LEGISLATIVE BILL 237

Approved by the Governor March 29, 1991

Introduced by Landis, 46; Lindsay, 9; Conway, 17; Wesely, 26; Schmit, 23; Haberman, 44; Abboud, 12

AN ACT relating to insurance; to amend sections 21-1339, 21-2108, 44-319.01, 44-320, 44-322, 44-386, 44-402.03, 44-821, 44-2202, 44-2213, 44-2909, 44-3106, and 44-4313, Reissue Revised Statutes of Nebraska, 1943, sections 21-2109, 44-2827.01, and 44-32,137, Revised Statutes Supplement, 1990, and section 44-4830, Revised Statutes Supplement, 1990, as amended by section 80, Legislative Bill 236, Ninety-second Legislature, First Session, 1991; to adopt the Insurers Investment Act; to change provisions relating to authorized investments; to change provisions relating to transactions between domestic insurance companies and directors or officers of such companies; to eliminate provisions relating to investments and domestic assessment associations; to change the applicability date of certain setoff provisions; to harmonize provisions; and to repeal the original sections, and also sections 44-309 to 44-310.09, 44-311.01 to 44-316, 44-321, 44-397 to 44-399, and 44-824, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 54 of this act shall be known and may be cited as the Insurers Investment Act.

Sec. 2. The purpose of the Insurers Investment Act is to protect and further the interests of policyholders, claimants, creditors, and the general public by establishing standards, requirements, and limitations for the investments of insurers doing business in this state. Such standards, requirements, and limitations are intended to promote solvency, investment yield and growth, investment diversification, investment value stability, and liquidity to meet business needs.

Sec. 3. For purposes of the Insurers

Investment Act:

(1) Admitted assets shall mean the investments authorized under the act and stated at values at which they are permitted to be reported in the insurer's financial statements filed with the director pursuant to section 44-322;

(2) Clearing corporation shall mean The Depository Trust Company or any other clearing agency registered with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, section 17A, Euro-clear Clearance System Limited, and CEDEL S. A.;

(3) Custodian bank shall mean a bank, trust company, or branch of a bank or trust company that is acting as custodian and is supervised and examined by the state or federal authority having supervision over the bank or trust company or only with respect to an insurer's foreign investments by the regulatory authority having supervision over banks or trust companies in the jurisdiction in which the bank, trust company, or branch is located. Custodian bank shall include Euro-clear Clearance System Limited and CEDEL S. A. acting as custodians;

(4) Direct when used in connection with the term obligation shall mean that the designated obligor is primarily liable on the instrument representing the obligation;

(5) Director shall mean the Director of Insurance;

(6) Insurer shall be defined as provided in section 44-103, and unless the context otherwise requires, insurer shall mean domestic insurer;

(7) Mortgage shall mean a consensual interest created by a real estate mortgage, a trust deed on real estate, or a similar instrument;

(8) Obligation shall mean a bond, debenture, note, or other evidence of indebtedness;

(9) Policyholders surplus shall mean the amount obtained by subtracting from the admitted assets (a) actual liabilities and (b) any and all reserves which by law must be maintained. In the case of a stock insurer, the policyholders surplus shall also include the paid-up and issued capital stock;

(10) State shall mean any state of the United States, the District of Columbia, or any territory organized by Congress; and

(11) Unencumbered real estate shall mean real estate in which other interests may exist which if enforced would not result in the forfeiture of the

insurer's interest.

Sec. 4. (1) A domestic insurer holding a certificate of authority to do business in this state shall be subject to the Insurers Investment Act. Except as otherwise provided by law, only investments determined to be authorized investments under the act shall be considered admitted assets for purposes of a domestic insurer's financial statements filed with the director pursuant to section 44-322.

(2) A foreign or alien insurer holding a certificate of authority to do business in this state shall be subject to the act, except that investments authorized under the laws of its state or country of domicile may be recognized as authorized investments for purposes of the act in the discretion of the director.

Sec. 5. (1) An insurer shall not make any investment, sale, loan, or exchange, except loans on its own policies or contracts, unless authorized, approved, or ratified by a majority of the members of the board of directors or other governing body or by a committee of its members charged by the board of directors, other governing body, or bylaws with the duty of making such investment, sale, loan, or exchange. The minutes of any such committee shall be recorded, and reports of investments, sales, loans, or exchanges shall be submitted to the board of directors or other governing body. A written statement of investment policy shall be reviewed and approved at least annually by the board, governing body, or committee.

(2) Each insurer shall maintain a record of its investments in a form and manner as prescribed by the director. Such record shall include an indication by the insurer of the provision of law under which an investment is held.

Sec. 6. An insurer may make loans on any of its policies in an amount not exceeding the reserve thereon.

Sec. 7. A life insurer may allocate amounts to separate accounts established pursuant to sections 44-402.01 to 44-402.05.

Sec. 8. An insurer may invest in securities which are convertible into other securities if:

(1) The convertible securities are authorized under the Insurers Investment Act at the time of acquisition; and

(2) The securities into which such securities are convertible are authorized under the act at the time of conversion.

Sec. 9. An insurer's investments shall be

held in its own name or the name of its nominee, except that:

(1) Investments may be held in the name of a clearing corporation, a custodian bank, or the nominee of either on the following conditions:

(a) The clearing corporation, custodian bank, or nominee shall be legally authorized to hold the particular investment for the account of others;

(b) If the investment is evidenced by a certificate and held in the name of a custodian bank or the nominee of a custodian bank, a written agreement shall provide that certificates so deposited shall at all times be kept separate and apart from other deposits with the depository so that at all times they may be identified as belonging solely to the insurer making the deposit; and

(c) If a clearing corporation is to act as depository, the investment may be merged or held in bulk in the name of a clearing corporation or the nominee of the clearing corporation with other investments deposited with the clearing corporation by any other person if a written agreement provides that adequate evidence of the deposit is to be obtained and retained by the insurer or a custodian bank; and

(2) An insurer may participate through a member bank in the Federal Reserve book-entry system. The records of the member bank shall at all times show that the investments are held for the insurer or for specific accounts of the insurer.

Sec. 10. (1) An insurer may invest in an individual interest of a pool of obligations or a fractional interest of a single obligation if:

(a) The certificate of participation or interest or the confirmation of participation or interest in the investment is issued in the name of the insurer, a custodian bank, or the nominee of either; and

(b) The certificate or confirmation, if held by a custodian bank, is kept separate and apart from the investment of others so that at all times the participation or interest may be identified as belonging solely to the insurer making the investment.

(2) If an investment is not evidenced by a certificate, adequate evidence of the insurer's investment shall be obtained from the issuer or its transfer or recording agent and retained by the insurer, custodian bank, or clearing corporation except as provided in subdivision (2) of section 9 of this act. For purposes of this subsection, adequate evidence shall mean a written receipt or other verification issued by

the depository, issuer, or custodian bank which shows that the investment is held for the insurer. Transfers of ownership or investments held as described in subdivisions (1)(c) and (2) of section 9 of this act and this section may be evidenced by a bookkeeping entry on the books of the issuer of the investment, its transfer or recording agent, or the clearing corporation without physical delivery of certificates, if any, evidencing the insurer's investment.

(3) Any investment made pursuant to this section shall also conform with the following:

(a) The investment in which the interest is purchased shall be authorized under the Insurers Investment Act;

(b) The insurer's pro rata interest in the investment shall be in the same percentage as the par amount of its interest bears to the outstanding par amount of the investment at the time of purchase;

(c) Any person, other than an insurer, that is the obligor of the investment instrument or the investor from whom the interest is purchased shall have outstanding senior debt or commercial paper having a minimum quality rating as described in subdivision (3) of section 12 of this act; and

(d) Any insurer that is the obligor of the investment instrument or the investor from whom the interest is purchased shall be rated A or better by A.M. Best's rating service or the corresponding rating of a successor organization approved by the director.

(4) An investment may be authorized under this section although its interest does not include the right to exercise the investor's rights or enforce the investor's remedies according to the provisions of the issue.

(5) Any investment made pursuant to this section shall be purchased pursuant to a written participation agreement.

(6) An insurer's investments authorized under this section shall not exceed ten percent of its admitted assets.

Sec. 11. Any investment limitation in the Insurers Investment Act based upon the amount of the insurer's admitted assets or policyholders surplus shall relate to admitted assets or policyholders surplus as shown by the most recent financial statement filed by the insurer pursuant to section 44-322 unless the insurer's admitted assets or policyholders surplus is revised as a result of an examination conducted pursuant to section 44-107 or 44-107.01, in which case the

results of the examination shall control. Except as otherwise provided by law, an investment shall be measured by actual cost at the time of acquisition. If there is no actual cost at the time of acquisition, the investment shall be measured at fair value.

