

An Act

ENROLLED SENATE
BILL NO. 288

By: Quinn of the Senate

and

O'Donnell of the House

An Act relating to insurer investments; amending 36 O.S. 2011, Sections 1622, as amended by Section 3, Chapter 287, O.S.L. 2017 (36 O.S. Supp. 2020, Section 1622) and 1624, as amended by Section 4, Chapter 287, O.S.L. 2017 (36 O.S. Supp. 2020, Section 1624), which relate to mortgages on real estate and acquiring real property; modifying percentages of insurers' admitted assets allowed to be invested in certain areas; providing exception to percentage limit; conforming language; and declaring an emergency.

SUBJECT: Insurer investments

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 36 O.S. 2011, Section 1622, as amended by Section 3, Chapter 287, O.S.L. 2017 (36 O.S. Supp. 2020, Section 1622), is amended to read as follows:

Section 1622. A. An insurer may invest any of its funds in bonds, notes or other evidences of indebtedness which are secured by first mortgages or deeds of trust upon improved, unencumbered real property located in the United States, or which are secured by first mortgages or deeds of trust upon leasehold estates having an expired term of not less than twenty-one (21) years, inclusive of the term which may be provided by an enforceable option of renewal, in improved, unencumbered real property located in the United States.

B. Real property shall not be deemed to be encumbered within the meaning of this section by reason of the existence of instruments reserving mineral, oil or timber rights, rights-of-way, sewer rights, rights in walls, nor by reason of any liens for taxes or assessments not delinquent, nor by reason of building restrictions or other restrictive covenants, nor when such real property is subject to lease under which rents or profits are reserved to the owner, if in any event the security for such loan is a first lien upon such real property and if there is no condition or right of reentry or forfeiture under which, in the case of real property other than leaseholds, such lien can be cut off, subordinated, or otherwise disturbed or under which, in the case of leaseholds, the insurer is unable to continue the lease in force for the duration of the loan.

C. 1. No such mortgage loan or loans made or acquired by an insurer on any one property shall, at the time of investment by the insurer, exceed eighty percent (80%) of the value, or if the loan is for purchase money, the lesser of eighty percent (80%) of the value or purchase price of the real property or leasehold securing the same, except that such loan or loans may equal the amount of any guaranty by the United States of America or by any agency or instrumentality of the United States of America or by any private insurance company licensed as an authorized insurer by the Insurance Department of the State of Oklahoma to write mortgage insurance. Additionally, no single mortgage loan to any individual shall exceed ~~four percent (4%)~~ three percent (3%) of the company's admitted assets, with no more than thirty-five percent (35%) of the company's admitted assets invested in total aggregate amount in mortgage loans; provided, however, that an insurer may invest up to forty-five percent (45%) of the company's admitted assets invested in total aggregate amount in mortgage loans if the portfolio average loan to value is seventy-five percent (75%) or less of fair market value.

The calculation of admitted assets and portfolio average loan to value is based on the insurer's annual statement as of December 31 last preceding the date of investment, or as shown by a current financial statement on file with the Commissioner.

2. Mortgage loans made or acquired by an insurer prior to December 31, 1992, shall be in compliance with the limitation provided in this subsection for total aggregate investment of admitted assets in mortgage loans by December 31, 1997. Mortgage loans made or acquired by an insurer on or after December 31, 1992, but prior to September 1, 1993, shall be in compliance with the limitations for investment of admitted assets in single mortgage loans to individuals and total aggregate investments of admitted assets in mortgage loans provided in this subsection by December 31, 1997. Insurers shall maintain accurate and adequate records reflecting the provisions of this section and submit such records with quarterly and annual statements.

D. No such mortgage loan or loans shall be made or acquired by an insurer except after an appraisal made by a qualified appraiser for the purpose of such investment. No change or modification shall be made to such appraisal by any mortgage underwriter unless such person is licensed or certified as an appraiser pursuant to the Oklahoma Certified Real Estate Appraisers Act or unless such person has been provided by the person who made the appraisal written consent to make the modification. Such modification shall be disclosed to the seller and buyer and/or the seller's agent.

