

1                                   **INSURANCE RELATED INVESTMENT**

2   **AMENDMENTS**

3   2006 GENERAL SESSION

4   STATE OF UTAH

5   **Chief Sponsor: James A. Dunnigan**

6   Senate Sponsor: Curtis S. Bramble

---

---

7

8                   **LONG TITLE**

9                   **General Description:**

10                   This bill modifies the Insurance Code related to investments.

11                   **Highlighted Provisions:**

12                   This bill:

- 13                   ▶ modifies the power to hold property in other than an insurer's own name including:
  - 14                   • enforcement of these provisions; and
  - 15                   • treatment of securities kept in violation of the provisions;
- 16                   ▶ expands the permitted classes of investment;
- 17                   ▶ modifies investment limitations; and
- 18                   ▶ makes technical changes.

19                   **Monies Appropriated in this Bill:**

20                   None

21                   **Other Special Clauses:**

22                   None

23                   **Utah Code Sections Affected:**

24                   AMENDS:

25                   **31A-4-108**, as last amended by Chapters 60 and 344, Laws of Utah 1995

26                   **31A-18-105**, as last amended by Chapter 116, Laws of Utah 2001

27                   **31A-18-106**, as last amended by Chapter 90, Laws of Utah 2004

---

---

28

29                   *Be it enacted by the Legislature of the state of Utah:*

30 Section 1. Section 31A-4-108 is amended to read:

31 **31A-4-108. Power to hold property in other than own name.**

32 (1) An insurer shall hold all investments and deposits of its funds in its own name  
33 except:

34 (a) securities;

35 (i) kept under a custodial agreement or trust arrangement with one of the following  
36 approved by the commissioner:

37 (A) a bank~~[-];~~;

38 (B) a securities firm's trust company~~[-or];~~;

39 (C) a trust company ~~[approved by the commissioner, which];~~ or

40 (D) a brokerage firm; and

41 (ii) that may be issued in the name of a nominee of the;

42 (A) bank~~[-];~~;

43 (B) securities firm's trust company~~[-or];~~;

44 (C) trust company; ~~[and] or~~

45 (D) brokerage firm; and

46 (b) securities that may be acquired and held in bearer form.

47 (2) ~~[The]~~ An insurer shall take steps which the commissioner reasonably prescribes by  
48 rule or order to:

49 (a) safeguard the securities described in Subsection (1); and ~~[to]~~

50 (b) ensure that ~~[they]~~ the securities are not loaned to other insurers, affiliated or not, to  
51 mislead the commissioner about the true financial condition of either the lending or the  
52 borrowing insurer.

53 (3) (a) If the department finds that an insurer is in violation of this section, the insurer  
54 is subject to:

55 (i) a fine;

56 (ii) suspension of a license;

57 (iii) revocation of a license;

58 (iv) another penalty permitted by Section 31A-2-308; or

59 (v) any combination of Subsections (3)(a)(i) through (iv).

60 (b) An insurer may not provide for the custody of the insurer's securities except as  
61 granted by this section.

62 (c) Securities of an insurer kept under a custodial agreement or trust arrangement in  
63 violation of this section shall be disregarded in:

64 (i) determining the financial condition of the insurer; or

65 (ii) reporting the financial condition of the insurer.

66 Section 2. Section **31A-18-105** is amended to read:

67 **31A-18-105. Permitted classes of investments.**

68 The following classes of investment may be counted for the purposes specified under  
69 Chapter 17, Part 6, Risk-Based Capital:

70 (1) bonds or other evidences of indebtedness of:

71 (a) (i) governmental units in the United States or Canada;

72 (ii) instrumentalities of the governmental units described in Subsection (1)(a)(i); or

73 (iii) private corporations domiciled in the United States; and

74 (b) including demand deposits and certificates of deposits in solvent banks and savings  
75 and loan institutions;

76 (2) equipment trust obligations or certificates that are adequately secured instruments  
77 evidencing an interest in transportation equipment that is located wholly or in part within the  
78 United States, with a right to receive determined portions of the rental, or to purchase other  
79 fixed obligatory payments for the use or purchase of the transportation equipment;

80 (3) loans secured by:

81 (a) mortgages;

82 (b) trust deeds; or

83 (c) other statutorily authorized types of security interests in real estate located in the  
84 United States;

85 (4) loans secured by pledged securities or evidences of debt eligible for investment

86 under this section;

87 (5) preferred stocks of United States corporations;

88 (6) (a) common stocks of United States corporations; or

89 (b) American depository receipts if traded on one of the following exchanges:

90 (i) New York;