For purposes of this section, actual cost shall mean the total amount invested, expended, or which should be reasonably anticipated to be invested or expended in the acquisition or organization of any investment, insurer, or subsidiary, including all organizational expenses or contributions to capital and surplus whether or not represented by the purchase of capital stock or issuance of other securities.

Sec. 12. Any investment required to meet minimum quality ratings by the Insurers Investment Act shall be subject to the following categories:

(1) Category 1. Any investment subject to this subdivision shall have a minimum quality rating of Baa3 by Moody's Investors Service, Inc., BBB- by Standard and Poor's Corporation, or the corresponding rating of any successor organization approved by the director. If Moody's Investors Service, Inc., and Standard and Poor's Corporation do not rate the investment in question and either service rates an obligation of the obligor having a priority equal to or lower than the investment in question, the insurer may apply such rating to the investment. If the obligor of an investment is authorized by, established by, or incorporated under the laws of Canada or any province thereof and Moody's Investors Service, Inc., and Standard and Poor's Corporation do not rate the investment in question, the minimum quality rating shall be BBB (low) by the Dominion Bond Rating Service, B++ by the Canadian Bond Rating Service, or the corresponding rating of any successor organization approved by the director. If none of the rating organizations described in this subdivision rate the investment in question or an outstanding obligation of the obligor having a priority equal to or lower than the investment in question, the investment shall have a 1 or 2 designation from the Securities Valuation Office of the National Association of Insurance Commissioners;

(2) Category 2. Any investment subject to this subdivision shall have a minimum quality rating of Aa3 by Moody's Investors Service, Inc., or AA- by Standard and Poor's Corporation, or the corresponding rating of any successor organization approved by the director. If Moody's Investors Service, Inc., and Standard and Poor's Corporation do not rate the

investment in question and either service rates an obligation of the obligor having a priority equal to or lower than the investment in question, the insurer may apply such rating to the investment. If none of the rating organizations described in this subdivision rate the investment in question or an outstanding obligation of the obligor having a priority equal to or lower than the investment in question, the investment shall have a 1 designation from the Securities Valuation Office of the National Association of Insurance Commissioners; and

(3) Category 3. Any investment subject to this subdivision shall have a minimum quality rating of Baa3/P-2 by Moody's Investors Service, Inc., or BBB-/A-2 by Standard and Poor's Corporation, or the corresponding rating of any successor organization approved by the director. If Moody's Investors Service, Inc., and Standard and Poor's Corporation do not rate the investment in question and either service rates an obligation of the obligor having a priority equal to or lower than the investment in question, the insurer may apply such rating to the investment. If the obligor of an investment is authorized by, established by, or incorporated under the laws of Canada or any province thereof and Moody's Investors Service, Inc., and Standard and Poor's Corporation do not rate the investment in question, the minimum quality rating shall be BBB (low)/R-2 by the Dominion Bond Rating Service, B++/A-1 by the Canadian Bond Rating Service, or the corresponding rating of any successor organization approved by the director. If none of the rating organizations described in this subdivision rate the investment in question or an outstanding obligation of the obligor having a priority equal to or lower than the investment in question, the investment shall have a 1 or 2 designation from the Securities Valuation Office of the National Association of Insurance Commissioners.

Sec. 13. For purposes of the Insurers Investment Act, investments shall be valued in accordance with the valuation procedures established by the National Association of Insurance Commissioners unless the director requires a different valuation method or finds another valuation method reasonable under the circumstances.

Sec. 14. An insurer shall not invest in:

(1) Issued shares of its own capital stock except with the written permission of the director. Such permission may be granted if the purpose of the acquisition is:

(a) In connection with the lawful plan for

mutualization of the insurer;

(b) In furtherance of a retirement, pension, or incentive program for officers or employees of the insurer which has been approved by the shareholders; or

(c) Shown to be for the benefit of all shareholders.

Any share acquired pursuant to this subdivision shall not be considered an admitted asset; and

(2) Any investment which is found by the director to be designed to evade any provision of the Insurers Investment Act.

Sec. 15. (1) Except as provided in subsections (2) through (4) of this section, an insurer's investments authorized under the Insurers Investment Act in any one person shall not exceed five percent of the insurer's admitted assets.

(2) Subsection (1) of this section shall not apply to:

(a) Investments authorized under sections 23, 25, 42, 50, and 53 of this act;

(b) Investments authorized under section 32 of this act if collateralized by mortgages for which the full faith and credit of the United States or Canada is pledged for the payment of all principal and interest;

(c) Loans made pursuant to section 6 of this act; and

(d) Real estate held pursuant to subsection (2) of section 44 of this act.

(3)(a) An insurer's investments authorized under section 24 or 26 of this act in any one agency or instrumentality of the United States or Canada shall not exceed twenty-five percent of the insurer's admitted assets, and (b) an insurer's investments authorized under section 32 of this act in any one person if collateralized by mortgages for which the full faith and credit of an agency or instrumentality of the United States or Canada is pledged for the payment of all principal and interest shall not exceed twenty-five percent of the insurer's admitted assets. An insurer's investments authorized under section 24 or 26 of this act in any one agency or instrumentality of the United States or Canada and the insurer's investments authorized under section 32 of this act collateralized by mortgages for which the full faith and credit of such agency or instrumentality of the United States or Canada is pledged for the payment of all principal and interest, in the aggregate, shall not exceed twenty-five percent of the insurer's admitted assets.

(4)(a) An insurer's investments in any one person whose senior obligations have a 3 designation from the Securities Valuation Office of the National Association of Insurance Commissioners, in the aggregate, shall not exceed three percent of the insurer's admitted assets.

(b) An insurer's investments in any one person whose senior obligations have a 4 designation from the Securities Valuation Office of the National Association of Insurance Commissioners, in the aggregate, shall not exceed two percent of the insurer's admitted assets.

(c) An insurer's investments in any one person whose senior obligations have a 5 designation from the Securities Valuation Office of the National Association of Insurance Commissioners, in the aggregate, shall not exceed one percent of the insurer's admitted assets.

(d) An insurer's investments in any one person whose senior obligations have a 6 designation from the Securities Valuation Office of the National Association of Insurance Commissioners, in the aggregate, shall not exceed one-half percent of the insurer's admitted assets.

(5) For purposes of this section, person shall mean an individual or entity or group of individuals or entities so related as in fact to constitute a single venture, institution, corporation, association, company, partnership, syndicate, trust, society, or other legal entity.

Sec. 16. The amount of any obligation issued, assumed, or guaranteed by more than one obligor and authorized under more than one provision of the Insurers Investment Act shall be allocated to those provisions on a basis proportional to the obligations of each obligor.

Sec. 17. An insurer may hold an investment authorized under more than one provision of the Insurers Investment Act under the provision of its choice. Nothing in the act shall prevent an insurer from holding an investment under a provision different from the one under which it previously held the investment except as otherwise expressly provided by law.

Sec. 18. All principal, interest, premiums, dividends, and other payments received on any investment authorized under the Insurers Investment Act shall be payable in lawful money of the United States except as provided in section 37 of this act.

Sec. 19. (1) The director may impose reasonable and temporary restrictions upon the investments of an insurer, including prohibition or

divestment of a particular investment, if the director finds that the interests of insureds, creditors, or the general public are or may be endangered.

(2) If any insurer desires to exceed any investment limitation contained in the Insurers Investment Act, the insurer shall file an application with the director requesting written approval to exceed the investment limitation. The application shall set out all pertinent information regarding the proposed investment, including a full description of the investment, its actual cost, its market value, any appraisals, any encumbrances, the interest rate, the maturity dates, as appropriate, and any other relevant information requested by the director. The application shall be a public record open to public inspection from the date of filing. If the application is not approved or disapproved by the director within thirty days from the date of filing, the application shall be deemed disapproved. The disapproval in whole or in part shall be in the sole discretion of the director and shall not be subject to judicial review.

In determining whether to approve or disapprove the application, the director shall consider the following factors:

(a) The credit risk quality of the proposed investment;

(b) The liquidity of the proposed investment and of the insurer's entire investment portfolio;

(c) The extent of the diversification of the insurer's investment portfolio;

(d) The yield of the proposed investment;

(e) The reasonableness of the insurer's policyholders surplus in relation to the insurer's outstanding liabilities and financial needs as evaluated in accordance with the factors set forth in section 16, Legislative Bill 236, Ninety-second Legislature, First Session, 1991; and

(f) Any other relevant considerations.

If the director approves the application in whole or in part, the proposed investment shall be deemed to be an authorized investment to the extent of the director's approval. Whenever an insurer makes application pursuant to this subsection, the director may retain, at the insurer's expense, such attorneys, actuaries, accountants, and other experts not otherwise a part of the director's staff as are reasonably necessary to assist the director in determining whether such application should be approved. Any individual or organization so retained shall be under the direction

and control of the director and shall serve in a purely advisory capacity.