E. No such mortgage loan or loans made or acquired by an insurer after July 1, 2006, shall be made or acquired by an insurer unless the mortgages or mortgage loans are upon improved, unencumbered real property permitted as an investment pursuant to Section 1624 of this title.

F. No mortgage loan upon a leasehold shall be made or acquired pursuant to this section unless the terms thereof shall provide for amortization payments to be made by the borrower on the principal thereof at least once in each year in amounts sufficient completely to amortize the loan within a period of four-fifths (4/5) of the term of the leasehold, inclusive of the term which may be provided by an enforceable option of renewal, which is unexpired at the time the loan is made, but in no event exceeding thirty-five (35) years.

G. Subject to specific limitations otherwise applicable, no more than an aggregate of thirty-five percent (35%), except as provided in paragraph 1 of subsection C of this section, of the company's admitted assets may be invested in mortgage loans

pursuant to this section, purchase money mortgages pursuant to Section 1623 of this title, and real property pursuant to Section 1624 of this title.

SECTION 2. AMENDATORY 36 O.S. 2011, Section 1624, as amended by Section 4, Chapter 287, O.S.L. 2017 (36 O.S. Supp. 2020, Section 1624), is amended to read as follows:

Section 1624. No insurance company, foreign, alien or domestic, doing business in Oklahoma, may acquire or hold real property therein, except as follows:

1. Such as shall be requisite for the convenient accommodation of the transaction of its own business; the amount invested in such real property shall not exceed ten percent (10%) of the investing company's admitted assets but the Insurance Commissioner may grant permission to the company to invest in real property for such purpose in such increased amount as the Insurance Commissioner may deem proper on the showing made, if upon a hearing held the Insurance Commissioner finds that the amount represented by such percentage of its admitted assets is insufficient to provide convenient accommodation for the company's business. Real estate maintained for the convenient accommodation of the transaction of its own business, permitted to be carried as an admitted asset of the company pursuant to this section shall be carried at an amount equal to its cost at the time of acquisition together with the actual cost of improvements made thereon, less encumbrances and less depreciation; provided, however, any real estate carried at fair market value as an admitted asset of the company on ~~the effective date of this act~~ November 1, 1989, shall be excluded from this provision;

2. Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted for monies due;

3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in course of its dealings;

4. Such as shall have been purchased at sales on judgments, decrees, or mortgages obtained or made for such debts;

5. Such real property as shall have been acquired in whole or in part, in exchange for real property of approximately the same value theretofore legally acquired and held by it;

6. Real property and improvements thereon located in incorporated cities and towns and as additions thereto or real property and improvements wherever located acquired for sale or lease, if such lessee or purchaser could have legally acquired the same in the first instance, and may make improvements thereon for commercial and industrial purposes as an investment for the production of income. The phrase "commercial and industrial purposes" shall not include real property primarily intended for use or valued as agricultural, horticultural, farm, and ranch, unless adjacent to other real property the ownership of which is permitted under this section and was acquired prior to July 1, 2006. The total amount invested in such real property and improvements thereon shall not exceed the company's capital and/or surplus, or ten percent (10%) of its admitted assets whichever is the lesser; provided, however, the amount invested in any one investment shall not exceed four percent (4%) of the company's admitted assets. The admitted assets shall be determined by the company's last annual report made as of December 31, immediately preceding and which has been filed with the Insurance Commissioner as required by law, or as shown by a current financial statement on file with the Commissioner;

7. Real property acquired and held under Section 1612.1 of this title; and

8. Subject to specific limitations otherwise applicable, no more than an aggregate of thirty-five percent (35%), except as provided in paragraph 1 of subsection C of Section 1622 of this title, of the company's admitted assets may be invested in real property pursuant to this section, purchase money mortgages pursuant to Section 1623 of this title, and mortgage loans pursuant to Section 1622 of this title.

SECTION 3. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 8th day of March, 2021.

Presiding Officer of the Senate

Passed the House of Representatives the 21st day of April, 2021.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____