91 (ii) American; or

92 (iii) NASDAQ;

93 (7) real estate which is used as the home office or branch office of the insurer;

94 (8) real estate in the United States which produces substantial income;

95 (9) loans upon the security of the insurer's own policies in amounts that are adequately  
96 secured by the policies and that do not exceed the surrender value of the policies;

97 (10) financial futures contracts used for hedging and not for speculation, as approved  
98 under rules adopted by the commissioner;

99 (11) investments in foreign securities of the classes permitted under this section as  
100 required for compliance with Section 31A-18-103;

101 (12) investments permitted under Subsection 31A-18-102(2); [~~and~~]

102 (13) American depository receipts not traded on one of the following exchanges:

103 (a) New York;

104 (b) American; or

105 (c) NASDAQ;

106 (14) investments other than those listed in Subsections (1) through (13) that are

107 determined to be admitted in the Accounting Practices and Procedures Manual, published by  
108 the National Association of Insurance Commissioners; and

109 [~~(13)~~] (15) other investments as the commissioner authorizes by rule.

110 Section 3. Section **31A-18-106** is amended to read:

111 **31A-18-106. Investment limitations generally applicable.**

112 (1) The investment limitations listed in Subsections (1)(a) through [~~(t)~~] (m) apply to  
113 each insurer.

114 (a) (i) Except as provided in Subsection (1)(a)(ii), for investments authorized under  
115 Subsection 31A-18-105(1) that are not amortizable under applicable valuation rules, the  
116 limitation is 5% of assets.

117 (ii) The limitation of Subsection (1)(a)(i) and the limitation of Subsection (2) do not  
118 apply to demand deposits and certificates of deposit in solvent banks and savings and loan  
119 institutions to the extent they are insured by a federal deposit insurance agency.

120 (b) For investments authorized under Subsection 31A-18-105(2), the limitation is 10%  
121 of assets.

122 (c) For investments authorized under Subsection 31A-18-105(3), the limitation is 50%  
123 of assets.

124 (d) For investments authorized under Subsection 31A-18-105(4), that are considered to  
125 be investments in kinds of securities or evidences of debt pledged, those investments are  
126 subject to the class limitations applicable to the pledged securities or evidences of debt.

127 (e) For investments authorized under Subsection 31A-18-105(5), the limitation is 35%  
128 of assets.

129 (f) For investments authorized under Subsection 31A-18-105(6), the limitation is:

130 (i) 20% of assets for life insurers; and

131 (ii) 50% of assets for nonlife insurers.

132 (g) For investments authorized under Subsection 31A-18-105(7), the limitation is:

133 (i) 5% of assets~~[, except as to]; or~~

134 (ii) for insurers organized and operating under Chapter 7, Nonprofit Health Service  
135 Insurance Corporations, ~~[in which case the limitation is]~~ 25% of assets.

136 (h) For investments authorized under Subsection 31A-18-105(8), the limitation is:

137 (i) 20% of assets, inclusive of home office and branch office properties~~[, except as to];~~

138 or

139 (ii) for insurers organized and operating under Chapter 7, Nonprofit Health Service  
140 Insurance Corporations, ~~[in which case the limitation is]~~ 35% of assets, inclusive of home  
141 office and branch office properties.

142 (i) For investments authorized under Subsection 31A-18-105(10), the limitation is 1%  
143 of assets.

144 (j) For investments authorized under Subsection 31A-18-105(11), the limitation is the  
145 greater of that permitted or required for compliance with Section 31A-18-103.

146 (k) Except as provided in Subsection (1)(l), an insurer's investments in subsidiaries is  
147 limited to 50% of the insurer's total adjusted capital. Investments by an insurer in its  
148 subsidiaries includes:

- 149 (i) the insurer's loans, advances, and contributions to its subsidiaries; and
- 150 (ii) the insurer's holding of bonds, notes, and stocks of its subsidiaries are included.

151 (l) Under a plan of merger approved by the commissioner, the commissioner may  
152 allow an insurer any portion of its assets invested in an insurance subsidiary. The approved  
153 plan of merger shall require the acquiring insurer to conform its accounting for investments in  
154 subsidiaries to Subsection (1)(k) within a specified period that may not exceed five years.

155 (m) For investments authorized under Subsections 31A-18-105(13) and (14), the  
156 aggregate limitation is 10% of assets.

157 (2) The limits on investments listed in Subsections (2)(a) through (e) apply to each  
158 insurer.

