

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 957

Introduced by Flood, 19.

Read first time January 11, 2022

Committee:

1 A BILL FOR AN ACT relating to the Insurers Investment Act; to amend
2 sections 44-5103, 44-5105, 44-5120, 44-5120.01, 44-5132, 44-5137,
3 44-5139, 44-5141, 44-5143, 44-5144, 44-5149, and 44-5153, Reissue
4 Revised Statutes of Nebraska; to provide, change, and eliminate
5 definitions; to change provisions relating to investments; to
6 harmonize provisions; and to repeal the original sections.

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

1 Section 1. Section 44-5103, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 44-5103 For purposes of the Insurers Investment Act:

4 (1) Admitted assets means the investments authorized under the act
5 and stated at values at which they are permitted to be reported in the
6 insurer's financial statement filed under section 44-322, except that
7 admitted assets does not include assets of separate accounts, the
8 investments of which are not subject to the act;

9 (2) Agent means a national bank, state bank, trust company, or
10 broker-dealer that maintains an account in its name in a clearing
11 corporation or that is a member of the Federal Reserve System and through
12 which a custodian participates in a clearing corporation including the
13 Treasury/Reserve Automated Debt Entry Securities System and Treasury
14 Direct system, except that with respect to securities issued by
15 institutions organized or existing under the laws of a foreign country or
16 securities used to meet deposit requirements pursuant to the laws of a
17 foreign country as a condition of doing business therein, agent may
18 include a corporation that is organized or existing under the laws of a
19 foreign country and that is legally qualified under those laws to accept
20 custody of securities;

21 (3) Business entity means a sole proprietorship, corporation,
22 limited liability company, association, partnership, limited liability
23 partnership, joint-stock company, joint venture, mutual fund, trust,
24 joint tenancy, or other similar form of business organization, whether
25 organized for profit or not for profit;

26 (4) Clearing corporation means a clearing corporation as defined in
27 subdivision (a)(5) of section 8-102, Uniform Commercial Code, that is
28 organized for the purpose of effecting transactions in securities by
29 computerized book-entry, except that with respect to securities issued by
30 institutions organized or existing under the laws of a foreign country or
31 securities used to meet the deposit requirements pursuant to the laws of

1 a foreign country as a condition of doing business therein, clearing
2 corporation may include a corporation that is organized or existing under
3 the laws of a foreign country and which is legally qualified under those
4 laws to effect transactions in securities by computerized book-entry.
5 Clearing corporation also includes Treasury/Reserve Automated Debt Entry
6 Securities System and Treasury Direct system;

7 (5) Custodian means:

8 (a) A national bank, state bank, Federal Home Loan Bank, or trust
9 company that shall at all times during which it acts as a custodian
10 pursuant to the Insurers Investment Act be no less than adequately
11 capitalized as determined by the standards adopted by the regulator
12 charged with establishing such standards and assessing the solvency of
13 such institutions and that is regulated by federal or state banking laws
14 or the Federal Home Loan Bank Act or is a member of the Federal Reserve
15 System and that is legally qualified to accept custody of securities in
16 accordance with the standards set forth below, except that with respect
17 to securities issued by institutions organized or existing under the laws
18 of a foreign country, or securities used to meet the deposit requirements
19 pursuant to the laws of a foreign country as a condition of doing
20 business therein, custodian may include a bank or trust company
21 incorporated or organized under the laws of a country other than the
22 United States that is regulated as such by that country's government or
23 an agency thereof that shall at all times during which it acts as a
24 custodian pursuant to the Insurers Investment Act be no less than
25 adequately capitalized as determined by the standards adopted by
26 international banking authorities and that is legally qualified to accept
27 custody of securities; or

28 (b) A broker-dealer that shall be registered with and subject to
29 jurisdiction of the Securities and Exchange Commission, maintains
30 membership in the Securities Investor Protection Corporation, and has a
31 tangible net worth equal to or greater than two hundred fifty million

1 dollars;

2 (6) Custodied securities means securities held by the custodian or
3 its agent or in a clearing corporation, including the Treasury/Reserve
4 Automated Debt Entry Securities System and Treasury Direct system;

5 (7) Direct when used in connection with the term obligation means
6 that the designated obligor is primarily liable on the instrument
7 representing the obligation;

8 (8) Director means the Director of Insurance;

9 (9) Insurer is defined as provided in section 44-103, and unless the
10 context otherwise requires, insurer means domestic insurer;

11 (10) Mortgage means a consensual interest created by a real estate
12 mortgage, a trust deed on real estate, or a similar instrument;

13 (11) Obligation means a bond, debenture, note, or other evidence of
14 indebtedness or a participation, certificate, or other evidence of an
15 interest in any of the foregoing;

