority to make investments to a committee it designates (rather than a committee of the board members) and that investments made by other than the board or a designated committee must be made in conformity with either standards or investment objectives (rather than only standards).

The bill revises the restrictions on investments by domestic life and health insurers in their subsidiaries. The bill: (1) increases from

5% to 8% the percentage of admitted assets that a domestic life and health insurer is permitted to invest in subsidiaries, eliminate the commissioner's authority to increase the overall subsidiary investment limitation to 10% of admitted assets, and excludes investments in life insurance subsidiaries and in investment subsidiaries "engaged exclusively in the ownership and management of assets authorized as investments for the insurer" from the overall subsidiary investment limitation; (2) establishes a separate limitation of 5% of admitted assets on investments in life insurance subsidiaries; (3) provides that investments by subsidiaries (other than investment subsidiaries) would not be aggregated with the investments of a domestic life and health insurer for the purpose of determining whether the insurer has complied with the limitations applicable to particular categories of its own investments; (4) permits a domestic life and health insurer to retain 50% or less of the voting stock of a corporation that had previously been a subsidiary of the insurer; and (5) replaces the existing requirement that a domestic life and health insurer file notice of its intention to invest in voting stock of a subsidiary at least 30 days in advance of the investment with new requirements that the insurer file notice within 30 days after such an investment and file an annual subsidiary information report.

The committee amended the bill to: (1) provide that the additional 3% of admitted assets that may be invested by a domestic life and health insurer must not only be invested in foreign countries whose sovereign debt obligations are rated in one of the two highest rating categories by a nationally recognized United States rating agency but, if the investment is denominated in any currency other than United States dollars, must be effectively hedged; (2) decrease from 10% to 7% the percentage of admitted assets that a domestic life and health insurer is permitted to invest in investments not qualified under N.J.S. 17B:20-1; and (3) allow domestic life and health insurers to establish, on an expedited basis, separate accounts which are maintained solely for one or more employer group contracts sold to fund an employee benefit plan.