Sec. 20. (1) An insurer may lend its securities if:

(a) Simultaneously with the delivery of the loaned securities, the insurer receives collateral from the borrower consisting of cash or securities backed by the full faith and credit of the United States or an agency or instrumentality of the United States, except that any securities provided as collateral shall not be of lesser quality than the quality of the loaned securities. The securities shall have a market value of at least one hundred two percent of the market value of the loaned securities;

(b) Prior to the loan, the borrower furnishes the insurer with or the insurer otherwise obtains the most recent statement of the borrower's financial condition;

(c) The insurer receives a reasonable fee related to the market value of the loaned securities and to the term of the loan;

(d) The loan is made pursuant to a written loan agreement; and

(e) The borrower is required to furnish by the close of each business day during the term of the loan a report of the market value of all collateral and the market value of all loaned securities as of the close of trading on the previous business day. If at the close of any business day the market value of the collateral is less than one hundred two percent of the market value of the loaned securities, the borrower shall deliver by the close of the next business day any additional amount of cash or securities. The market value of the additional securities, together with the market value of all previously delivered collateral, shall equal at least one hundred two percent of the market value of the loaned securities.

(2) For purposes of this section, market value shall include accrued interest.

(3) An insurer shall effect securities lending only through the services of a custodian bank.

(4) An insurer's investments authorized under this section shall not exceed ten percent of its admitted assets.

Sec. 21. An insurer's investments shall be subject to the Insurers Investment Act notwithstanding anything in 15 U.S.C. 77r-1 to the contrary.

Sec. 22. Any investment held by an insurer on the effective date of this act which was an

authorized investment immediately prior to such date shall be deemed an authorized investment under the Insurers Investment Act.

Sec. 23. An insurer may invest in direct obligations of the United States or obligations for which the full faith and credit of the United States is pledged for the payment of all principal and interest.

Sec. 24. An insurer may invest in direct obligations of any agency or instrumentality of the United States or obligations for which the full faith and credit of any agency or instrumentality of the United States is pledged for the payment of all principal and interest.

Sec. 25. An insurer may invest in direct obligations of the government of Canada or obligations for which the full faith and credit of the government of Canada is pledged for the payment of all principal and interest.

Sec. 26. An insurer may invest in direct obligations of any agency or instrumentality of the government of Canada or obligations for which the full faith and credit of any agency or instrumentality of the government of Canada is pledged for the payment of all principal and interest.

Sec. 27. An insurer may invest in direct obligations of any province or municipality of Canada or obligations for which the full faith and credit of any province or municipality of Canada is pledged for the payment of all principal and interest. Any investment authorized under this section shall have a minimum quality rating as described in subdivision (1) of section 12 of this act.

Sec. 28. An insurer may invest in obligations issued, assumed, or guaranteed by the United States, an agency or instrumentality of the United States, a state, a municipality, a political subdivision, the government of Canada, an agency or instrumentality of the government of Canada, any province or municipality of Canada, or any municipal utility, corporate authority, nonprofit corporation, or institution authorized or established by an act of Congress or by the laws of any state, Canada, or any province of Canada if, by statutory or other legal requirements applicable to those obligations, they are payable as to both principal and interest:

(1) From taxes levied or required to be levied upon all taxable property or all taxable income within the jurisdiction of the borrowing entity;

(2) From adequate special revenue pledged or

otherwise appropriated or required by law to be provided for the purpose of the payment, excluding any obligation payable solely out of special assessments on properties benefited by local improvements;

(3) From and secured by a pledge of rentals from leases or subleases on property owned or leased by the obligor if:

(a) Such underlying lease has an unexpired term of not less than the term of the lease or sublease whose rentals are pledged by the issuer; and

(b) The fixed rentals reserved under such lease or sublease will be sufficient to pay all of the expenses of the lessor in connection with the lease or sublease and the operation of the property and to pay principal and interest so as to retire the bonds during the fixed term of such lease or sublease or, if such fixed rentals are not sufficient, a governmental subdivision agrees to pay such required amounts;

(4) From revenue specifically pledged therefor of a public service operated by the borrowing entity if the entity is legally authorized and does obligate itself that rates of service will be fixed, maintained, and collected so as to produce revenue or earnings sufficient to pay all operating and maintenance charges and all principal and interest of such obligations in accordance with their terms; or

(5) From revenue specifically pledged therefor from excise taxes levied.

Any investment authorized under this section shall have a minimum quality rating as described in subdivision (1) of section 12 of this act.

Sec. 29. An insurer may invest in obligations issued, assumed, or guaranteed by any corporation created or existing under the laws of the United States or Canada or any state or province thereof. Any investment authorized under this section shall have a minimum quality rating as described in subdivision (1) of section 12 of this act.

Sec. 30. An insurer may invest in obligations of any regulated public utility corporation wholly situated or maintained in the United States and Canada. Any investment authorized under this section shall have a minimum quality rating as described in subdivision (1) of section 12 of this act.

Sec. 31. An insurer may invest in obligations issued, assumed, or guaranteed by an international development bank of which the United States is a member. Any investment authorized under this section shall have a minimum quality rating as

described in subdivision (2) of section 12 of this act. An insurer's investments authorized under this section shall not exceed twenty percent of its admitted assets.

Sec. 32. (1) An insurer may invest in interest-bearing obligations entitled to receive both principal and interest from (a) a collateralized pool of one or more commercial and residential mortgages or (b) certificates entitled to receive both principal and interest from a collateralized pool of one or more commercial and residential mortgages. Any pool of mortgages or certificates serving as collateral for such investments shall have been sold to and be currently owned by either a trust or corporation established solely for the purpose of holding such mortgages or certificates for the benefit of the obligee.

(2) Investments in principal-only or interest-only mortgage-backed securities shall not be authorized under this section.

(3) Any investment authorized under this section shall have a minimum quality rating as described in subdivision (2) of section 12 of this act.

Sec. 33. (1) An insurer may invest in interest-bearing obligations entitled to receive both principal and interest from a collateralized pool of one or more assets other than those authorized under section 32 of this act. Any pool of assets serving as collateral for such investments shall have been sold to and be currently owned by a trust or corporation established solely for the purpose of holding such assets for the benefit of the obligee.

(2) Any investment authorized under this section shall have a minimum quality rating as described in subdivision (2) of section 12 of this act.

(3) An insurer's investments authorized under this section shall not exceed twenty percent of its admitted assets.

Sec. 34. (1) An insurer may, in addition to any investment authorized under sections 32 and 33 of this act, invest in obligations secured by pledged securities if:

(a) The market value of such pledged securities or the fair value if the securities have no recognized market value will at all times of holding the investment be equal to at least one hundred ten percent of the investment in the notes or other evidence of indebtedness; and

(b) The pledged securities are of the kind authorized for investment under the Insurers Investment Act.

(2) For purposes of this section, pledged securities shall mean notes, mortgages, bonds, debentures, and preferred or common stock. Pledged securities shall not be valued at an amount greater than the value at which they could be shown on the insurer's financial statements filed with the director pursuant to section 44-322 if owned directly by the insurer.

(3) An insurer's investments authorized under this section shall not exceed twenty percent of its admitted assets.

Sec. 35. An insurer may invest in obligations secured by an assignment of a lease to or for the benefit of the insurer and the rents payable under the lease if:

(1) The lessee or ultimate guarantor of any lease securing the obligation is an entity the obligations of which are authorized for investment under sections 23 to 31 of this act;

(2) The rentals assigned are sufficient to repay not less than ninety percent of the obligation within the unexpired term of the lease excluding any term that may be provided by an enforceable option of renewal; and

(3) A first lien on the lessor's interest in the unencumbered leased property is obtained as additional security for the obligation for which the rentals described in subdivision (2) of this section are not sufficient to repay the obligation.

Sec. 36. An insurer may invest in obligations secured by an assignment of a through-put agreement or take-or-pay contract if:

(1) The payments to be made to the operator, exclusive of assessments, taxes, maintenance, and operating costs required under such agreement or contract, will be sufficient to pay all interest and fully amortize the debt within the remaining term, exclusive of any renewal term, of the agreement or contract; and

(2) Any party obligated under such agreement or contract or any guarantor of the specific obligations of any party obligated under such agreement or contract is an entity the obligations of which are investments authorized under sections 23 to 31 of this act.

An insurer's investments authorized under this section shall not exceed twenty percent of its admitted assets.

Sec. 37. (1) An insurer may invest in securities or other investments (a) issued in, (b) located in, (c) denominated in the currency of, (d)

whose ultimate payment amounts of principal or interest are subject to fluctuations in the currency of, or (e) whose obligors are domiciled in countries other than the United States which are substantially of the same kinds, classes, and investment grades as those authorized for investment under the Insurers Investment Act.

