

## LEGISLATIVE BILL 273

Approved by the Governor May 27, 1997

Introduced by Landis, 46

AN ACT relating to insurance; to amend sections 44-319.01, 44-5103 to 44-5105, 44-5110, 44-5112, 44-5115, 44-5117, 44-5118, 44-5120, 44-5122, 44-5127 to 44-5129, 44-5131, 44-5132, 44-5134, 44-5137, 44-5138, 44-5141, 44-5144, 44-5149, and 44-5151 to 44-5153, Reissue Revised Statutes of Nebraska; to change and eliminate investment provisions for insurance companies; to harmonize provisions; to repeal the original sections; and to outright repeal sections 44-5130, 44-5136, 44-5146, 44-5147, and 44-5148, Reissue Revised Statutes of Nebraska, and section 44-5133, Revised Statutes Supplement, 1996.

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

Section 1. Section 44-319.01, Reissue Revised Statutes of Nebraska, is amended to read:

44-319.01. 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 authorized under the Insurers Investment Act other than investments authorized under sections 44-5134, 44-5143 to 44-5145, 44-5147 to 44-5149, 44-5150, 44-5152, and 44-5153, 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. 2. Section 44-5103, Reissue Revised Statutes of Nebraska, is amended to read:

44-5103. For purposes of the Insurers Investment Act:

(1) Admitted assets shall mean means 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) Business entity means a sole proprietorship, corporation, limited liability company, association, partnership, limited liability partnership, joint-stock company, joint venture, mutual fund, trust, joint tenancy, or other similar form of business organization, whether organized for profit or not for profit.

~~(2)~~ (3) Clearing corporation shall mean means 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)~~ (4) Custodian bank shall mean means 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)~~ (5) Direct when used in connection with the term obligation shall mean means that the designated obligor is primarily liable on the instrument representing the obligation;

~~(5)~~ (6) Director shall mean means the Director of Insurance;

~~(6)~~ (7) Insurer shall be is defined as provided in section 44-103, and unless the context otherwise requires, insurer shall mean means domestic insurer;

~~(7)~~ (8) Mortgage shall mean means a consensual interest created by a real estate mortgage, a trust deed on real estate, or a similar instrument;

~~(8)~~ (9) Obligation shall mean means a bond, debenture, note, or

other evidence of indebtedness;

(9) (10) Policyholders surplus shall ~~mean~~ means 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~~ also includes the paid-up and issued capital stock;

(11) ~~Securities Valuation Office means the Securities Valuation Office of the National Association of Insurance Commissioners or any successor office established by the National Association of Insurance Commissioners; and~~

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

(11) ~~Unenumerated 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. 3. Section 44-5104, Reissue Revised Statutes of Nebraska, is amended to read:

44-5104. (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 ~~not~~ 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 unless the director notifies such insurer that any of its investments will not be recognized by him or her as an authorized investment for purposes of the act.~~

Sec. 4. Section 44-5105, Reissue Revised Statutes of Nebraska, is amended to read:

44-5105. (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 board of directors shall further determine by formal resolution at least annually whether all investments have been made in accordance with the delegations, standards, limitations, and investment objectives prescribed by the board of directors or a committee of the board of directors charged with the responsibility to direct its investments. 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) ~~The board of directors, after reviewing and assessing the insurer's technical investment and administrative capabilities and expertise, shall adopt a written plan for making investments and for engaging in investment practices. The plan shall specify, unless otherwise authorized by the Director of Insurance, the quality, maturity, and diversification of investments, including investment strategies intended to assure that the investments and investment practices are appropriate for the business conducted by the insurer, its liquidity needs, and its capital and surplus.~~

(3) ~~On no less than a quarterly basis, and more often if deemed appropriate, the board of directors or committee of the board of directors shall:~~

(a) ~~Receive and review a summary report on the insurer's investment portfolio, investment activities, and investment practices engaged in under delegated authority, in order to determine whether the investment activity of the insurer is consistent with its written plan; and~~

(b) ~~Review and revise, as appropriate, the written plan.~~

(4) ~~The board of directors shall require that records of authorizations, approvals or other documentation as the board of directors may require, and reports of any action taken under authority delegated under the written plan shall be made available on a regular basis to the board of directors.~~

(5) ~~The board of directors shall perform its duties in good faith and with that degree of care that ordinarily prudent individuals in like positions would use under similar circumstances.~~

(6) Each insurer shall maintain a record of its investments in a form and manner as prescribed by the director ~~Director of Insurance~~. Such

record shall include an indication by the insurer of the provision of law under which an investment is held.

(7) For purposes of this section, board of directors includes the governing body of an insurer having authority equivalent to that of a board of directors.

