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SENATE BILL 274

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO INSURANCE; CHANGING PROVISIONS OF THE NEW MEXICO  
INSURANCE CODE PERTAINING TO SUBSIDIARIES AND AFFILIATES OF  
INSURERS; AMENDING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 59A-9-12 NMSA 1978 (being Laws 1984,  
Chapter 127, Section 145) is amended to read:

"59A-9-12. INVESTMENTS IN SUBSIDIARIES. --

A. An insurer either by itself or in cooperation  
with one or more other business entities, may organize or  
acquire one or more subsidiaries engaged or to be engaged in  
any of the following businesses:

(1) ~~any~~ an insurance business authorized by  
the jurisdiction in which the subsidiary is incorporated;

(2) acting as insurance broker or insurance

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1 agent for its parent or for any of its parent's insurer  
2 subsidiaries;

3 (3) investing, reinvesting or trading in  
4 securities for its own account, that of its parent, any  
5 subsidiary of its parent or any affiliate or subsidiary;

6 (4) management of any investment company  
7 registered pursuant to the federal Investment Company Act of  
8 1940, as amended, including related sales and services;

9 (5) acting as a broker-dealer registered  
10 pursuant to the federal Securities Exchange Act of 1934, as  
11 amended;

12 (6) rendering investment advice to  
13 governments, government agencies, corporations or other  
14 organizations or groups;

15 (7) rendering other services related to  
16 operations of an insurance business [~~including, but not~~  
17 ~~limited to, actuarial, loss prevention, safety engineering,~~  
18 ~~data processing, accounting, claims, appraisal and collection~~  
19 ~~services~~];

20 (8) [~~ownership~~] owning and [~~management of~~]  
21 managing assets [~~which~~] that the parent corporation could  
22 itself own or manage;

23 (9) acting as administrative agent for a  
24 government instrumentality [~~which~~] that is performing an  
25 insurance function; or

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1 (10) financing insurance premiums, agents and  
2 other forms of consumer financing; and

3 (11) any other business activity determined  
4 by the superintendent to be reasonably [~~ancillary~~] ancillary  
5 to an insurance business.

6 B. In addition to investments in common stock,  
7 preferred stock, debt obligations and other securities  
8 permitted under all other sections of [~~this article~~] Chapter  
9 59A, Article 9 NMSA 1978 an insurer may also:

10 (1) invest, in common stock, preferred stock,  
11 debt obligations and other securities of one or more  
12 subsidiaries, amounts which unless otherwise approved by the  
13 superintendent do not exceed the lesser of [~~five~~] ten percent  
14 of [~~such~~] the insurer's assets or fifty percent of [~~such~~] the  
15 insurer's surplus as regards policyholders, if, after [~~such~~]  
16 the investments, the insurer's surplus as regards  
17 policyholders will be reasonable in relation to the insurer's  
18 outstanding liabilities and adequate to its financial needs.  
19 In calculating the amount of [~~such~~] the investments, there  
20 shall be included:

21 (a) total net money or other  
22 consideration expended and obligations assumed in the  
23 acquisition or formation of a subsidiary, including all  
24 organizational expenses and contributions to capital and  
25 surplus of [~~such~~] the subsidiary, whether or not represented

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1 by the purchase of capital stock or the issuance of other  
2 securities; and

3 (b) all amounts expended in acquiring  
4 additional common stock, preferred stock, debt obligations and  
5 other securities and all contributions to the capital and  
6 surplus of a subsidiary subsequent to its acquisition or  
7 formation;

8 (2) if the insurer's total liabilities, as  
9 calculated for annual statement purposes, are less than ten  
10 percent of assets, invest any amount in common stock,  
11 preferred stock, debt obligations and other securities of one  
12 or more subsidiaries, if, after [~~such~~] the investment, the  
13 insurer's surplus as regards policyholders, considering [~~such~~]  
14 the investment as if it were a disallowed asset, will be  
15 reasonable in relation to the insurer's outstanding  
16 liabilities and adequate to its financial needs;

17 (3) invest any amount in common stock,  
18 preferred stock, debt obligations and other securities of one  
19 or more subsidiaries, if each [~~such~~] subsidiary agrees to  
20 limit its investments in any asset so that [~~such~~] the  
21 investments will not cause the amount of the total investment  
22 of the insurer to exceed any of the investment limitations  
23 specified in Paragraph (1) of this subsection or in [~~this~~  
24 ~~article~~] Chapter 59A, Article 9 NMSA 1978, applicable to the  
25 insurer. For the purpose of this paragraph "the total

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1 investment of the insurer" ~~[shall include]~~ includes:

2 (a) any direct investment by the insurer in  
3 an asset; and

4 (b) the insurer's proportionate share of  
5 any investment in an asset by any subsidiary of the insurer,  
6 which shall be calculated by multiplying the amount of the  
7 subsidiary's investment by the percentage of the insurer's  
8 ownership of ~~[such]~~ the subsidiary;

9 (4) with the approval of the superintendent,  
10 invest any amount in common stock, preferred stock, debt  
11 obligations or other securities of one or more subsidiaries,  
12 if, after ~~[such]~~ the investment, the insurer's surplus as  
13 regards policyholders will be reasonable in relation to the  
14 insurer's outstanding liabilities and adequate to its  
15 financial needs; and

16 (5) invest any amount in the common stock,  
17 preferred stock, debt obligations or other securities of any  
18 subsidiary exclusively engaged in holding title to, or holding  
19 title to and managing or developing, real or personal  
20 property, if, after considering as a disallowed asset so much  
21 of the investment as is represented by subsidiary assets which  
22 if held directly by the insurer would be considered as a  
23 disallowed asset, the insurer's surplus as regards  
24 policyholders will be reasonable in relation to the insurer's  
25 outstanding liabilities and adequate to its financial needs,

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1 and if, following such investment, all voting securities of  
2 such subsidiary would be owned by the insurer.

3 C. Investments in common stock, preferred stock,  
4 debt obligations or other securities of subsidiaries made  
5 pursuant to Subsection B of this section shall not be subject  
6 to any of the otherwise applicable restrictions or  
7 prohibitions contained in this article applicable to ~~[such]~~  
8 the investments of the insurer.

9 D. Whether any investment made pursuant to  
10 Subsection B of this section meets the applicable requirements  
11 thereof is to be determined immediately after ~~[such]~~ the  
12 investment is made, taking into account the then outstanding  
13 balance on all previous investments in debt obligations and  
14 the value of all previous equity securities as of the date  
15 they were made.

16 E. If an insurer ceases to control a subsidiary, it  
17 shall dispose of any investment ~~[therein]~~ made in it pursuant  
18 to this section within three ~~[-3-]~~ years from time of the  
19 cessation of control or within such further time as the  
20 superintendent may prescribe, unless at any time after ~~[such]~~  
21 the investment ~~[shall have been]~~ is made, ~~[such]~~ the  
22 investments ~~[shall have met]~~ meet the requirements for  
23 investment under any other section of ~~[this article]~~ the  
24 Insurance Code, and the insurer has so notified the  
25 superintendent ~~[thereof]~~. "

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1           Section 2. Section 59A-37-3 NMSA 1978 (being Laws 1993,  
2 Chapter 320, Section 72) is amended to read:

3           "59A-37-3. SUBSIDIARIES OF INSURERS. --

4           A. Any domestic insurer, either by itself or in  
5 cooperation with one or more persons, may organize or acquire  
6 one or more subsidiaries engaged in the following kinds of  
7 business:

8                   (1) [~~any kind of~~] an insurance business  
9 authorized by the jurisdiction in which it is incorporated;

10                   (2) acting as an insurance broker or as an  
11 insurance agent for its parent or for any of its parent's  
12 insurer subsidiaries;

13                   (3) investing, reinvesting or trading in  
14 securities for its own account, that of its parent, any  
15 subsidiary of its parent, or any affiliate or subsidiary;

16                   (4) management of any investment company  
17 subject to or registered pursuant to the federal Investment  
18 Company Act of 1940, as amended, including related sales and  
19 services;

20                   (5) acting as a broker-dealer subject to or  
21 registered pursuant to the federal Securities Exchange Act of  
22 1934, as amended;

23                   (6) rendering investment advice to governments,  
24 government agencies, corporations or other organizations or  
25 groups;

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1 (7) rendering other services relating to the  
2 operations of an insurance business [~~including, but not~~  
3 ~~limited to, actuarial, loss prevention, safety engineering,~~  
4 ~~data processing, accounting, claims, appraisal and collection~~  
5 ~~services~~];

6 (8) [~~ownership~~] owning and [~~management of~~]  
7 managing assets [~~which~~] that the parent corporation could  
8 itself own or manage;

9 (9) acting as administrative agent for a  
10 governmental instrumentality [~~which~~] that is performing an  
11 insurance function;

12 (10) financing of insurance premiums, agents  
13 and other forms of consumer financing;

14 (11) any other business activity determined by  
15 the superintendent to be reasonably ancillary to an insurance  
16 business; and

17 (12) owning a corporation or corporations  
18 engaged or organized to engage exclusively in one or more of  
19 the businesses specified in this section.