(2) Except for investments authorized under sections 25 to 30 of this act, an insurer's investments authorized under subsection (1) of this section shall not exceed five percent of its admitted assets.

(3) An insurer which is authorized to do business in a foreign country or which has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in a foreign country may, in addition to the investments authorized by subsection (1) of this section, invest in securities and investments (a) issued in, (b) located in, (c) denominated in the currency of, (d) whose ultimate payment amounts of principal and interest are subject to fluctuations in the currency of, or (e) whose obligors are domiciled in such foreign countries which are substantially of the same kinds, classes, and investment grades as those authorized for investment under the act.

(4) An insurer's investments authorized under subsection (3) of this section and cash in the currency of such country which is at any time held by such insurer, in the aggregate, shall not exceed the greater of (a) one and one-half times the amount of its reserves and other obligations under such contracts or (b) the amount which such insurer is required by law to invest in such country.

Sec. 38. (1) An insurer may invest in:

(a) Bank certificates of deposit, banker's acceptances, or corporate promissory notes with a remaining term of no more than one year;

(b) Written repurchase agreements collateralized by securities authorized under section 23 or 24 of this act;

(c) Other bills of exchange of the kind and maturities authorized by law for purchase in the open market by federal reserve banks; and

(d) Shares, interests, or participation certificates in any management type of investment trust, corporate or otherwise, registered under the Investment Company Act of 1940, as amended, as a diversified open-end investment company, that invests solely in such investments as described in subdivisions (1)(a), (b), and (c) of this section.

(2) For purposes of this section, repurchase

agreement shall mean a bilateral agreement whereby an insurer purchases securities with a related agreement that the seller will purchase or repurchase at a specified price the equivalent or similar securities within a specified period of time or upon demand.

(3) Any investment in corporate promissory notes authorized under subdivision (1)(a) of this section shall have a minimum quality rating as described in subdivision (3) of section 12 of this act.

Sec. 39. (1) An insurer may invest in shares of a fund registered under the Investment Company Act of 1940, as amended, as a diversified open-end investment company and in shares, interests, or participation certificates in any management type of investment trust, corporate or otherwise, subject to the following restrictions:

(a) The investment restrictions and policies relating to the investment of the assets of the trust and its activities shall be limited to the same kinds, classes, and investment grades as those authorized for investment under the Insurers Investment Act; and

(b) The assets of such investment trust shall not be less than twenty million dollars at the date of purchase.

An insurer's investments authorized under this subsection shall not exceed ten percent of its admitted assets. Shares, interests, or participation certificates in trusts described in this subsection shall also be subject to the overall limitation of subsection (3) of section 41 of this act.

(2) An insurer may invest in the shares of a fund registered under the Investment Company Act of 1940, as amended, as a diversified open-end investment company when the investment restrictions and policies relating to the investment of the assets of the fund and its activities are limited solely to (a) obligations, (b) commitments to purchase obligations, or (c) assignments of interest in obligations issued or guaranteed by the United States or its agencies or instrumentalities. An insurer's investments authorized under this subsection shall not exceed twenty-five percent of its admitted assets.

Sec. 40. (1) An insurer may invest in the preferred stock of any corporation which:

(a) Has retained earnings of not less than one million dollars;

(b) Has earned and paid regular dividends at the regular prescribed rate each year upon its preferred stock, if any is or has been outstanding, for not less

than five years immediately preceding the purchase of such preferred stock or during such part of such five-year period as it has had preferred stock outstanding; and

(c) Has had no material defaults in principal payments of or interest on any obligations of such corporation and its subsidiaries having a priority equal to or higher than those purchased during the period of five years immediately preceding the date of acquisition or, if outstanding for less than five years, at any time since such obligations were issued.

The earnings of and the regular dividends paid by all predecessor, merged, consolidated, or purchased corporations may be included through the use of consolidated or pro forma statements.

(2) Except as authorized under the Insurance Holding Company System Act, an insurer shall not own more than five percent of the total issued shares of stock of any corporation other than an insurer.

(3) A life insurer's investments authorized under this section shall not exceed the greater of ten percent of its admitted assets or one hundred percent of its policyholders surplus.

Sec. 41. (1) An insurer may invest in the common stock of any corporation which has retained earnings of not less than one million dollars, except that an investment may be made in any corporation having a majority of its operations in this state which has retained earnings of not less than two hundred fifty thousand dollars. The earnings of all predecessor, merged, consolidated, or purchased corporations shall be included through the use of consolidated or pro forma statements.

(2) An insurer may purchase exchange-traded options or other rights to purchase or sell stocks if the stocks are an authorized investment under this section. An insurer's investments authorized under this subsection shall not exceed one percent of its policyholders surplus.

(3) Except as authorized under the Insurance Holding Company System Act, an insurer shall not own more than five percent of the total issued shares of stock of any corporation other than an insurer.

(4) A life insurer's investments authorized under this section shall not exceed one hundred percent of its policyholders surplus.

Sec. 42. (1) Stock insurers which maintain capital stock required by section 44-214 and nonstock insurers which maintain surplus required by section

44-219 may invest in the common and preferred stock of other insurers.

(2) An insurer's investments authorized under this section shall not exceed the lesser of (a) the amount by which such insurer's admitted assets exceed its required capital and liabilities if a stock insurer or its required surplus and liabilities if a nonstock insurer or (b) fifty percent of its policyholders surplus.

(3) In calculating the admitted assets of the insurer acquiring the stock of another insurer pursuant to this section, the value of any investment in such common or preferred stock shall be the cost of such stock to the acquiring insurer.

Sec. 43. (1) An insurer may invest in bonds or notes secured by a first mortgage on real estate in the United States or Canada if the amount loaned by the insurer, together with any amount secured by an equal security interest, does not exceed seventy-five percent of the appraised value of the real estate and improvements at the time of making the investment. The limitation in this subsection shall not:

(a) Apply to investments authorized under section 32 of this act;

(b) Prohibit an insurer from renewing or extending a loan for the original amount when the value of such real estate has depreciated;

(c) Prohibit an insurer from accepting, as part payment for real estate sold by it, a mortgage thereon for more than seventy-five percent of the purchase price of such real estate; or

(d) Prohibit an insurer from advancing additional loan funds to protect its real estate security.

(2) An insurer may invest in bonds or notes secured by a first mortgage on leasehold estates in improved real estate located in the United States or Canada if:

(a) Such underlying real estate is unencumbered except by rentals to accrue therefrom to the owner of the real estate;

(b) There is no condition or right of reentry or forfeiture under which such lien can be cut off, subordinated, or otherwise disturbed so long as the lessee is not in default;

(c) The amount loaned by the insurer, together with any amount secured by an equal security interest, does not exceed seventy-five percent of the appraised value of such leasehold with improvements at the time of

making the loan; and

(d) Such mortgage loan will be completely amortized during the unexpired portion of the lease or leasehold estate.

(3) Nothing in this section shall prevent any amount invested under this section that exceeds seventy-five percent of the appraised value of the real estate or leasehold and improvements, as the case may be, from being authorized under section 53 of this act.

(4) All buildings and other real estate improvements which constitute a material part of the value of the mortgaged premises, whether estates in fee or leasehold estates or combination thereof, shall be (a) substantially completed before the investment is made and (b) kept insured against loss or damage by fire or windstorm in a reasonable amount for the benefit of the mortgagee.

(5) If there are more than four holders of the issue of such bonds or notes described in subsection (1) or (2) of this section, (a) the security of such bonds or notes, as well as all collateral papers including insurance policies executed in connection therewith, shall be made to and held by a trustee, which trustee shall be a solvent bank or trust company having a paid-in capital of not less than two hundred fifty thousand dollars, except in case of a bank or trust company incorporated under the laws of this state, in which case a paid-in capital of not less than one hundred thousand dollars shall be required, and (b) it shall be agreed that, in case of proper notification of default, such trustee, upon request of at least twenty-five percent of the holders of the par amount of the bonds outstanding and proper indemnification, shall proceed to protect the rights of such bondholders under the provisions of the trust indenture.

(6) An insurer's investments authorized under this section shall not exceed forty percent of its admitted assets, and an insurer's investments authorized under this section and section 44 of this act, in the aggregate, shall not exceed fifty percent of its admitted assets.

Sec. 44. (1) An insurer may acquire and hold unencumbered real estate or certificates evidencing participation with other investors, either directly or through partnership interests, in unencumbered real estate if:

(a) The real estate is leased under a lease contract in which the lessee contracts to pay all assessments, taxes, maintenance, and operating costs;

(b) The net amount of the annual lease payments to the owner of the real estate is sufficient to amortize the cost of the real estate within the duration of the lease, but in no event for a period of longer than forty years, and pay at least three percent per annum on the unamortized balance of the cost of the real estate; and

(c) The amount invested in any such real estate does not exceed its appraised value.