Sec. 5. Section 44-5110, Reissue Revised Statutes of Nebraska, is amended to read:

44-5110. (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 44-5109. 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 44-5109 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)~~ (2) of section 44-5112 or subsection (3) of section 44-5138; 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. 6. Section 44-5112, Reissue Revised Statutes of Nebraska, is amended to read:

44-5112. 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 1 designation from the Securities Valuation Office. If the Securities Valuation Office does not rate the investment in question and either service rates but does rate 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 If the Securities Valuation Office does not 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; minimum quality rating of A3 by Moody's Investors Services, Inc., A- by Standard and Poor's Corporation, or the corresponding investment grade rating from any nationally recognized statistical rating organization recognized by the Securities Valuation Office; and

(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 1 or 2 designation from the Securities Valuation Office. If the Securities Valuation Office does not rate the investment in question and either service rates but does rate 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 the Securities Valuation Office does not 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 minimum quality rating of Baa3 by Moody's Investors Services, Inc., BBB- by Standard and Poor's Corporation, or the corresponding investment grade rating from any nationally recognized statistical rating organization recognized by the Securities Valuation Office. If the obligor of an investment is authorized by, established by, or incorporated under the laws of Canada or any province thereof and the Securities Valuation Office does 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. 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. 7. Section 44-5115, Reissue Revised Statutes of Nebraska, is amended to read:

44-5115. (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 44-5123, 44-5125, 44-5142, 44-5150, and 44-5153;

(b) Investments authorized under section sections 44-5124, 44-5126 to 44-5129, and 44-5132 if collateralized by obligations or 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 44-5106; and

(d) Real estate held pursuant to subsection (2) or (3) of section 44-5144.

(3)(a) An insurer's investments authorized under section 44-5124 or 44-5126 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 44-5132 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 44-5124 or 44-5126 in any one agency or instrumentality of the United States or Canada and the insurer's investments authorized under section 44-5132 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, limited liability company, syndicate, trust, society, or other legal entity.

Sec. 8. Section 44-5117, Reissue Revised Statutes of Nebraska, is amended to read:

44-5117. An insurer may hold an investment authorized under more than one provision of the Insurers Investment Act under the provision of its choice except as otherwise expressly provided by law. 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. 9. Section 44-5118, Reissue Revised Statutes of Nebraska, is amended to read:

44-5118. All cash payments of principal, interest, premiums, dividends, and other payments cash consideration 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 44-5137.

Sec. 10. Section 44-5120, Reissue Revised Statutes of Nebraska, is amended to read:

44-5120. (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. Any investment made by an insurer with cash received as collateral for loaned securities shall be made in the same kinds, classes and investment grades as those authorized under the Insurers Investment Act. The securities provided as collateral shall have a market value when the loan is made of at least one hundred two percent of the market value of the loaned securities;

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

(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 for any loan outstanding to a borrower 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 an 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 for that loan.

(2) If at the close of any business day the market value of the collateral for all loans outstanding to a borrower 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 an 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 for all loans to that borrower.

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

~~(3)~~ (4) An insurer shall effect securities lending only through the services of a custodian bank.

~~(4)~~ (5) An insurer's investments authorized under this section shall not exceed ten percent of its admitted assets.

Sec. 11. Section 44-5122, Reissue Revised Statutes of Nebraska, is amended to read:

44-5122. Any investment held by an insurer on September 6, 1991 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. 12. Section 44-5127, Reissue Revised Statutes of Nebraska, is amended to read:

44-5127. 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)~~ (2) section 44-5112.

Sec. 13. Section 44-5128, Reissue Revised Statutes of Nebraska, is amended to read:

44-5128. 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)~~ (2) of section 44-5112.

Sec. 14. Section 44-5129, Reissue Revised Statutes of Nebraska, is amended to read:

44-5129. An insurer may invest in obligations issued, assumed, or guaranteed by any corporation of a business entity 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) (2) of section 44-5112.

Sec. 15. Section 44-5131, Reissue Revised Statutes of Nebraska, is amended to read:

44-5131. An insurer may invest in obligations issued, assumed, or guaranteed by of 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) (1) of section 44-5112. An insurer's investments authorized under this section shall not exceed twenty percent of its admitted assets.

Sec. 16. Section 44-5132, Reissue Revised Statutes of Nebraska, is amended to read:

44-5132. (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, a security or other instrument, excluding a mutual fund, evidencing an interest in or the right to receive payments from, or payable from distributions on, an asset, a pool of assets, or specifically divisible cash flows which are legally transferred to a special purpose bankruptcy-remote business entity created or existing under the laws of the United States or Canada or any state or province thereof, on the following conditions:

(a) The business entity is established solely for the purpose of acquiring specific types of assets or rights to cash flows, issuing securities and other instruments representing an interest in or right to receive cash flows from those assets or rights, and engaging in activities required to service the assets or rights and any credit enhancement or support features held by the business entity; and

(b) The assets of the business entity consist solely of interest-bearing obligations or other contractual obligations representing the right to receive payment from the cash flows from the assets or rights. However, the existence of credit enhancements, such as letters of credit or guarantees, or other support features, shall not cause a security or other instrument to be an unauthorized investment under this section.