16 (12) Policyholders surplus means the amount obtained by subtracting
17 from the admitted assets (a) actual liabilities and (b) any and all
18 reserves which by law must be maintained. In the case of a stock insurer,
19 the policyholders surplus also includes the paid-up and issued capital
20 stock;

21 (13) Primary credit source means the credit source to which an
22 insurer looks for payment as to an investment and against which an
23 insurer has a claim for full payment;

24 (14) ~~(13)~~ Securities Valuation Office means the Securities Valuation
25 Office of the National Association of Insurance Commissioners or any
26 successor office established by the National Association of Insurance
27 Commissioners;

28 (15) ~~(14)~~ Security certificate has the same meaning as defined in
29 subdivision (a)(16) of section 8-102, Uniform Commercial Code;

30 (16) ~~(15)~~ State means any state of the United States, the District
31 of Columbia, or any territory organized by Congress;

1 (17) ~~(16)~~ Tangible net worth means shareholders equity, less
2 intangible assets, as reported in the broker-dealer's most recent Annual
3 or Transition Report pursuant to section 13 or 15(d) of the Securities
4 Exchange Act of 1934, S.E.C. Form 10-K, filed with the Securities and
5 Exchange Commission; and

6 (18) ~~(17)~~ Treasury/Reserve Automated Debt Entry Securities System
7 and Treasury Direct system mean the book-entry securities systems
8 established pursuant to 5 U.S.C. 301, 12 U.S.C. 391, and 31 U.S.C. 3101
9 et seq. The operation of the systems are subject to 31 C.F.R. part 357 et
10 seq.

11 Sec. 2. Section 44-5105, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 44-5105 (1) An insurer shall not make any investment, sale, loan, or
14 exchange, except loans on its own policies or contracts, unless
15 authorized, approved, or ratified by a majority of the members of the
16 board of directors or by a committee of its members charged by the board
17 of directors or bylaws with the duty of making such investment, sale,
18 loan, or exchange. The board of directors shall further determine by
19 formal resolution at least annually whether all investments have been
20 made in accordance with the delegations, standards, limitations, and
21 investment objectives prescribed by the board of directors or a committee
22 of the board of directors charged with the responsibility to direct its
23 investments.

24 (2) The board of directors, after reviewing and assessing the
25 insurer's technical investment and administrative capabilities and
26 expertise, shall adopt a written plan for making investments and for
27 engaging in investment practices. The plan shall specify, unless
28 otherwise authorized by the Director of Insurance, the quality, maturity,
29 and diversification of investments, including investment strategies
30 intended to assure that the investments and investment practices are
31 appropriate for the business conducted by the insurer, its liquidity

1 needs, and its capital and surplus. At least annually, the board of
2 directors or a committee of the board of directors shall review and
3 revise, as appropriate, the written plan.

4 (3) On no less than a quarterly basis, and more often if deemed
5 appropriate, the board of directors or committee of the board of
6 directors shall receive ~~:(a) Receive~~ and review a summary report on the
7 insurer's investment portfolio, investment activities, and investment
8 practices engaged in under delegated authority, in order to determine
9 whether the investment activity of the insurer is consistent with its
10 written plan. ~~;~~ ~~and~~

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

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

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

20 (6) Each insurer shall maintain a record of its investments in a
21 form and manner as prescribed by the Director of Insurance. Such record
22 shall include an indication by the insurer of the provision of law under
23 which an investment is held.

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

27 Sec. 3. Section 44-5120, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 44-5120 (1) An insurer may lend its securities if:

30 (a) The securities are created or existing under the laws of the
31 United States and, simultaneously with the delivery of the loaned

1 securities, the insurer receives collateral from the borrower consisting
2 of cash or securities backed by the full faith and credit of the United
3 States or an agency or instrumentality of the United States, except that
4 any securities provided as collateral shall not be of lesser quality than
5 the quality of the loaned securities. Any investment made by an insurer
6 with cash received as collateral for loaned securities shall be made in
7 the same kinds, classes, and investment grades as those authorized under
8 the Insurers Investment Act and in a manner that recognizes the liquidity
9 needs of the transaction or is used by the insurer for its general
10 corporate purposes. The securities provided as collateral shall have a
11 market value when the loan is made of at least one hundred two percent of
12 the market value of the loaned securities;

13 (b) The securities are created or existing under the laws of Canada
14 or are securities described in section 44-5137 and, simultaneously with
15 the delivery of the loaned securities, the insurer receives collateral
16 from the borrower consisting of cash or securities backed by the full
17 faith and credit of the foreign country, except that any securities
18 provided as collateral shall not be of lesser quality than the quality of
19 the loaned securities. Any investment made by an insurer with cash
20 received as collateral for loaned securities shall be made in the same
21 kinds, classes, and investment grades as those authorized under the
22 Insurers Investment Act and in a manner that recognizes the liquidity
23 needs of the transaction or is used by the insurer for its general
24 corporate purposes. The securities provided as collateral shall have a
25 market value when the loan is made of at least one hundred two percent of
26 the market value of the loaned securities;