When the lessee under a lease described in this subsection is the United States or any agency or instrumentality thereof, any state or any county, municipality, district, or other governmental subdivision thereof, or any agency, board, authority, or institution established or maintained under the laws of the United States or any state thereof, such lease contract may provide that upon the termination of the term thereof title to such real estate shall vest in the lessee.

When an insurer owns less than the entire real estate leased under a lease described in this subsection, the legal title to the real estate shall be in the name of a trustee which meets the qualifications set out in subsection (5) of section 43 of this act under a trust agreement which provides, among other things, that upon proper notification of default under such lease and request to such trustee by an investor or investors representing at least twenty-five percent of the equitable ownership of the real estate and proper indemnification, the trustee shall proceed to protect the rights and interest of the investors owning the equitable title to the real estate.

(2) An insurer may also acquire and hold real estate:

(a) Mortgaged to it in good faith by way of security for a loan previously contracted or for money due;

(b) Conveyed to it in satisfaction of debts previously contracted in the course of its dealings; and

(c) Purchased at sale upon judgments, decrees, or mortgages obtained or made for such debts.

(3) An insurer may invest in real estate required for its home offices or to be otherwise occupied by the insurer or its employees in the transaction of its business and may rent the balance of the space therein. The value of an insurer's investments authorized under this subsection shall not exceed ten percent of its admitted assets.

(4)(a) An insurer with policyholders surplus

of at least one million dollars may individually or in conjunction with other investors acquire, own, hold, develop, and improve real estate that is essentially residential or commercial in character, even though subject to an existing mortgage or thereafter mortgaged by the insurer, if such real estate is located in a city or village or within five miles of the limits thereof.

(b) For purposes of this subsection, real estate shall include a leasehold having an unexpired term of at least twenty years, including the term provided by any enforceable option of renewal. The income from such leasehold shall be applied so as to amortize the cost of leasehold and improvements within the lesser of eighty percent of such expired term or forty years from acquisition.

(c) The value of an insurer's investments authorized under this subsection shall not exceed ten percent of its admitted assets.

(5) An insurer may also acquire such other real estate as may be acquired ancillary to a corporate merger, acquisition, or reorganization of the insurer.

(6) The value of an insurer's investments authorized under subsections (3), (4), and (5) of this section, in the aggregate, shall not exceed fifteen percent of its admitted assets.

(7) For purposes of this section, value shall mean original cost plus any development and improvement costs whenever expended less the unpaid balance of any mortgage and annual depreciation on improvements of not less than two percent.

(8) An insurer's investments authorized under this section and section 43 of this act, in the aggregate, shall not exceed fifty percent of its admitted assets.

Sec. 45. An insurer may invest in equipment or interests in equipment wholly situated or maintained in the United States and Canada which are mortgaged or otherwise encumbered by the insurer as security for a nonrecourse debt and which are leased under a lease contract if:

(1) The annual lease payments to the lessor are sufficient to repay the full cost of the financing thereof within the unexpired term of the lease; and

(2) The lessee or ultimate guarantor of any lease securing the obligation is an entity the obligations of which are authorized investments under sections 23 to 31 of this act.

An insurer's investments authorized under this section shall not exceed five percent of its admitted

assets.

Sec. 46. An insurer may invest in equipment trust certificates and other obligations secured by transportation equipment or by evidence of ownership of or an interest in transportation equipment evidencing a right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of such equipment. For purposes of this section, transportation equipment shall include automobile freight racks used in the transportation of passenger vehicles.

Any investment authorized under this section shall have a minimum quality rating as described in subdivision (1) of section 12 of this act. An insurer's investments authorized under this section shall not exceed twenty percent of its admitted assets.

Sec. 47. An insurer may invest in the ownership of or in loans secured by first liens upon:

(1) Production payments, interests, or rights therein payable from oil, gas, other hydrocarbons, or other minerals in producing properties located in areas of established and continuing production within the United States or the adjacent continental shelf areas. Such payments, interests, or rights shall be dischargeable from property interests appraised to have a current market value of at least one hundred fifty percent of the purchase price of or the amount loaned upon the security of such production payments. Such appraisals shall be provided at the time of acquisition by independent petroleum engineers and shall be based on current market prices; or

(2) Royalty, overriding royalty, net profit, leasehold, working, or other interests or rights in oil, gas, other hydrocarbons, or other minerals in place or as produced, whether or not subject to production payments as described in this section.

For purposes of determining the amount invested in payments, interests, or rights described in this section at any given time, the insurer may evaluate such payments, interests, or rights in such manner as will permit it to amortize the payments, interests, or rights over a period of time not greater than the estimated productive life of the interests or rights as determined by independent petroleum engineers. The insurer may amortize the interests or rights by use of the successful efforts accounting method.

An insurer's investments authorized under this section shall not exceed five percent of its admitted assets.

Sec. 48. An insurer may invest in electronic data processing hardware and operating systems software for its own use if the hardware or operating systems software is depreciated or amortized over no more than five years. An insurer's investments authorized under this section shall not exceed one percent of its admitted assets with such investments determined on the basis of cost less accumulated depreciation and amortization.

Sec. 49. (1) An insurer may effect or maintain bona fide hedging transactions in:

(a) Foreign currency in connection with the sale or purchase of securities authorized for investment under section 37 of this act;

(b) Contracts for future delivery, options and other rights to purchase or sell, and options and other rights to purchase or sell contracts for future delivery of domestic or foreign currency or of securities authorized for investment under the Insurers Investment Act if such contracts, options, or rights are traded on a national securities exchange or board of trade regulated under the laws of the United States; and

(c) Stock or bond index contracts or other contracts that require for settlement the delivery of cash.

(2) An insurer may sell exchange-traded warrants, options, or other rights to purchase stock but only with respect to stock which it owns at the time such warrant, option, or right is sold. Such stock shall be held throughout the period during which the warrant, option, or right may be exercised against the seller by the owner of the warrant, option, or right in an amount which would fully discharge the seller's potential obligation to deliver such stock.

(3) An insurer may sell exchange-traded warrants, options, or other rights to sell stock but only if its obligations under such warrants, options, or rights are fully secured by a deposit by the insurer with a bank or other custodian of cash or cash equivalents.

(4) For purposes of this section, bona fide hedging transaction shall mean a sale or purchase of foreign currency or of a contract, option, or right entered into for the purpose of offsetting changes in (a) foreign currency exchange rates or (b) the market value of investments owned or proposed to be acquired or sold by the insurer within one year or for the purpose of minimizing interest rate risks in respect of obligations or insurance policies or contracts supported

by investments held or proposed to be held by the insurer.

(5) An insurer's investments authorized under this section shall not exceed ten percent of its admitted assets.

Sec. 50. (1) A title insurer may invest in a title plant if an amount equal to the insurer's minimum capital or surplus is also invested in investments otherwise authorized by the Insurers Investment Act.

(2) A title plant shall be valued at its fair value. For purposes of determining fair value:

(a) No value shall be attributed to furniture and fixtures;

(b) The real estate in which the title plant is housed shall be considered real estate; and

(c) The value of title abstracts, title briefs, copies of conveyances and other documents, indices, and other records comprising the title plant shall be determined by considering the expenses incurred in obtaining them, the age thereof, the cost of replacement less depreciation, and all other relevant factors.

Sec. 51. An insurer may hold investments not otherwise authorized under the Insurers Investment Act if such investments:

(1) Have minimum quality ratings as described in subdivision (1) of section 12 of this act; and

(2) In the aggregate do not exceed one hundred percent of the insurer's policyholders surplus.

Sec. 52. (1) Subject to the limitations in subsections (2) through (4) of this section, an insurer may invest in obligations having 3, 4, 5, and 6 designations from the Securities Valuation Office of the National Association of Insurance Commissioners.

(2) Subject to the limitation in subsection (4) of this section:

(a) An insurer's investments in obligations having a 4 designation from the Securities Valuation Office of the National Association of Insurance Commissioners shall not exceed four percent of the insurer's admitted assets;

(b) An insurer's investments in obligations having a 5 designation from the Securities Valuation Office of the National Association of Insurance Commissioners shall not exceed two percent of the insurer's admitted assets; and

(c) An insurer's investments in obligations having a 6 designation from the Securities Valuation Office of the National Association of Insurance

Commissioners shall not exceed one percent of the insurer's admitted assets.

(3) Subject to the limitations in subsection (2) of this section:

(a) An insurer's investments in obligations having any combination of 4, 5, and 6 designations from the Securities Valuation Office of the National Association of Insurance Commissioners, except the combination described in subdivision (3)(b) of this section, in the aggregate, shall not exceed four percent of the insurer's admitted assets; and

(b) An insurer's investments in obligations having 5 and 6 designations from the Securities Valuation Office of the National Association of Insurance Commissioners, in the aggregate, shall not exceed two percent of the insurer's admitted assets.

