

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



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

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

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

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

(a) securities;

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

(A) a bank[;];

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

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

(D) a brokerage firm; and

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

(A) bank[;];

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

(C) trust company; [and] or

(D) brokerage firm; and

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

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

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

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

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

(i) a fine;

(ii) suspension of a license;

(iii) revocation of a license;

(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 [~~(f)~~] (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.

Legislative Review Note
as of 11-9-05 2:48 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-21-05 12:58 PM

The Business and Labor Interim Committee recommended this bill.