20 B. In addition to investments in common stock,  
21 preferred stock, debt obligations and other securities  
22 permitted [~~under all other sections of~~] pursuant to the  
23 federal Insurance Holding Company Law, a domestic insurer may  
24 also:

25 (1) invest, in common stock, preferred stock,

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1 debt obligations and other securities of one or more  
2 subsidiaries, amounts which do not exceed [~~the lesser of ten~~  
3 ~~percent of such insurer's assets or~~] fifty percent of [~~such~~]  
4 the insurer's surplus as regards policyholders, provided that  
5 after [~~such~~] the investments, the insurer's surplus as regards  
6 policyholders shall be reasonable in relation to the insurer's  
7 outstanding liabilities and adequate to its financial needs.

8 In calculating the amount of [~~such~~] the investments,  
9 investments in domestic or foreign insurance subsidiaries  
10 shall be excluded, and there shall be included:

11 (a) total net [~~monies~~] money or other  
12 consideration expended and obligations assumed in the  
13 acquisition or formation of a subsidiary, including all  
14 organizational expenses and contributions to capital and  
15 surplus of [~~such~~] the subsidiary whether or not represented by  
16 the purchase of capital stock or issuance of other securities;  
17 and

18 (b) all amounts expended in acquiring  
19 additional ~~common~~ stock, preferred stock, debt obligations and  
20 other securities and all contributions to the capital or  
21 surplus of a subsidiary subsequent to its acquisition or  
22 formation;

23 (2) invest any amount in ~~common~~ stock,  
24 preferred stock, debt obligations and other securities of one  
25 or ~~more~~ subsidiaries engaged or organized to engage

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1 exclusively in the ownership and management of assets  
2 authorized as investments for the insurer, provided that each  
3 [~~such~~] subsidiary agrees to limit its investments in any asset  
4 so that [~~such~~] the investments will not cause the amount of  
5 the total investment of the insurer to exceed any of the  
6 investment limitations specified in Paragraph (1) of this  
7 subsection or in Chapter 59A, Article 9 NMSA 1978 applicable  
8 to the insurer. For the purpose of this paragraph, "the total  
9 investment of the insurer" [~~shall include~~] includes:

10 (a) any direct investment by the insurer in  
11 an asset; and

12 (b) the insurer's proportionate share of  
13 any investment in an asset by any subsidiary of the insurer,  
14 which shall be calculated by multiplying the amount of the  
15 subsidiary's investment by the percentage of the ownership of  
16 [~~such~~] the subsidiary; or

17 (3) with the approval of the superintendent,  
18 invest any greater amount in common stock, preferred stock,  
19 debt obligations, or other securities of one or more  
20 subsidiaries, provided that after [~~such~~] the investment the  
21 insurer's surplus as regards policyholders will be reasonable  
22 in relation to the insurer's outstanding liabilities and  
23 adequate to its financial needs.

24 C. Investments in common stock, preferred stock,  
25 debt obligations or other securities of subsidiaries made

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1 pursuant to Subsection B of this section shall not be subject  
2 to ~~[the]~~ any of the otherwise applicable restrictions or  
3 prohibitions contained in the Insurance Code applicable to  
4 ~~[such]~~ the investments of the insurer.

5 D. Whether any investment pursuant to Subsection B  
6 of this section meets the applicable requirements ~~[thereof is~~  
7 ~~to be]~~ of that subsection shall be determined before ~~[such]~~  
8 the investment is made, by calculating the applicable  
9 investment limitations as though the investment had already  
10 been made, taking into account the then outstanding principal  
11 balance on all previous investments in debt obligations and  
12 the value of all previous investments in equity securities as  
13 of the day they were made, net of any return of capital  
14 invested and not including dividends.

15 E. If an insurer ceases to control a subsidiary, it  
16 shall dispose of any investment ~~[therein]~~ made in it pursuant  
17 to this section within three years from the time of the  
18 cessation of control or within such further time as the  
19 superintendent may prescribe, unless at any time after the  
20 investment ~~[shall have been]~~ is made, the investment ~~[shall~~  
21 ~~have met]~~ meets the requirements for investment under any  
22 other section of the Insurance Code, and the insurer has so  
23 notified the superintendent ~~[thereof]~~. "

24 Section 3. Section 59A-37-20 NMSA 1978 (being Laws 1993,  
25 Chapter 320, Section 83) is amended to read:

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1 "59A-37-20. TRANSACTIONS WITH AFFILIATES. --

2 A. Transactions within a holding company system to  
3 which an insurer subject to registration is a party shall be  
4 subject to the following standards:

5 (1) the terms shall be fair and reasonable;