(4) An insurer's investments authorized under this section, in the aggregate, shall not exceed fifteen percent of its admitted assets.

Sec. 53. (1)(a)(i) A life insurer may make investments not otherwise authorized under the Insurers Investment Act in an amount, in the aggregate, not exceeding the lesser of five percent of its admitted assets or one hundred percent of its policyholders surplus.

(ii) An insurer other than a life insurer may make investments not otherwise authorized under the act in an amount, in the aggregate, not exceeding the lesser of twenty-five percent of the amount by which its admitted assets exceed its total liabilities, excluding capital, or five percent of its admitted assets.

(b) Investments authorized under this subsection shall not include obligations having 3, 4, 5, and 6 designations from the Securities Valuation Office of the National Association of Insurance Commissioners.

(2) Notwithstanding the provisions of subdivisions (1)(a)(ii) and (b) of this section, an insurer other than a life insurer may make investments not otherwise authorized under the act in an amount not exceeding that portion of its policyholders surplus which is in excess of fifty percent of its annual net written premiums.

(3) Investments authorized under subsection (1) or (2) of this section shall not include insurance agents' balances or amounts advanced to or owing by insurance agents.

(4) The limitations set forth in this section shall be applied at the time the investment in question is made and at the end of each calendar quarter. An

insurer's investment, which at the time of its acquisition was authorized only under the provisions of this section but which has subsequently and while held by such insurer become of such character as to be authorized elsewhere under the act, shall not be included in determining the amount of such insurer's investments, in the aggregate, authorized under this section, and investments otherwise authorized under the act at the time of their acquisition shall not be included in making such determination.

Sec. 54. The director may adopt and promulgate rules and regulations to carry out the Insurers Investment Act.

Sec. 55. That section 21-1339, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

21-1339. Obligations of a cooperative farm land company secured by a first mortgage on agricultural lands purchased by a cooperative farm land company shall be a lawful investment for funds of any insurance company which has conveyed real estate to the company to the full extent of the purchase price. ~~, and shall be deemed within the provisions of section 44-309, as now existing or as hereafter amended.~~

Sec. 56. That section 21-2108, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

21-2108. Notwithstanding any other provisions of law, any person, copartnership, or corporation may acquire, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the shares of capital stock of a development corporation created under the Nebraska Business Development Corporation Act, except ~~provisions of sections 21-2101 to 21-2117, PROVIDED,~~ that insurance companies, ~~reciprocals~~ reciprocal exchanges, and fraternal benefit societies shall not invest therein other than as provided in ~~section 44-311.03 or 44-311.04, as the same may be amended from time to time~~ the Insurers Investment Act.

Sec. 57. That section 21-2109, Revised Statutes Supplement, 1990, be amended to read as follows:

21-2109. (1) Notwithstanding any other provision of law, any financial institution is authorized to become a member of and to invest in a development corporation by making application to the board of directors on such form and in such manner as the board of directors may require, and membership shall become effective upon acceptance of such application by

such board. Membership shall be for the duration of the corporation, except that upon written notice given to the corporation two years in advance, a member may withdraw from membership at the expiration date of such notice and shall not, after the expiration date of such notice, be obligated to make any loans to the corporation. No financial institution shall become a member of more than one development corporation, except that this restriction shall not apply to the Research and Development Authority.

(2) Each such member shall make loans to the corporation as and when called upon to do so, upon such terms and conditions as ~~shall~~ be approved from time to time by the board of directors, subject to the following conditions:

(a) All loans shall be evidenced by negotiable instruments of the corporation and shall bear interest at the rate determined by the board of directors to be the prime rate on unsecured commercial loans as of the date of the loan;

(b) All loan limits shall be established at the thousand dollar amount nearest the amount computed in accordance with this section;

(c) The total amount outstanding at any one time on loans to a development corporation made by any member, other than an insurance company, reciprocal exchange, or fraternal benefit society, shall not exceed the following limit, to be determined as of the time such member becomes a member, on the basis of figures contained in the most recent year-end statement prior to its application for membership:

(i) Banking associations, three percent of the paid-in capital and surplus;

(ii) Savings and loan associations, three percent of the general reserve account and surplus; and

(iii) Other financial institutions, such limits as may be approved from time to time by the board of directors of the development corporation;

(d) In the case of an insurance company, reciprocal exchange, and fraternal benefit society, the total amount outstanding at any time on loans to a development corporation shall be limited as follows: (i) For stock life insurance companies, one percent of capital and unassigned surplus, which amount loaned shall be included in and be a part of those investments authorized for stock life insurance companies under section ~~44-311.03~~ 53 of this act; (ii) for mutual life insurance companies or fraternal benefit societies, one percent of unassigned surplus, which amount loaned shall

be included in and be a part of those investments authorized under such section; ~~44-311.03,~~ and (iii) for other insurance companies or reciprocal exchanges, one-tenth of one percent of admitted assets, which amount loaned shall be included in and be a part of those investments authorized under such section; ~~44-311.04,~~ and

(e) Each call for loans made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the loan limit of each member bears to the aggregate loan limits of all members.

Sec. 58. That section 44-319.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-319.01. ~~As used in~~ For purposes of sections 44-319.01 to 44-319.13, unless the context otherwise requires:

(1) Director shall mean the Director of Insurance or his or her authorized representative;

(2) Policyholders shall mean all persons having a legal or equitable right against a depositing insurer or assessment association arising out of or by reason of depositing insurer's or association's policies and obligees under its surety contracts;

(3) State shall mean any state of the United States, the government of Puerto Rico, and the District of Columbia;

(4) Eligible securities shall mean the investments ~~permitted, limited, and defined by section 44-309, except subdivisions (1), (5), and (12) thereof~~ authorized under the Insurers Investment Act other than investments authorized under sections 34, 43 to 45, 47 to 50, and 53 of this act, and unless otherwise provided by law, the values of such investments shall, for the purpose of sections 44-319.01 to 44-319.13, be an amount not exceeding the current market values thereof; and

(5) Insurer shall mean stock and mutual insurance companies and reciprocal exchanges.

Sec. 59. That section 44-320, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-320. ~~No~~ (1) Except as provided in subsections (2) through (6) of this section, no director or officer of any domestic insurance company ~~doing business under this chapter~~ shall directly or indirectly receive any money or valuable consideration for negotiating any loan for ~~any such~~ the company or for selling or aiding in the sale of any property to or by

the company ~~nor shall~~ and no such director or officer shall directly or indirectly borrow money from, purchase ~~or buy~~ any property from, or sell any property to ~~such corporation, except that a~~ the company.

(2)(a) Nothing in this section shall prevent any domestic insurance company ~~may make~~ from making a loan to an officer of ~~such~~ the company for the purchase of a principal residence or ~~may acquire~~ acquiring the principal residence of an officer in connection with the relocation of the officer's place of employment at the request of the company either during the course of employment or upon initial employment of such officer. Any loan permitted under this ~~section~~ subsection shall be secured by a first trust deed or first mortgage and shall not exceed seventy-five percent of the fair market value of the property. Any acquisition permitted under this ~~section~~ subsection shall not exceed the fair market value of the property.

(b) For purposes of this ~~section~~ subsection, fair market value shall mean the market value of real estate as determined by a licensed real estate appraiser who is recognized as a Member of the Appraisal Institute, a Residential Member by the American Institute of Real Estate Appraisers, a Senior Real Estate Analyst, a Senior Real Property Appraiser, or a Senior Residential Appraiser by the Society of Real Estate Appraisers, or an American Society Appraiser by the American Society of Appraisers.

(c) Any loan or acquisition permitted under this ~~section~~ subsection shall be subject to ~~(1)~~ (i) the approval of the domestic insurance company's board of directors or a delegated committee of the company and ~~(2)~~ (ii) prior written approval of the Director of Insurance based upon written application by the company including full and fair disclosure of the terms of the transaction. Approval of such transaction by the Director of Insurance shall be presumed unless notice of disapproval is received by the applicant within thirty days of the filing of the application. Approval of such transaction may be denied if the director finds that it is not in the best interest of the company or that the terms of the transaction are not fair and reasonable to the company.

(3) Nothing in this section shall prevent any director or officer of any domestic insurance company from purchasing from his or her company an insurance policy or annuity contract if (a) the purchase is in the ordinary course of the company's business and subject to all of the requirements normally imposed by the company

in the sale of such policies and contracts and (b) no discount granted to the director or officer in connection with the purchase is greater than discounts provided to other employees of the company in connection with the sale of similar policies and contracts.

(4) Nothing in this section shall prevent any director or officer of any domestic insurance company from purchasing from his or her company surplus personal property having a total purchase price not in excess of ten thousand dollars in any calendar year if the personal property is sold to the director or officer at not less than its fair market value.

