

SENATE, No. 2125

STATE OF NEW JERSEY

INTRODUCED JUNE 5, 1997

By Senator SINGER

1 AN ACT concerning investments by property and casualty insurers in
2 investment pools.

3

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

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7 1. As used in this act:

8 "Business entity" means a corporation, limited liability company,
9 limited liability partnership, association, partnership, joint stock
10 company, joint venture, mutual fund trust, or other legal form of
11 organization, whether organized for-profit or not-for-profit.

12 "Class one money market mutual fund" means a money market
13 mutual fund that at all times qualifies for investment using the bond
14 class one reserve factor under the published valuation standards of the
15 Securities Valuation Office of the National Association of Insurance
16 Commissioners.

17 "Commissioner" means the Commissioner of Banking and
18 Insurance.

19 "Government money market mutual fund" means a money market
20 mutual fund that at all times:

21 (1) Invests only in obligations issued, guaranteed or insured by the
22 federal government of the United States or collateralized and
23 repurchase agreements composed of these obligations; and

24 (2) Qualifies for investment without a reserve under the published
25 valuation standards of the Securities Valuation Office of the National
26 Association of Insurance Commissioners.

27 "Money market mutual fund" means a mutual fund that meets the
28 conditions of 17 C.F.R. § 270.2a-7, under the federal "Investment
29 Company Act of 1940," 15 U.S.C. § 80a-1 et seq.

30 "Obligation" means a bond, note, debenture, trust certificate
31 including an equipment certificate, production payment, negotiable
32 bank certificate of deposit, bankers' acceptance, credit tenant loan,
33 loan secured by financing net leases and other evidence of
34 indebtedness for the payment of money (or participations, certificates
35 or other evidences of an interest in any of the foregoing), whether
36 constituting a general obligation of the issuer or payable only out of
37 certain revenues or certain funds pledged or otherwise dedicated for

1 payment.

2 "Qualified bank" means a national bank, state bank or trust
3 company that at all times is no less than adequately capitalized as
4 determined by the standards adopted by the United States banking
5 regulators and that is either regulated by state banking laws or is a
6 member of the Federal Reserve System.

7 "Repurchase transaction" means a transaction in which an insurer
8 purchases securities from a business entity that is obligated to
9 repurchase the purchased securities or equivalent securities from the
10 insurer at a specified price, either within a specified period of time or
11 upon demand.

12 "Reverse repurchase transaction" means a transaction in which an
13 insurer sells securities to a business entity and is obligated to
14 repurchase the sold securities or equivalent securities from the
15 business entity at a specified price, either within a specified period of
16 time or upon demand.

17 "Securities lending transaction" means a transaction in which
18 securities are loaned by an insurer to a business entity that is obligated
19 to return the loaned securities or equivalent securities to the insurer,
20 either within a specified period of time or upon demand.

21 "SVO" means the Securities Valuation Office of the National
22 Association of Insurance Commissioners.

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24 2. An insurer may invest in investment pools that:

25 a. Invest only in:

26 (1) Obligations that are rated "1" or "2" by the SVO or have an
27 equivalent of an SVO "1" or "2" rating by a nationally recognized
28 statistical rating organization recognized by the SVO and have:

29 (a) A remaining maturity of 397 days or less or a put that entitles
30 the holder to receive the principal amount of the obligation, which put
31 may be exercised through maturity at specified intervals, not exceeding
32 397 days; or

33 (b) A remaining maturity of three years or less and a floating
34 interest rate that resets no less frequently than quarterly on the basis
35 of a current short-term index (federal funds, prime rate, treasury bills,
36 London InterBank Offered Rate (LIBOR) or commercial paper) and
37 is subject to no maximum limit, if the obligations do not have an
38 interest rate that varies inversely to market interest rate changes;

39 (2) Government money market mutual funds or class one money
40 market mutual funds; or

41 (3) Securities lending, repurchase and reverse repurchase
42 transactions in accordance with the provisions of R.S.17:24-1; or

43 b. Invest only in investments which an insurer may acquire under
44 subsection a. of this section if the insurer's proportionate interest in the
45 amount invested in these investments does not exceed the applicable
46 limits of section 4 of this act.