27 (c) Prior to the loan, the borrower or any indemnifying party
28 furnishes the insurer with or the insurer otherwise obtains the most
29 recent financial statement of the borrower or any indemnifying party;

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

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

2 (f) The borrower is required to furnish by the close of each
3 business day during the term of the loan a report of the market value of
4 all collateral and the market value of all loaned securities as of the
5 close of trading on the previous business day. If at the close of any
6 business day the market value of the collateral for any loan outstanding
7 to a borrower is less than one hundred percent of the market value of the
8 loaned securities, the borrower shall deliver by the close of the next
9 business day an additional amount of cash or securities. The market value
10 of the additional securities, together with the market value of all
11 previously delivered collateral, shall equal at least one hundred two
12 percent of the market value of the loaned securities for that loan.

13 ~~(2) For purposes of this section, market value includes accrued~~
14 ~~interest.~~

15 (2) ~~(3)~~ An insurer shall effect securities lending only through the
16 services of a custodian bank or similar entity as approved by the
17 director.

18 (3) ~~(4)~~ An insurer's investments authorized under this section shall
19 not exceed twenty ten percent of its admitted assets.

20 Sec. 4. Section 44-5120.01, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 44-5120.01 (1) For purposes of this section:

23 (a) Acceptable collateral means:

24 (i) As to reverse repurchase transactions, cash, cash equivalents,
25 highly rated business entity obligations created or existing under the
26 laws of the United States or Canada, public equity securities that are
27 traded on a United States exchange, and direct obligations of, or
28 securities that are fully guaranteed as to principal and interest by, the
29 government of the United States or an agency of the government of the
30 United States or the Federal National Mortgage Association or the Federal
31 Home Loan Mortgage Corporation; and

1 (ii) As to ~~reverse~~ repurchase transactions, cash and cash
2 equivalents;

3 (b) Cash equivalents means short-term, highly rated investments or
4 securities readily convertible to known amounts of cash without penalty
5 and so near maturity that they present insignificant risk of change in
6 value. Cash equivalents includes government money market mutual funds and
7 class one money market mutual funds. ~~For purposes of this definition:~~

8 ~~(c) (i)~~ Short-term means investments with a remaining term to
9 maturity of ninety days or less; and

10 ~~(d) (ii)~~ Highly rated means an investment with a minimum quality
11 rating as described in subsection (2) of section 44-5112 ~~rated at least~~
12 ~~P-1 by Moody's Investors Service, Inc., A-1 by Standard and Poor's~~
13 ~~division of The McGraw Hill Companies, Inc., or its equivalent rating by~~
14 ~~a nationally recognized statistical rating organization recognized by the~~
15 ~~Securities Valuation Office;~~

16 ~~(e) Repurchase transaction means a transaction in which an insurer~~
17 ~~purchases securities from a business entity that is obligated to~~
18 ~~repurchase the purchased securities or equivalent securities from the~~
19 ~~insurer at a specified price, either within a specified period of time or~~
20 ~~upon demand; and~~

21 ~~(e) Repurchase (d) Reverse repurchase~~ transaction means a
22 transaction in which an insurer sells securities to a business entity and
23 is obligated to repurchase the sold securities or equivalent securities
24 from the business entity at a specified price, either within a specified
25 period of time or upon demand; ~~and -~~

26 (f) Reverse repurchase transaction means a transaction in which an
27 insurer purchases securities from a business entity that is obligated to
28 repurchase the purchased securities or equivalent securities from the
29 insurer at a specified price, either within a specified period of time or
30 upon demand.

31 (2) An insurer may engage in repurchase and reverse repurchase

1 transactions as set forth in this section. The insurer shall enter into a
2 written agreement for transactions entered under this section. Such
3 agreements shall require that each transaction terminate no more than one
4 year from its inception.

5 (3) Cash received in a transaction under this section shall be
6 invested in accordance with the Insurers Investment Act and in a manner
7 that recognizes the liquidity needs of the transaction or is used by the
8 insurer for its general corporate purposes.

9 (4) So long as the transaction remains outstanding, the insurer, or
10 its agent or custodian, shall maintain as acceptable collateral received
11 in a transaction under this section, either physically or through the
12 book entry systems of the federal reserve, depository trust company,
13 participants' trust company, or other securities depositories approved by
14 the director:

15 (a) Possession of the acceptable collateral;

16 (b) A perfected security interest in the acceptable collateral; or

17 (c) In the case of a jurisdiction outside of the United States,
18 title to, or rights of a secured creditor to, the acceptable collateral.