(2) Investments in principal-only or interest-only mortgage-backed securities or other instruments 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 44-5112.

Sec. 17. Section 44-5134, Reissue Revised Statutes of Nebraska, is amended to read:

44-5134. (1) An insurer may, in addition to any investment authorized under sections section 44-5132, and 44-5133; 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. 18. Section 44-5137, Reissue Revised Statutes of Nebraska, is amended to read:

44-5137. (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 or Canada, which are substantially of the same kinds, and classes, and investment grades as those authorized for investment under the Insurers Investment Act.

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

(a) An insurer's investments authorized under subsection (1) of this section in any one foreign jurisdiction whose sovereign debt has a 1 designation from the Securities Valuation Office shall not exceed ten percent of the insurer's admitted assets;

(b) An insurer's investments authorized under subsection (1) of this section in any one foreign jurisdiction whose sovereign debt has a 2 or 3 designation from the Securities Valuation Office shall not exceed five percent of the insurer's admitted assets;

(c) An insurer's investments authorized under subsection (1) of this section shall not include investments in any one foreign jurisdiction whose sovereign debt has a 4, 5, or 6 designation from the Securities Valuation Office;

(d) An insurer's investments authorized under subsection (1) of this section denominated in any one foreign currency shall not exceed two percent of the insurer's admitted assets; and

(e) An insurer's investments authorized under subsection (1) of this section denominated in foreign currencies, in the aggregate, shall not exceed five percent of the insurer's admitted assets.

(3) An Except for investments authorized under sections 44-5125 to 44-5130, an insurer's investments authorized under subsection (1) of this section shall not exceed, in the aggregate, fifteen five percent of its admitted assets.

(4) (4) 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, and classes, and investment grades as those authorized for investment under the act.

(5) (5) An insurer's investments authorized under subsection (4) (4) 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.

(6) Any investment in debt obligations authorized under this section shall have a minimum quality rating as described in subdivision (2) of section 44-5112.

(7) An insurer's investments made under this section shall be aggregated with investments of the same kinds and classes made under the Insurers Investment Act except section 44-5153 for purposes of determining compliance with the limitations contained in other sections.

Sec. 19. Section 44-5138, Reissue Revised Statutes of Nebraska, is amended to read:

44-5138. (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 44-5123 or 44-5124; and

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

~~(4) 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) and (b) and (e) 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 44-5112 1 or 2 designation from the Securities Valuation Office. If the Securities Valuation Office does not rate the investment in question but does rate 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 Securities Valuation Office does not 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 minimum quality rating of P-2 by Moody's Investors Service, Inc., A-2 by Standard and Poor's Corporation, or the corresponding investment grade rating from any nationally recognized statistical rating organization recognized by the Securities Valuation Office. If the obligor of an investment is authorized by, established by, or incorporated under the laws of Canada or any province thereof and the Securities Valuation Office does not rate the investment in question, the minimum quality rating shall be R-2 by the Dominion Bond Rating Service, A-1 by the Canadian Bond Rating Service, or the corresponding rating of any successor organization approved by the director.

Sec. 20. Section 44-5141, Reissue Revised Statutes of Nebraska, is amended to read:

44-5141. (1) An insurer may invest in the common stock or rights to purchase or sell 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)(a) An insurer may invest in equity interests or rights to purchase or sell equity interests in business entities, other than general partnerships, created or existing under the laws of the United States or Canada or any state or province thereof.

(b)(i) A life insurer's investments authorized under this subsection shall not exceed fifty percent of its policyholders surplus.

(ii) A life insurer shall not invest under this subsection in any investment which the life insurer may invest in under section 44-5140 or 44-5144 or subsection (1) of this section. 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 invest in more than five ten percent of the total issued shares of stock of any corporation other than an insurer equity interests in any business entity 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. 21. Section 44-5144, Reissue Revised Statutes of Nebraska, is amended to read:

44-5144. (1) An insurer may acquire and hold unencumbered real estate or certificates evidencing participation with other investors, either directly or through partnership or limited liability company 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 44-5143 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.

For purposes of this subsection, unencumbered real estate means real

estate in which other interests may exist which if enforced would not result in the forfeiture of the insurer's interest.

(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 44-5143, in the aggregate, shall not exceed fifty percent of its admitted assets.