(5) Nothing in this section shall prevent any director or officer of any domestic insurance company from selling to his or her company property of any type or nature having a total purchase price not in excess of ten thousand dollars in any calendar year if the sale is in the ordinary course of business of the director's or officer's business and if the property is sold to the company at not more than its fair market value.

(6) Except as otherwise provided in this section, if any director or officer of any domestic insurance company desires to borrow money from, purchase any property from, or sell any property to the company in excess of ten thousand dollars in any calendar year, the company shall file an application with the Director of Insurance requesting written approval to engage in such transaction. The application shall set out the names of all of the parties interested in the transaction and the respective percentage of interest of each party, a brief description of the nature of the transaction, and a full disclosure of all consideration given or received by the company in connection with such transaction. The application shall be a public record open to public inspection from the date of filing. If the transaction is not approved or disapproved by the director within thirty days from the date of filing, the transaction shall be deemed disapproved. In determining whether to approve or disapprove such transaction, the director shall consider the following factors:

(a)(i) The fact that the transaction has been disclosed or made known to the board of directors of the company or a delegated committee of the company which must authorize approval or ratify the transaction by a vote or consent sufficient for the purpose without counting the vote or consent of any interested director or officer; and

(ii) If applicable, the fact of such transaction has been disclosed or made known to the

shareholders entitled to vote and they authorize approval or ratify such transaction by vote or written consent; or

(b)(i) The transaction is fair and reasonable to the company; and

(ii) The transaction is of a nature normally engaged in by the company and the consideration is fair and reasonable.

(7) The Director of Insurance may proceed in a court of competent jurisdiction against a domestic insurance company to reverse or hold invalid a transaction made in violation of subsection (6) of this section unless the transaction was approved pursuant to such subsection.

(8) In addition to other remedies and penalties available under the law of this state, each violation of this section shall be an unfair or deceptive act or practice in the business of insurance subject to sections 44-1522 to 44-1535.

Sec. 60. That section 44-322, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-322. (1) Every insurance company holding a certificate of authority to transact the business of insurance in this state shall file with the director on or before March 1 of each year an annual financial statement for the year ending December 31 immediately preceding on forms prescribed by the director which conform substantially to the forms adopted by the National Association of Insurance Commissioners. Unless the director provides otherwise, the financial statement shall be prepared in accordance with the annual statement instructions and the Accounting Practices and Procedures Manual adopted by the National Association of Insurance Commissioners and shall include the salaries and compensation of the officers and any other information required by the director. Every insurance company subject to this section shall make such other periodic financial filings as the director may reasonably require.

The director shall suspend or shall not issue or renew the certificate of authority of an insurance company until it has complied with the requirements of this subsection and any rules and regulations or orders issued thereunder, except that for good and sufficient cause shown the director may grant a reasonable extension of time within which the financial statement may be filed, in no event to exceed thirty days.

(2) Every insurance company holding a

certificate of authority to transact the business of insurance in this state shall participate in the National Association of Insurance Commissioners Insurance Regulatory Information System, including the payment of all fees and charges of such system, except as exempted by the director. Each participating insurance company shall file with the National Association of Insurance Commissioners on or before March 1 of each year a copy of its annual financial statement along with any additional filings required by the director for the immediately preceding year. The financial statement so filed shall be in the same format and scope as that required by subsection (1) of this section and shall include a signed jurat page and actuarial certification except as exempted by the director. Each participating insurance company shall file with the National Association of Insurance Commissioners any amendments and addendums to the financial statement and annual and quarterly financial statement information in computer readable format as required by the Insurance Regulatory Information System. ~~(1) Every insurance company doing business in this state, unless otherwise provided or excepted in this chapter, must make and file with the Department of Insurance, on or before March 1, of each year, a statement under oath for the year ending December 31 immediately preceding, upon a form to be prescribed and which may be furnished by the department, which form shall at least include the substance of that required by what is known as the convention blank form adopted, and which is amended from year to year by the national association of insurance commissioners, and shall also include the salaries and compensations of the officers and any other information required by the department.~~

~~(2) The department shall not issue any license to any company, either domestic or foreign, until such company has complied with all the provisions of subsection (1) of this section, provided, for good and sufficient cause shown, the department may grant a reasonable extension of time within which such statement may be filed, in no event to exceed thirty days.~~

Sec. 61. That section 44-386, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-386. Nothing in ~~this chapter~~ Chapter 44 shall be so construed as to prevent any number of persons, not to exceed ~~twenty-five~~ two thousand five hundred, who are residents of this state, from making mutual pledges and giving valid obligations to each

other for their own insurance from loss by fire, lightning, tornado, cyclone, windstorms, hail, death, or other cause for which insurance may be obtained under any of the laws of this state. Such association of persons shall in no case insure any property not owned by one of their number~~,~~ and no life except that of their number, nor shall the provisions of ~~sections 44-301 to 44-396~~ Chapter 44, article 3, or the Insurers Investment Act be applicable to such associations of persons except that the Department of Insurance may require such reports as it deems advisable. Such associations of persons shall receive no premiums, shall make no dividends, and shall not ~~nor shall~~ they hire or compensate any agent, solicitors, adjusters, or appraisers. Officers and employees of such association shall be hired by the board of directors. All salaries of such officers and employees shall be approved by the board, but in no case shall such salaries exceed ten dollars per day. No such association of persons shall ever make any levies or collect any money from its members or prospective members~~,~~ except to pay for losses on property or lives insured and such expenses as are necessary and incidental to the operation of such association, except ~~,~~ ~~PROVIDED,~~ that one membership fee of not more than five dollars per person may be charged at the time of entrance for the purpose of providing a fund, which shall not be in excess of one hundred fifty percent of the average monthly disbursement during such calendar year at the end of each calendar year unless specifically approved by the director each year, out of which benefits may be paid pending assessment receipts and for the purpose of paying initial expenses. All fees and receipts shall be debited to the assets of the association and shall be expended as allowable for expenses, salaries, and benefits or distributed as ~~herein~~ provided in this section. No money shall be paid or donated to any organization or to any person except as a benefit or as an allowable salary or expense. All expenses including salaries shall not exceed twenty percent of all assessments, levies, and fees received. No surplus except that in the ~~aforementioned~~ fund described in this section shall be maintained or allowed. Advance payments of assessments shall not be considered as surplus money for purposes of this section. All surplus money except that maintained in the fund and that allowed for expenses and salaries must be distributed to the members, except ~~,~~ ~~PROVIDED,~~ that~~:~~ ~~(1)~~ ~~if~~ if membership in such association is limited to the employees or former employees of a particular

employer, and ~~(2) Such~~ such employer has contributed funds to such association to be used to pay benefits to the members, in the period during which any such surplus fund was accumulated, then upon any distribution of such surplus, other than in payment of expenses, salaries, and benefits, whether upon the order of the Director of Insurance, or otherwise, such distribution shall be equitably divided among the members in good standing on the date of such distribution, and such employer, in proportion to their respective contributions made in the period during which such surplus was accumulated. No such distribution shall be made until approved by the director.

Sec. 62. That section 44-402.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-402.03. (1) Except as may be provided with respect to reserves for guaranteed benefits, amounts allocated to any separate account and accumulations thereon may be invested and reinvested without regard to any requirements or limitations prescribed by the laws of this state governing the investments of life insurance companies and the investments in such separate account or accounts shall not be taken into account in applying investment limitations otherwise applicable to investments of such company.

(2) No investment in such separate accounts or in the domestic life insurance company's general investment account shall be transferred by sale, exchange, substitution, or otherwise from one account to another unless the director approves such transfer or unless the director has not disapproved the application for transfer within thirty days from filing. The application to transfer investments shall be on a form provided by the director.

Sec. 63. That section 44-821, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-821. No domestic assessment association organized after August 24, 1941, shall be authorized to transact the business of health or accident insurance until it ~~shall have~~ has deposited with the Department of Insurance ~~of the State of Nebraska~~ the sum of ten thousand dollars in cash or securities ~~of like value of the kind and character provided by sections 44-309 and 44-310~~ as described in subdivision (4) of section 44-319.01.

Sec. 64. That section 44-2202, Reissue Revised Statutes of Nebraska, 1943, be amended to read

as follows:

44-2202. Before a company may apply to issue variable annuities in this state, it must have an initial amount of capital and surplus, if a stock company, or an amount of surplus, if a mutual company, of at least two million dollars and shall maintain a surplus, if either a stock company or a mutual company, of at least one million five hundred thousand dollars. The ~~provided that the~~ Director of Insurance may make exceptions to this provision if he or she deems it in the public interest to do so. ~~If the applicant is a subsidiary of a Nebraska domestic insurer, the provisions of section 44-310.09, must have previously been complied with.~~ In addition to meeting the ~~aforementioned~~ requirements of this section, a foreign company must be licensed to do a variable annuity or life insurance business in its state of domicile before it may apply to issue variable annuities in this state.