19 (5) The limitations of sections 44-5115 and 44-5137 shall not apply
20 to the business entity counterparty exposure created by transactions
21 under this section. An insurer shall not enter into a transaction under
22 this section if, as a result of and after giving effect to the
23 transaction:

24 (a) The aggregate amount of securities then sold to or purchased
25 from any one business entity counterparty under this section would exceed
26 five percent of its admitted assets; and in calculating the amount sold
27 to or purchased from a business entity counterparty under repurchase or
28 reverse repurchase transactions, effect may be given to netting
29 provisions under a master written agreement; or

30 (b) The aggregate amount of all securities then sold to or purchased
31 from all business entities under this section would exceed twenty percent

1 of its admitted assets, and in no event shall the collateral market value
2 of all public equity securities that are traded on a United States
3 exchange received in a reverse repurchase transaction exceed more than
4 twenty percent of the total market value of collateral received in
5 reverse repurchase transactions.

6 (6)(a) In a reverse repurchase transaction, the insurer shall
7 receive acceptable collateral having a market value as of the transaction
8 date at least equal to ninety-five percent of the market value of the
9 securities transferred by the insurer in the transaction as of that date.
10 If at the close of any business day ~~any time~~ the market value of the
11 acceptable collateral is less than ninety-five percent of the market
12 value of the securities so transferred, the business entity counterparty
13 shall be obligated to deliver, by the close of the next business day,
14 additional acceptable collateral, the market value of which, together
15 with the market value of all acceptable collateral then held in
16 connection with the transaction, at least equals ninety-five percent of
17 the market value of the transferred securities.

18 (b) In a reverse repurchase transaction, the insurer shall receive
19 acceptable collateral having a market value at least equal to (i) one
20 hundred two percent of the purchase price paid by the insurer for
21 collateral excluding public equity securities that are traded on a United
22 States exchange or (ii) one hundred ten percent of the purchase price
23 paid by the insurer for public equity securities that are traded on a
24 United States exchange. If at the close of any business day ~~any time~~ the
25 market value of the acceptable collateral is less than one hundred
26 percent of the purchase price paid by the insurer, the business entity
27 counterparty shall be obligated to provide by the close of the next
28 business day additional acceptable collateral, the market value of which,
29 together with the market value of all acceptable collateral then held in
30 connection with the transaction, at least equals the applicable
31 percentage of such collateral as provided in this subdivision ~~one hundred~~

1 ~~two percent of the purchase price.~~ Securities acquired by an insurer in a
2 reverse repurchase transaction shall not be sold in a ~~reverse repurchase~~
3 transaction, loaned in a securities lending transaction, or otherwise
4 pledged.

5 Sec. 5. Section 44-5132, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 44-5132 (1) An insurer may invest in a security or other instrument,
8 excluding a mutual fund, evidencing an interest in or the right to
9 receive payments from, or payable from distributions on, an asset, a pool
10 of assets, or specifically divisible cash flows which are legally
11 transferred to a special purpose bankruptcy-remote business entity
12 ~~created or existing under the laws of the United States or Canada or any~~
13 ~~state or province thereof,~~ on the following conditions:

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

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

27 (c) The business entity exists under the laws of the United States
28 or Canada or any state or province thereof or substantially all the
29 assets, interest, or rights described in this subsection are located in
30 the United States or Canada.

31 (2) Investments in interest-only securities, other than those with a

1 1 designation from the Securities Valuation Office, or other instruments
2 shall not be authorized under this section.

3 (3) Any investment authorized under this section shall have a
4 minimum quality rating as described in subdivision (2) of section
5 44-5112.

6 Sec. 6. Section 44-5137, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 44-5137 (1) An insurer may invest in foreign securities or other
9 investments (a) issued in, (b) located in, (c) denominated in the
10 currency of, (d) whose ultimate payment amounts of principal or interest
11 are subject to fluctuations in the currency of, or (e) whose obligors are
12 domiciled in countries other than the United States or Canada, which are
13 substantially of the same kinds and classes as those authorized for
14 investment under the Insurers Investment Act. A security shall not be
15 deemed to be foreign if the issuer, the primary credit source, including,
16 if applicable, collateral pool assets, or a guarantor against which an
17 insurer has a claim for payment, has its principal place of business or
18 is domiciled in the United States or Canada.