6 (2) charges or fees for services performed  
7 shall be reasonable;

8 (3) expenses incurred and payment received  
9 shall be allocated to the insurer in conformity with customary  
10 insurance accounting practices consistently applied;

11 (4) the books, accounts and records of each  
12 party to all [~~such~~] transactions shall be [~~so~~] maintained [~~as~~]  
13 to clearly and accurately disclose the nature and details of  
14 the transactions, including [~~such~~] accounting information [~~as~~  
15 ~~is~~] necessary to support the reasonableness of the charges or  
16 fees to the respective parties; and

17 (5) the insurer's surplus as regards  
18 policyholders following any dividends or distributions to  
19 shareholder affiliates shall be reasonable in relation to the  
20 insurer's outstanding liabilities and adequate to its  
21 financial needs.

22 B. The following transactions involving a domestic  
23 insurer and any person in its holding company system may not  
24 be entered into unless the insurer has notified the  
25 superintendent in writing of its intention to enter into

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1 [such] the transactions at least thirty days prior thereto, or  
2 such shorter period as the superintendent may permit, and the  
3 superintendent has not disapproved it within that period:

4 (1) sales, purchases, exchanges, loans or  
5 extensions of credit, guarantees or investments, provided the  
6 transactions are equal to or exceed:

7 (a) with respect to nonlife insurers, [~~the~~  
8 ~~lesser of three percent of the insurer's admitted assets or~~]  
9 twenty-five percent of surplus as regards policyholders as of  
10 December 31 next preceding; or

11 (b) with respect to life insurers, three  
12 percent of the insurer's admitted assets as of December 31  
13 next preceding;

14 (2) loans or extensions of credit to any person  
15 who is not an affiliate, where the insurer makes loans or  
16 extensions of credit with the agreement or understanding that  
17 the proceeds of the transactions, in whole or in substantial  
18 part, are to be used to make loans or extensions of credit to,  
19 to purchase assets of, or to make investments in, any  
20 affiliate of the insurer making the loans or extensions of  
21 credit, provided the transactions are equal to or exceed:

22 (a) with respect to nonlife insurers, [~~the~~  
23 ~~lesser of three percent of the insurer's admitted assets or~~]  
24 twenty-five percent of surplus as regards policyholders as of  
25 December 31 next preceding; or

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1 (b) with respect to life insurers, three  
2 percent of the insurer's admitted assets as of December 31  
3 next preceding;

4 (3) reinsurance agreements or modifications  
5 thereto in which the reinsurance premium or a change in the  
6 insurer's liabilities equals or exceeds five percent of the  
7 insurer's surplus as regards policyholders, as of December 31  
8 next preceding, including those agreements which may require  
9 as consideration the transfer of assets from an insurer to a  
10 non-affiliate, if an agreement or understanding exists between  
11 the insurer and non-affiliate that any portion of [~~such~~] the  
12 assets will be transferred to one or more affiliates of the  
13 insurer;

14 (4) all management agreements, service  
15 contracts and all cost-sharing arrangements; and

16 (5) any material transactions, specified by  
17 [~~regulation, which~~] rule, that the superintendent determines  
18 may adversely affect the interests of the insurer's  
19 policyholders.

20 C. Nothing contained in [~~this~~] Subsection B of this  
21 section [~~shall be deemed to authorize~~] authorizes or [~~permit~~  
22 ~~any~~] permits transactions which, in the case of an insurer not  
23 a member of the same holding company system, would be  
24 otherwise contrary to law.

25 [~~C.~~] D. A domestic insurer may not enter into

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1 transactions [~~which~~] that are part of a plan or series of like  
2 transactions with persons within the holding company system if  
3 the purpose of those separate transactions is to avoid the  
4 statutory threshold amount and thus avoid the review that  
5 would occur otherwise. If the superintendent determines that  
6 [~~such~~] separate transactions were entered into over any  
7 twelve-month period for that purpose, he may exercise his  
8 authority under Section 59A-37-26 NMSA 1978.

9 [~~D-~~] E. The superintendent, in reviewing  
10 transactions pursuant to Subsection B of this section, shall  
11 consider whether the transactions comply with the standards  
12 set forth in Subsection A of this section and whether they may  
13 adversely affect the interests of policyholders.

14 [~~E-~~] F. The superintendent shall be notified within  
15 thirty days of any investment of the domestic insurer in any  
16 one corporation if the total investment in [~~such~~] that  
17 corporation by the insurance holding company system exceeds  
18 ten percent of the corporation's voting securities. "

19 Section 4. EFFECTIVE DATE. -- The effective date of the  
20 provisions of this act is July 1, 2001.