Sec. 65. That section 44-2213, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2213. Any sales, transfers, or exchange of investments made by a domestic company between any of the separate accounts or between any other investment account of the company and one or more of the separate accounts shall be in accordance with section ~~44-310.08~~ 44-402.03, and the provisions or lack of provisions concerning transfers of investments in the laws of foreign companies shall be taken into consideration in admission of a foreign company.

Sec. 66. That section 44-2827.01, Revised Statutes Supplement, 1990, be amended to read as follows:

44-2827.01. (1) Any general acute hospital as defined in subdivision (3) of section 71-2017.01 or a psychiatric or mental hospital as defined in subdivision (7) of such section operated by the Board of Regents of the University of Nebraska may, in addition to the methods of establishing financial responsibility provided in section 44-2827, establish financial responsibility by a risk-loss trust.

(2) In order to establish financial responsibility through the use of a risk-loss trust, the risk-loss trust shall be approved in writing by the director. Such approval shall expire on the last day of April in each year and shall be renewed annually thereafter if the risk-loss trust continues to comply with the requirements of the Nebraska Hospital-Medical Liability Act and any rules and regulations adopted and

promulgated thereunder.

(3) The director shall approve the use of a risk-loss trust to establish financial responsibility if he or she determines from a review of the plan of operation or feasibility study for the risk-loss trust that (a) the risk-loss trust will comply with all of the applicable requirements of the act, (b) the risk-loss trust has a financial plan which provides for adequate funding and adequate reserves to establish and maintain financial responsibility, and (c) the risk-loss trust has a plan of management designed to provide for its competent operation and management.

(4) Any risk-loss trust shall be established and maintained only on an occurrence basis, shall maintain reserves for payment of claims, and shall process and act upon claims in accordance with guidelines acceptable for Nebraska domestic insurance companies. The funds, or any part thereof, of any risk-loss trust may be invested as authorized ~~in Chapter 44, article 3,~~ under the Insurers Investment Act for any domestic property and casualty insurance company.

(5) Any risk-loss trust shall file with the director, on or before March 1 of each year, a financial statement under oath for the year ending December 31 immediately preceding which shall include an actuarial or loss reserve specialist's opinion. The trust shall annually be audited by an independent accountant, and such audit shall be filed with the director.

(6) The director may examine the business affairs, records, and assets of such risk-loss trust to assure that it will be able to establish and maintain financial responsibility. Any examination conducted by the director or his or her authorized representative shall be at the expense of the risk-loss trust.

(7) If the director finds after notice to the Board of Regents of the University of Nebraska and a hearing that the risk-loss trust is not maintaining financial responsibility, he or she may order the board to take such action as is necessary to establish financial responsibility and upon failure by the board to comply therewith may revoke approval of such trust.

(8) If any hospital establishes financial responsibility as provided in subsection (1) of this section, the annual surcharge amount which shall be levied against the board pursuant to section 44-2829 shall be established annually by the director after giving consideration to the following factors:

(a) The surcharge rate for hospitals set by the director pursuant to such section;

(b) The average rates charged by insurers of Nebraska hospitals;

(c) Variations in coverage provisions, liability limits, or deductibles between insurance provided by private insurers and the coverage provided by the risk-loss trust; and

(d) The loss experience of the board.

(9) The director may adopt and promulgate reasonable rules and regulations necessary and proper to carry out this section.

Sec. 67. That section 44-2909, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2909. No association organized under ~~sections 44-2901 to 44-2918~~ the Nebraska Hospital and Physicians Mutual Insurance Association Act shall transact the business of insurance until:

(1) Its articles and bylaws have been approved by the Director of Insurance and the articles filed as required by section 44-2906;

(2) It has filed with the ~~Director of Insurance~~ director acceptable evidence that it has, and ~~shall~~ will maintain, a minimum surplus aggregating at least five hundred thousand dollars in cash, in the investments ~~specified in section 44-309,~~ authorized under the Insurers Investment Act or a letter of credit issued by a Nebraska banking institution in accordance with loan restrictions prescribed by the laws of this state;

(3) All policies, applications, and other forms together with all manuals and rates to be used, have been filed and approved as provided in sections 44-348 and 44-1405;

(4) A certificate of authority has been issued to the association as provided in section 44-303; and

(5) It has received at least five applications for policies in a hospital association or at least two hundred applications for policies in a physicians association.

Sec. 68. That section 44-3106, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-3106. No professional association mutual insurance company shall be issued a certificate of authority to do any business in this state until it has filed with the director acceptable evidence that it has, and ~~shall~~ will maintain, a minimum surplus aggregating at least five hundred thousand dollars in cash, in the investments ~~specified in section~~ 44-309, authorized

under the Insurers Investment Act or a letter of credit issued by a Nebraska banking institution in accordance with loan restrictions prescribed by the laws of this state.

Sec. 69. That section 44-32,137, Revised Statutes Supplement, 1990, be amended to read as follows:

44-32,137. With the exception of investments made in accordance with subdivision (1) of section 44-32,122, the investable funds of a health maintenance organization shall be invested only ~~in securities or other investments permitted by the insurance laws of this state for the investment of assets constituting the legal reserves of life insurance companies or such other securities or investments as the director permits~~ as authorized under the Insurers Investment Act for a domestic life insurance company.

Sec. 70. That section 44-4313, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-4313. The capital, surplus, and other funds, or any part thereof, of any risk management pool may be invested as authorized ~~in Chapter 44, article 3, for any domestic insurance company other than a legal reserve life~~ under the Insurers Investment Act for a domestic property and casualty insurance company.

Sec. 71. That section 44-4830, Revised Statutes Supplement, 1990, as amended by section 80, Legislative Bill 236, Ninety-second Legislature, First Session, 1991, be amended to read as follows:

44-4830. (1) Mutual debts or mutual credits whether arising out of one or more contracts between the insurer and another person in connection with any action or proceeding under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act shall be set off and the balance only shall be allowed or paid except as provided in subsections (2) through (4) of this section and in section 44-4833.

(2) No setoff shall be allowed in favor of any person when:

(a) The obligation of the insurer to the person would not at the date of the filing of a petition for liquidation entitle the person to share as a claimant in the assets of the insurer;

(b) The obligation of the insurer to the person was purchased by or transferred to the person with a view to its being used as a setoff;

(c) The obligation of the insurer is owed to an affiliate of such person or any other entity or

association other than the person;

(d) The obligation of the person is owed to an affiliate of the insurer or any other entity or association other than the insurer;

(e) The obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution; or

(f) The obligation between the person and the insurer arises from business which is both ceded to and assumed from the insurer, except that the rehabilitator may, with regard to such business, allow certain setoffs in rehabilitation if he or she finds the allowance of the setoffs appropriate.

(3) The liquidator shall provide persons that assumed business from the insurer with accounting statements identifying debts which are currently due and payable. Such persons may set off against such debts only mutual credits which are currently due and payable by the insurer to such persons for the period covered by the accounting statement.

(4) A person that ceded business to the insurer may set off debts due the insurer against only those mutual credits which the person has paid or which have been allowed in the insurer's delinquency proceeding.

(5) Notwithstanding the provisions of subsections (2) through (4) of this section, a setoff of sums due on obligations in the nature of those set forth in subdivision (2)(f) of this section shall be allowed for those sums accruing from business written if the contracts were entered into, renewed, or extended with the express written approval of the director, commissioner, or equivalent official of the state of domicile of the now-insolvent insurer, when in his or her judgment it was necessary to provide reinsurance in order to prevent or mitigate a threatened impairment or insolvency of a domiciliary insurer in connection with the exercise of his or her regulatory responsibilities.

(6) The provisions of subsections (2) through (5) of this section shall apply to all contracts entered into, renewed, extended, or amended on or after ~~January~~ July 1, 1992, and to debts or credits arising from any business written after such date pursuant to any contract, including contracts in existence prior to such date, and shall supersede any agreements or contractual provisions which might be construed to enlarge the setoff rights of any person under any contract with the

insurer. For purposes of this subsection, any change in the terms of or consideration for any such contract shall be deemed an amendment of the contract.

Sec. 72. That original sections 21-1339, 21-2108, 44-319.01, 44-320, 44-322, 44-386, 44-402.03, 44-821, 44-2202, 44-2213, 44-2909, 44-3106, and 44-4313, Reissue Revised Statutes of Nebraska, 1943, sections 21-2109, 44-2827.01, and 44-32,137, Revised Statutes Supplement, 1990, and section 44-4830, Revised Statutes Supplement, 1990, as amended by section 80, Legislative Bill 236, Ninety-second Legislature, First Session, 1991, and also sections 44-309 to 44-310.09, 44-311.01 to 44-316, 44-321, 44-397 to 44-399, and 44-824, Reissue Revised Statutes of Nebraska, 1943, are repealed.