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

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

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

28 (c) An insurer's investments authorized under subsection (1) of this
29 section in any one foreign jurisdiction whose sovereign debt has a 4, 5,
30 or 6 designation from the Securities Valuation Office shall not exceed
31 three percent of the insurer's admitted assets;

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

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

7 (f) An insurer's investments authorized under subsection (1) of this
8 section shall not be considered denominated in a foreign currency if the
9 acquiring insurer enters into one or more contracts in transactions
10 permitted under section 44-5149 to exchange all payments made on the
11 foreign currency denominated investments for United States currency at a
12 rate which effectively insulates the investment cash flows against future
13 changes in currency exchange rates during the period the contract or
14 contracts are in effect.

15 (3) An insurer's investments authorized under subsection (1) of this
16 section shall not exceed, in the aggregate, twenty-five ~~twenty~~ percent of
17 its admitted assets.

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

28 (5) An insurer's investments authorized under subsection (4) of this
29 section and cash in the currency of such country which is at any time
30 held by such insurer, in the aggregate, shall not exceed the greater of
31 (a) one and one-half times the amount of its reserves and other

1 obligations under such contracts or (b) the amount which such insurer is
2 required by law to invest in such country.

3 (6) Any investment in debt obligations authorized under this section
4 shall have a minimum quality rating as described in subdivision (2) of
5 section 44-5112, except that an insurer's investment in bonds or notes
6 secured by a mortgage on real estate located outside of the United States
7 or Canada that otherwise complies with section 44-5143 shall not be
8 subject to such minimum quality rating requirements.

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

13 Sec. 7. Section 44-5139, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 44-5139 (1) An insurer may invest in shares of a fund registered
16 under the Investment Company Act of 1940, as amended, as a diversified
17 open-end investment company and in shares, interests, or participation
18 certificates in any management type of investment trust, corporate or
19 otherwise, subject to ~~the the following restrictions:~~ (a) The investment
20 restrictions and policies relating to the investment of the assets of the
21 trust and its activities shall be limited to the same kinds, classes, and
22 investment grades as those authorized for investment under the Insurers
23 Investment Act. ~~;~~ and

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

26 An insurer's investments authorized under this subsection shall not
27 exceed ten percent of its admitted assets. ~~Shares, interests, or~~
28 ~~participation certificates in trusts described in this subsection shall~~
29 ~~also be subject to the overall limitation of subsection (3) of section~~
30 ~~44-5141.~~

31 (2) An insurer may invest in the shares of a fund registered under

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

9 Sec. 8. Section 44-5141, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 44-5141 (1) An insurer may invest in the common stock or rights to
12 purchase or sell common stock of any corporation which has retained
13 earnings of not less than one million dollars, except that an investment
14 may be made in any corporation having a majority of its operations in
15 this state which has retained earnings of not less than two hundred fifty
16 thousand dollars. The earnings of all predecessor, merged, consolidated,
17 or purchased corporations shall be included through the use of
18 consolidated or pro forma statements.

19 (2)(a) An insurer may invest in equity interests or rights to
20 purchase or sell equity interests in business entities other than general
21 partnerships unless the general partnership is wholly owned by the
22 insurer.

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

25 ~~(b) (ii) A life insurer shall not invest under this subsection in~~
26 ~~any investment which the life insurer may invest in under section 44-5140~~
27 ~~or 44-5144 or subsection (1) of this section.~~

28 ~~(3) Except as authorized under the Insurance Holding Company System~~
29 ~~Act, an insurer shall not invest in more than ten percent of the total~~
30 ~~equity interests in any business entity other than an insurer.~~

31 (3) (4) A life insurer's investments authorized under this section

1 shall not exceed the greater of one hundred percent of its policyholders
2 surplus or twenty percent of its admitted assets.

3 Sec. 9. Section 44-5143, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 44-5143 (1) An insurer may invest in bonds or notes secured by a
6 first mortgage on real estate in the United States or Canada if the
7 amount loaned by the insurer, together with any amount secured by an
8 equal security interest, does not exceed eighty percent of the appraised
9 value of the real estate and improvements at the time of making the
10 investment, or if the funds are used for a construction loan, the amount
11 does not exceed eighty percent of the market value of the real estate
12 together with the actual costs of improvements constructed thereon at the
13 time of final funding by the insurer. The limitation in this subsection
14 shall not:

15 (a) Apply to investments authorized under section 44-5132;

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

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

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

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

26 (a) Such underlying real estate is unencumbered except by (i)
27 rentals to accrue therefrom to the owner of the real estate or (ii) a fee
28 mortgage, if there is an agreement from the lender secured by the fee
29 mortgage to not terminate or extinguish the leasehold interest as long as
30 the lessee is not in default;

31 (b) There is no condition or right of reentry or forfeiture under

1 which such lien can be cut off, subordinated, or otherwise disturbed so
2 long as the lessee is not in default;