- 1 3. For an investment in an investment pool to be qualified under
2 this act, the investment pool shall not:
- 3 a. Acquire securities issued, assumed, guaranteed or insured by the
4 insurer or an affiliate of the insurer;
- 5 b. Borrow or incur any indebtedness for borrowed money, except
6 for securities lending and reverse repurchase transactions that meet the
7 requirements of this act; or
- 8 c. Permit the aggregate value of securities then loaned or sold to,
9 purchased from or invested in any one business entity under this act to
10 exceed ten percent of the total assets of the investment pool.
- 11
- 12 4. Notwithstanding the provisions of R.S.17:24-1 to the contrary,
13 an insurer may invest in an investment pool, however, an insurer shall
14 not acquire an investment in an investment pool under this act if, as a
15 result of and after giving effect to the investment, the aggregate
16 amount of investments then held by the insurer:
- 17 a. In any one investment pool would exceed ten percent of its
18 admitted assets;
- 19 b. In all investment pools, investing in investments permitted under
20 section 2 of this act, would exceed twenty-five percent of its admitted
21 assets; or
- 22 c. In all investment pools would exceed thirty-five percent of its
23 admitted assets.
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- 25 5. For an investment in an investment pool to be qualified under
26 this act, the manager of the investment pool shall:
- 27 a. Be organized under the laws of the United States or a state and
28 designated as the pool manager in a pooling agreement;
- 29 b. Be the insurer, an affiliated insurer or a business entity affiliated
30 with the insurer, a qualified bank, a business entity registered under
31 the federal "Investment Advisors Act of 1940," 15 U.S.C. §80A-1 et
32 seq., or, in the case of a reciprocal insurer or interinsurance exchange,
33 its attorney-in-fact, or in the case of a United States branch of an alien
34 insurer, its United States manager or affiliated or subsidiaries of its
35 United States manager;
- 36 c. Compile and maintain detailed accounting records setting forth:
- 37 (1) The cash receipts and disbursements reflecting each
38 participant's proportionate investment in the investment pool;
- 39 (2) A complete description of all underlying assets of the
40 investment pool (including amount, interest rate, maturity date (if any)
41 and other appropriate designations); and
- 42 (3) Other records which, on a daily basis, allow third parties to
43 verify each participant's investment in the investment pool; and
- 44 d. Maintain the assets of the investment pool in one or more
45 accounts, in the name of or on behalf of the investment pool, under a

1 custody agreement with a qualified bank. The custody agreement
2 shall:

- 3 (1) State and recognize the claims and rights of each participant;
- 4 (2) Acknowledge that the underlying assets of the investment pool
5 are held solely for the benefit of each participant in proportion to the
6 aggregate amount of its investments in the investment pool; and
- 7 (3) Contain an agreement that the underlying assets of the
8 investment pool shall not be commingled with the general assets of the
9 custodian qualified bank or any other person.

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11 6. The pooling agreement for each investment pool shall be in
12 writing and shall provide that:

13 a. An insurer and its affiliated insurers or, in the case of an
14 investment pool investing solely in investments permitted under
15 section 2 of this act, the insurer and its subsidiaries, affiliates or any
16 pension or profit sharing plan of the insurer, its subsidiaries and
17 affiliates or, in the case of a United States branch of an alien insurer,
18 affiliates or subsidiaries of its United States manager, shall, at all
19 times, hold one hundred percent of the interests in the investments
20 pool;

21 b. The underlying assets of the investment pool shall not be
22 commingled with the general assets of the pool manager or any other
23 person;

24 c. In proportion to the aggregate amount of each pool participant's
25 interest in the investment pool:

26 (1) Each participant owns an undivided interest in the underlying
27 assets of the investment pool; and

28 (2) The underlying assets of the investment pool are held solely for
29 the benefit of each participant;

30 d. A participant, or in the event of the participant's insolvency,
31 bankruptcy or receivership, its trustee, receiver or other successor-in-
32 interest, may withdraw all or any portion of its investment from the
33 pool under the terms of the pooling agreement.

34 e. Withdrawals may be made on demand without penalty or other
35 assessment on any business day, but settlement of funds shall occur
36 within a reasonable and customary period thereafter not to exceed five
37 business days. Distributions under this paragraph shall be calculated
38 in each case net of all then applicable fees and expenses of the
39 investment pool. The pooling agreement shall provide that the pool
40 manager shall distribute to a participant, at the discretion of the pool
41 manager:

42 (1) In cash, the then fair market value of the participant's pro rata
43 share of each underlying asset of the investment pool;

44 (2) In kind, a pro rata share of each underlying asset; or

45 (3) In a combination of cash and in kind distributions, a pro rata
46 share in each underlying asset; and

1 f. The pool manager shall make the records of the investment pool
2 available for inspection by the commissioner.

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4 7. An investment pool established pursuant to the provisions of this
5 act shall be a business entity.

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7 8. The provisions of section 4 of P.L.1970, c.22 (C.17:27A-4) shall
8 not apply to transactions between the pool and its participants,
9 provided, however, that the investment activities of the pool and
10 transactions between an insurer investment pool and its participants
11 shall be reported annually in the registration statement required
12 pursuant to section 3 of P.L.1970, c, 22 (C.17:27A-3).

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14 9. This act shall take effect immediately.

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STATEMENT

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19 This bill provides that insurers may acquire investments in
20 investment pools. The bill establishes requirements an investment pool
21 must follow for an investment to be qualified; specifies requirements
22 for the managers of investment pools; requires among other things
23 that, a pooling agreement for each investment pool to be in writing;
24 requires the investment pool to be a business entity; and subjects
25 investment activities of the pool and transactions between pools and
26 participants to be reported on the annual registration statement
27 required under section 3 of P.L.1970, c.22 (C.17:27A-3).

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32 Establishes criteria for investment pools of property and casualty
33 insurers.