159 (a) For all investments in a single entity, its affiliates, and subsidiaries, the limitation is  
160 10% of assets, except that the limit imposed by this Subsection (2)(a) does not apply to:

- 161 (i) investments in the government of the United States or its agencies;
- 162 (ii) investments guaranteed by the government of the United States; or
- 163 (iii) investments in the insurer's insurance subsidiaries.

164 (b) Investments authorized by Subsection 31A-18-105(3) shall comply with the  
165 requirements listed in this Subsection (2)(b).

166 (i) (A) Except as provided in this Subsection (2)(b)(i), the amount of any loan secured  
167 by a mortgage or deed of trust may not exceed 80% of the value of the real estate interest  
168 mortgaged, unless the excess over 80%:

169 (I) is insured or guaranteed by the United States, any state of the United States, any

170 instrumentality, agency, or political subdivision of the United States, any of its states, or a  
171 combination of any of these; or

172 (II) insured by an insurer approved by the commissioner and qualified to insure that  
173 type of risk in this state.

174 (B) Mortgage loans representing purchase money mortgages acquired from the sale of  
175 real estate are not subject to the limitation of Subsection (2)(b)(i)(A).

176 (ii) Subject to Subsection (2)(b)(v), loans or evidences of debt secured by real estate  
177 may only be secured by:

178 (A) unencumbered real property[;] that is located in the United States; or

179 (B) an unencumbered interest in real property that is located in the United States.

180 (iii) Evidence of debt secured by first mortgages or deeds of trust upon leasehold  
181 estates shall require that:

182 (A) the leasehold estate exceed the maturity of the loan by not less than 10% of the  
183 lease term;

184 (B) the real estate not be otherwise encumbered; and

185 (C) the mortgagee is entitled to be subrogated to all rights under the leasehold.

186 (iv) Subject to Subsection (2)(b)(v):

187 (A) participation in any mortgage loan must:

188 (I) be senior to other participants; and

189 (II) give the holder substantially the rights of a first mortgagee; or

190 (B) the interest of the insurer in the evidence of indebtedness must be of equal priority,  
191 to the extent of the interest, with other interests in the real property.

192 (v) A fee simple or leasehold real estate or any interest in either of them is not  
193 considered to be encumbered within the meaning of this chapter by reason of any prior  
194 mortgage or trust deed held or assumed by the insurer as a lien on the property, if:

195 (A) the total of the mortgages or trust deeds held does not exceed 70% of the value of  
196 the property; and

197 (B) the security created by the prior mortgage or trust deed is a first lien.

198 (c) Loans permitted under Subsection 31A-18-105(4) may not exceed 75% of the  
199 market value of the collateral pledged, except that loans upon the pledge of United States  
200 government bonds may be equal to the market values of the pledge.

201 (d) For an equity interest in a single real estate property authorized under Subsection  
202 31A-18-105(8), the limitation is 5% of assets.

203 (e) Investments authorized under Subsection 31A-18-105(10) shall be in connection  
204 with potential changes in the value of specifically identified:

- 205 (i) assets which the insurer owns; or
- 206 (ii) liabilities which the insurer has incurred.

207 (3) The restrictions on investments listed in Subsections (3)(a) and (b) apply to each  
208 insurer.

209 (a) Except for financial futures contracts and real property acquired and occupied by  
210 the insurer for home and branch office purposes, a security or other investment is not eligible  
211 for purchase or acquisition under this chapter unless it is:

- 212 (i) interest bearing or income paying; and
- 213 (ii) not then in default.
- 214 (b) A security is not eligible for purchase at a price above its market value.

215 (4) Computation of percentage limitations under this section:

216 (a) is based only upon the insurer's total qualified invested assets described in Section  
217 31A-18-105 and this section, as these assets are valued under Section 31A-17-401; and

218 (b) excludes investments permitted under Section 31A-18-108 and Subsections  
219 31A-17-203(2) and (3).

220 (5) An insurer may not make an investment that, because the investment does not  
221 conform to Section 31A-18-105 and this section, has the result of rendering the insurer, under  
222 Chapter 17, Part 6, Risk-Based Capital, subject to proceedings under Chapter 27, Insurers  
223 Rehabilitation and Liquidation.

224 (6) A pattern of persistent deviation from the investment diversification standards set  
225 forth in Section 31A-18-105 and this section may be grounds for a finding that the person or



226 persons with authority to make the insurer's investment decisions are "incompetent" as used in  
227 Subsection 31A-5-410(3).

228 (7) Section 77r-1 of the Secondary Mortgage Market Enhancement Act of 1984 does  
229 not apply to the purchase, holding, investment, or valuation limitations of assets of insurance  
230 companies subject to this chapter.