3 (c) The amount loaned by the insurer, together with any amount
4 secured by an equal security interest, does not exceed eighty percent of
5 the appraised value of such leasehold with improvements at the time of
6 making the loan, or, if the funds are used for a construction loan, the
7 amount loaned does not exceed eighty percent of the market value of the
8 leasehold estate together with the actual costs of improvements
9 constructed thereon at the time of final funding by the insurer; and

10 (d) Such mortgage loan will be completely amortized during the
11 unexpired portion of the lease or leasehold estate, or, if a loan has a
12 balloon payment, the mortgage loan amortization period plus the remaining
13 unexpired term of the lease after the maturity date of the loan is at
14 least thirty years, except that any lease or leasehold estate that is
15 convertible by the borrower, as lessee, or the insurer, as lender, into a
16 fee interest for no or minimal consideration at any time during the lease
17 term shall be treated as a fee interest for all purposes under section
18 44-5143 so long as the insurer's mortgage is secured by such fee interest
19 following such conversion.

20 (3) Nothing in this section shall prevent any amount invested under
21 this section that exceeds eighty percent of the appraised value of the
22 real estate or leasehold and improvements, as the case may be, from being
23 authorized under section 44-5153.

24 (4) All buildings and other real estate improvements which
25 constitute a material part of the value of the mortgaged premises,
26 whether estates in fee or leasehold estates or combination thereof, shall
27 be (a)(i) substantially completed before the investment is made or (ii)
28 of a value that is at all times substantial in value in relation to the
29 amount of construction loan funds advanced by the insurer on account of
30 the loan and (b) kept insured against loss or damage by fire or windstorm
31 in a reasonable amount for the benefit of the mortgagee.

1 (5) Other than investments subject to section 44-5132, if If there
2 are more than four holders of the issue of such bonds or notes described
3 in subsection (1) or (2) of this section, (a) the security of such bonds
4 or notes, as well as all collateral papers including insurance policies
5 executed in connection therewith, shall be made to and held by a trustee,
6 which trustee shall be a solvent bank or trust company having a paid-in
7 capital of not less than two hundred fifty thousand dollars, except in
8 case of a bank or trust company incorporated under the laws of this
9 state, in which case a paid-in capital of not less than one hundred
10 thousand dollars shall be required, and (b) it shall be agreed that, in
11 case of proper notification of default, such trustee, upon request of at
12 least twenty-five percent of the holders of the par amount of the bonds
13 outstanding and proper indemnification, shall proceed to protect the
14 rights of such bondholders under the provisions of the trust indenture.
15 Nothing in this subsection shall be deemed to inhibit the ability of an
16 insurer to rely on the provisions of section 44-5110 with regard to loan
17 participations for loans that meet the requirements of this section.

18 (6)(a) An insurer may invest in notes or bonds secured by second
19 mortgages or other second liens, including all inclusive or wraparound
20 mortgages or liens, upon real property encumbered only by a first
21 mortgage or lien which meets the requirements set forth in this section,
22 subject to either of the following conditions:

23 (i) The insurer also owns the note or bond secured by the prior
24 first mortgage or lien and the aggregate value of both loans does not
25 exceed the loan to market value ratio requirements of this section; or

26 (ii) The note or bond is secured by an all-inclusive or wraparound
27 lien or mortgage which conforms to the requirements set forth in
28 subdivision (b) of this subsection, if the aggregate value of the
29 resulting loan does not exceed the loan to market value ratio
30 requirements of this section.

31 (b) For purposes of this subsection, the terms wraparound and all-

1 inclusive lien or mortgage refer to a loan made by an insurer to a
2 borrower on the security of a mortgage or lien on real property other
3 than property containing a residence of one to four units or on which a
4 residence of one to four units is to be constructed, where such real
5 property is encumbered by a first mortgage or lien and which loan is
6 subject to all of the following requirements:

7 ~~(i) There is no more than one preexisting mortgage or lien on the~~
8 ~~real property;~~

9 (i) ~~(ii)~~ The total amount of the obligation of the borrower to the
10 insurer under the loan is not less than the sum of the amount disbursed
11 by the insurer on account of the loan and the outstanding balance of the
12 obligation secured by the preexisting lien or mortgage;

13 (ii) ~~(iii)~~ The instrument evidencing the lien or mortgage by which
14 the obligation of the borrower to the insurer under the loan is secured,
15 is recorded, and the lien is insured under a policy of title insurance in
16 an amount not less than the total amount of the obligation of the
17 borrower to the insurer under the loan; and

18 (iii) ~~(iv)~~ The insurer either (A) files for record in the office of
19 the recorder of the county in which the real property is located a duly
20 acknowledged request for a copy of any notice of default or of sale under
21 the preexisting lien or (B) is entitled under applicable law to receive
22 notice of default, sale, or foreclosure of the preexisting lien.