Sec. 22. Section 44-5149, Reissue Revised Statutes of Nebraska, is amended to read:

44-5149. (i) 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 44-5137;

(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:

(1) An insurer may use derivative instruments in hedging transactions if:

(a) The aggregate statement value of options, caps, floors, and warrants not attached to any financial instrument and used in hedging transactions does not exceed the lesser of seven and one-half percent of the insurer's admitted assets or seventy-five percent of the insurer's policyholders surplus;

(b) The aggregate statement value of options, caps, and floors written in hedging transactions does not exceed the lesser of three percent of the insurer's admitted assets or thirty percent of the insurer's policyholders surplus; and

(c) The aggregate potential exposure of collars, swaps, forwards, and futures used in hedging transactions does not exceed the lesser of six and one-half percent of the insurer's admitted assets or sixty-five percent of the insurer's policyholders surplus.

(2)(a) An insurer may use derivative instruments in income-generation transactions by selling:

(i) Covered call options on non-callable fixed income securities or callable fixed income securities if the option expires by its terms prior to the end of the non-callable period;

(ii) Covered call options on equity securities if the insurer holds in its portfolio, or can immediately acquire through the exercise of options, warrants, or conversion rights already owned, the equity securities subject to call during the complete term of the call option sold;

(iii) Covered puts on investments that the insurer is permitted to acquire under the Insurers Investment Act if the insurer has escrowed, or entered into a custodian agreement segregating, cash or cash equivalents with a market value equal to the amount of its purchase obligations under that put during the complete term of the put option sold; and

(iv) Covered caps or floors if the insurer holds in its portfolio the investments generating the cash flow to make the required payments under such caps or floors during the complete term that the cap or floor is outstanding.

(b) An insurer may enter into income-generation transactions under this subsection if the aggregate statement value of the fixed income assets that are subject to call or that generate the cash flows for payments under the caps or floors, plus the face value of fixed income securities underlying any derivative instrument subject to call, does not exceed the lesser of ten percent of the insurer's admitted assets or one hundred percent of the insurer's policyholders surplus.

(3) An insurer shall demonstrate to the director upon request the intended hedging or income-generation characteristics and the ongoing effectiveness of the derivative transaction or combination of the transactions through cash flow testing or other appropriate analysis.

(4) An insurer shall include all counterparty exposure amounts in determining compliance with the limitations in section 44-5115.

(5) The director may approve additional transactions involving the use of derivative instruments pursuant to rules and regulations adopted and promulgated by the director.

(6) For purposes of this section:

(a) Derivative instrument means an agreement, option, instrument, or a series or combination thereof:

(i) To make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests or to make a cash settlement in lieu thereof; or

(ii) That has a price, performance, value, or cash flow based primarily upon the actual or expected price, level, performance, value, or cash flow of one or more underlying interests.

Derivative instrument includes, and is limited to, options, warrants used in a hedging transaction and not attached to another financial instrument, caps, floors, collars, swaps, forwards, and futures. Derivative instrument does not include investments authorized under any other section of the Insurers Investment Act;

(b) Hedging transaction means a derivative transaction which is entered into and maintained to reduce:

(i) The risk of a change in value, yield, price, cash flow, or quantity of assets or liabilities which the insurer has acquired or incurred or anticipates acquiring or incurring; or

(ii) The currency exchange rate risk or the degree of exposure as to assets or liabilities which an insurer has acquired or incurred or anticipates acquiring or incurring; and

(c) Income-generation transaction means a derivative transaction involving the writing of covered call options, covered put options, covered caps, or covered floors that is intended to generate income or enhance return.

Sec. 23. Section 44-5151, Reissue Revised Statutes of Nebraska, is amended to read:

44-5151. (1) An insurer may hold investments not otherwise authorized under the Insurers Investment Act if such investments:

(1) (a) Have minimum quality ratings as described in subdivision (1) (2) of section 44-5112; and

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

(2) Investments authorized under any other section of the Insurers Investment Act, except section 44-5153, shall not be authorized investments under this section.

Sec. 24. Section 44-5152, Reissue Revised Statutes of Nebraska, is amended to read:

44-5152. (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. 25. Section 44-5153, Reissue Revised Statutes of Nebraska, is amended to read:

44-5153. (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)(a) Notwithstanding the provisions of subdivision (1)(a)(i) of this section, 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 ten percent of its admitted assets.

(b) 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.

(5) Derivative instruments described in subsections (1) and (2) of section 44-5149 shall not be authorized investments under this section.

Sec. 26. Original sections 44-319.01, 44-5103 to 44-5105, 44-5110, 44-5112, 44-5115, 44-5117, 44-5118, 44-5120, 44-5122, 44-5127 to 44-5129, 44-5131, 44-5132, 44-5134, 44-5137, 44-5138, 44-5141, 44-5144, 44-5149, and 44-5151 to 44-5153, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 27. The following sections are outright repealed: Sections 44-5130, 44-5136, 44-5146, 44-5147, and 44-5148, Reissue Revised Statutes of Nebraska, and section 44-5133, Revised Statutes Supplement, 1996.