23 (7)(a) An insurer may invest in mezzanine real estate loans subject
24 to the following conditions:

25 (i) The terms of the mezzanine loan agreement:

26 (A) Require that each pledgor abstain from granting additional
27 security interests in the equity interest pledged;

28 (B) Employ techniques to minimize the likelihood or impact of a
29 bankruptcy filing on the part of the real estate owner or the mezzanine
30 real estate loan borrower; and

31 (C) Require the real estate owner, or mezzanine real estate loan

1 borrower, to: (I) Hold no assets other than, in the case of the real
2 estate owner, the real property, and in the case of the mezzanine
3 borrower, the equity interest in the real estate owner; (II) not engage
4 in any business other than, in the case of the real estate owner, the
5 ownership and operation of the real estate, and in the case of the
6 mezzanine real estate borrower, holding an ownership interest in the real
7 estate owner; and (III) not incur additional debt, other than limited
8 trade payables, a first mortgage loan, and the mezzanine real estate
9 loan; and

10 (ii) At the time of the initial investment, the mezzanine real
11 estate loan lender shall corroborate that the sum of the first mortgage
12 and the mezzanine real estate loan does not exceed one hundred percent of
13 the value of the real estate as evidenced by a current appraisal.

14 (b) The value of an insurer's investments authorized under this
15 subsection shall not exceed three percent of its admitted assets.

16 (c) For purposes of this subsection, mezzanine real estate loan
17 refers to a loan made by an insurer to a borrower on the security of debt
18 obligation, ~~that is not a security,~~ which is secured by a pledge of a
19 direct or indirect equity interest in an entity that owns real estate.

20 (8) An insurer's investments authorized under this section shall not
21 exceed forty percent of its admitted assets, and an insurer's investments
22 authorized under this section and section 44-5144, in the aggregate,
23 shall not exceed fifty percent of its admitted assets.

24 Sec. 10. Section 44-5144, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 44-5144 (1) An insurer may acquire and hold unencumbered real estate
27 or certificates evidencing participation with other investors, either
28 directly or through partnership or limited liability company interests,
29 or other equity interests, including common and preferred equity
30 investments, in unencumbered real estate if:

31 (a) The real estate is leased under a lease contract ~~in which the~~

1 ~~lessee contracts to pay all assessments, taxes, maintenance, and~~
2 ~~operating costs;~~

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

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

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

17 When a lease described in this subsection is ~~When an insurer owns~~
18 ~~less than the entire real estate leased under a lease described in this~~
19 ~~subsection, the legal title to the real estate shall be in the name of a~~
20 ~~trustee which meets the qualifications set out in subsection (5) of~~
21 ~~section 44-5143~~ under a trust agreement which provides, among other
22 things, that upon proper notification of default under such lease and
23 request to such trustee by an investor or investors representing at least
24 twenty-five percent of the equitable ownership of the real estate and
25 proper indemnification, the trustee shall proceed to protect the rights
26 and interest of the investors owning the equitable title to the real
27 estate. In a governmental lease or leasehold estate under which the
28 insurer owns an interest in a lessee that is convertible by the lessee
29 into a fee interest for no or de minimis consideration at any time during
30 the lease term it shall be treated as a fee interest for all purposes
31 under this section.

1 For purposes of this subsection, unencumbered real estate means real
2 estate in which other interests may exist which if enforced would not
3 result in the forfeiture of the insurer's interest.

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

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

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

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

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

16 (4)(a) An insurer with policyholders surplus of at least one million
17 dollars may individually or in conjunction with other investors acquire,
18 own, hold, develop, and improve real estate that is essentially
19 residential or commercial in character, even though subject to an
20 existing mortgage or thereafter mortgaged by the insurer, if such real
21 estate is located in the United States or Canada ~~a city or village or~~
22 ~~within five miles of the limits thereof.~~

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

29 An insurer may hold real estate or certification evidencing
30 participation authorized under this subsection with other investors
31 either directly or through a partnership, limited liability company, or

1 other equity interest, including without limitation, common and preferred
2 equity investments.

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

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

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

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

15 (8) An insurer's investments authorized under this section and
16 section 44-5143, in the aggregate, shall not exceed fifty percent of its
17 admitted assets.

18 Sec. 11. Section 44-5149, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 44-5149 (1) An insurer may use derivative instruments in hedging
21 transactions if:

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

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

31 (c) The aggregate potential exposure of collars, swaps, forwards,

1 and futures used in hedging transactions does not exceed the lesser of
2 six and one-half percent of the insurer's admitted assets or sixty-five
3 percent of the insurer's policyholders surplus.

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

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

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

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

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

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

30 (3) An insurer may use derivative instruments in replication
31 transactions if:

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

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

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

14 (d) The replication transactions are limited to the replication of
15 investments or instruments otherwise permitted under the Insurers
16 Investment Act; and

17 (e) The insurer engages in hedging transactions or income generation
18 transactions pursuant to this section and has sufficient experience with
19 derivatives generally such that its performance and procedures reflect
20 that the insurer has been successful in adequately identifying,
21 measuring, monitoring, and limiting exposures associated with such
22 transactions and that the insurer has superior corporate controls over
23 such activities as well as a sufficient number of dedicated staff who are
24 knowledgeable and skilled with these sophisticated financial instruments.

25 (4) An insurer may purchase or sell one or more derivative
26 instruments to offset, in whole or in part, any derivative instrument
27 previously purchased or sold, as the case may be, without regard to the
28 quantitative limitations of this section, provided that the derivative
29 instrument is an exact offset to the original derivative instrument being
30 offset.

31 (5) An insurer shall demonstrate to the director upon request the

1 intended hedging, income-generation, or replication characteristics and
2 the ongoing effectiveness of the derivative transaction or combination of
3 the transactions through cash flow testing or other appropriate analysis.

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

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

9 (8) For the investment limitations covered in subsections (1), (2),
10 and (3) of this section, aggregate statement value and aggregate
11 potential exposure shall be calculated net of collateral posted or
12 received.

13 (9) (8) For purposes of this section:

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

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

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

22 Derivative instrument includes all investment instruments or
23 contracts that derive all or almost all of their value from the
24 performance of an underlying market, index, or financial instrument,
25 including, but not limited to, options, warrants, caps, floors, collars,
26 swaps, credit default swaps, swaptions, forwards, and futures. Derivative
27 instrument does not include investments authorized under any other
28 section of the Insurers Investment Act;

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

31 (i) The risk of a change in value, yield, price, cash flow, or

1 quantity of assets or liabilities which the insurer has acquired or
2 incurred or anticipates acquiring or incurring; or

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

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

10 (d) Replication transaction means a derivative transaction or
11 combination of derivative transactions effected either separately or in
12 conjunction with cash market investments included in the insurer's
13 portfolio in order to replicate the investment characteristic of another
14 authorized transaction, investment, or instrument or that may operate as
15 a substitute for cash market investments. A derivative transaction
16 entered into by the insurer as a hedging or income-generation transaction
17 authorized pursuant to this section shall not be considered a replication
18 transaction.

19 Sec. 12. Section 44-5153, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 44-5153 (1)(a)(i) A life insurer may make investments not otherwise
22 authorized under the Insurers Investment Act in an amount, in the
23 aggregate, not exceeding the lesser of five percent of the first five
24 hundred million dollars of its admitted assets plus ten percent of its
25 admitted assets exceeding five hundred million dollars or one hundred
26 percent of its policyholders surplus.

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

1 plus ten percent of its admitted assets exceeding five hundred million
2 dollars.

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

6 (2)(a) In addition to the provisions of subdivision (1)(a)(i) of
7 this section, a life insurer may make investments not otherwise
8 authorized under the act in an amount not exceeding that portion of its
9 policyholders surplus which is in excess of ten percent of its admitted
10 assets.

11 (b) In addition to the provisions of subdivisions (1)(a)(ii) and (b)
12 of this section, an insurer other than a life insurer may make
13 investments not otherwise authorized under the act in an amount not
14 exceeding that portion of its policyholders surplus which is in excess of
15 fifty percent of its annual net written premiums as shown by the most
16 recent annual financial statement filed by the insurer pursuant to
17 section 44-322.

18 (3) Investments authorized under subsection (1) or (2) of this
19 section shall not include assets held by a ceding insurer as security
20 supporting reinsurance arrangements through which credit for reinsurance
21 has been allowed.

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

25 ~~(5)~~ ~~(4)~~ The limitations set forth in this section shall be applied
26 at the time the investment in question is made and at the end of each
27 calendar quarter. An insurer's investment, which at the time of its
28 acquisition was authorized only under the provisions of this section but
29 which has subsequently and while held by such insurer become of such
30 character as to be authorized elsewhere under the act, shall not be
31 included in determining the amount of such insurer's investments, in the

1 aggregate, authorized under this section, and investments otherwise
2 authorized under the act at the time of their acquisition shall not be
3 included in making such determination.

4 (6) ~~(5)~~ Derivative instruments described in subsections (1), (2),
5 and (4) ~~(3)~~ of section 44-5149 shall not be authorized investments under
6 this section.

7 Sec. 13. Original sections 44-5103, 44-5105, 44-5120, 44-5120.01,
8 44-5132, 44-5137, 44-5139, 44-5141, 44-5143, 44-5144, 44-5149, and
9 44-5153, Reissue Revised Statutes of Nebraska, are repealed.