

SENATE BILL No. 336

AN ACT concerning insurance; relating to permissible investments made by life insurance companies; updating certain investment limitation requirements to provide increased options for Kansas domiciled life insurance companies investing in equity interests and preferred stock; amending K.S.A. 40-2b06 and 40-2b07 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 40-2b06 is hereby amended to read as follows: 40-2b06. Any life insurance company ~~heretofore or hereafter~~ organized under any law of this state may invest by loans or otherwise, with the direction or approval of a majority of its board of directors or authorized committee thereof, any of its funds, or any part thereof in preferred stocks of, or stocks guaranteed by, a corporation incorporated under the laws of the United States of America, or of any state, district, insular or territorial possession thereof, or of the Dominion of Canada, or any province thereof, in an amount not to exceed 25% of its admitted assets as shown by the company's last annual report, as filed with the state commissioner of insurance, or a more recent quarterly financial statement ~~as filed with the commissioner, on a form prescribed by the national association of insurance commissioners, filed~~ within 45 days following the end of the calendar quarter to which the interim statement pertains, ~~and which meets the following qualifications:~~

~~(a) All bonds or other evidences of indebtedness and preferred stocks shown on the last published annual statement of the issuing corporation, if any, senior to the preferred stock acquired must be eligible as investments under K.S.A. 40-2b05 or 40-2b06, and amendments thereto, as of the date of acquisition;~~

~~(b) if cumulative preferred, not in arrears as to dividends, or if noncumulative, has paid full dividends in each of the last three years;~~

~~(c) sinking fund payments are on a current basis;~~

~~(d) if net earnings available for fixed charges for the most recently completed three fiscal year period is at least equal to $1\frac{1}{4}$ times the aggregate fixed charges, plus full contingent interest and preferred dividend requirements of the preferred stock under consideration and those on a parity therewith or having a priority thereto, for the same period; and~~

~~(e) the corporation must have been in existence for a period of not less than five years.~~

~~(f) (1) "Fixed charges" shall include actual interest incurred in each year on funded and unfunded debt; and~~

~~(2) "net earnings" shall mean income, before deducting interest on funded and unfunded debt, and after deducting operating and maintenance expenses, depreciation and depletion and all taxes, including income taxes. Extraordinary, nonrecurring items of income or expenses shall be excluded in the form and manner prescribed by the commissioner in rules and regulations.~~

Sec. 2. K.S.A. 40-2b07 is hereby amended to read as follows: 40-2b07. (a) Any life insurance company organized under any law of this state may invest by loans or otherwise, with the direction or approval of a majority of its board of directors or authorized committee thereof, any of its funds, or any part thereof in the equity interests of any business entity organized and doing business under the laws of the United States or any state, or of the District of Columbia, or of the Dominion of Canada or any province ~~of the Dominion of Canada thereof~~, in an amount, based upon cost, ~~not exceeding 15% to exceed 20%~~ of its admitted assets as shown by the company's last annual report as filed with the state commissioner of insurance or a more recent quarterly financial statement ~~as filed with the commissioner, on a form prescribed by the national association of insurance commissioners, filed~~ within 45 days following the end of the

calendar quarter to which the interim statement pertains *in the form and manner prescribed by the commissioner in rules and regulations*. Such life insurance company may write exchange traded, covered call options on equity interests it owns and may purchase call options for the sole purpose of closing out a position taken previously with respect to one or more options having been written. The purchase of a call option for any reason other than as a closing transaction and the writing of naked, uncovered, call options are hereby prohibited. Investments in equity interests and the writing of call options shall be further limited as ~~provided in subsections (a) through (g) except that subsections (a) through (c) shall only apply to an amount that exceeds 7.5% of a life insurance company's admitted assets.~~

~~(a) The obligations, if any, shown on the last published annual statement of such business entity must be eligible for investment under K.S.A. 40-2b05, and amendments thereto;~~

~~(b) cash dividends have been paid during each of the last three years preceding the date of acquisition;~~

~~(c) the equity interest is registered with a national securities exchange regulated under the securities exchange act of 1934, as amended, or is regularly traded on a national or regional basis;~~

~~(d) the business entity shall have earnings in three of the last five years preceding the date of acquisition;~~

~~(e) follows:~~

~~(1) At no time shall an insurance company invest in more than 5% of the outstanding equity interests of any one such business entity, nor an amount more than 2% of the investing such insurance company's admitted assets in the outstanding equity interests of any one such business entity, determined on the basis of the cost of such equity interests to the insurance company at time of purchase; and~~

~~(2) an equity interest owned by an insurance company that is obligated under an unexpired written call option shall be valued at the lesser of the striking price or current market value. For the purposes of this subsection, "striking price" means the price per equity interest, exclusive of selling costs, the company would receive should the call option be exercised by the holder;~~

~~(g) the provisions of subsections (b) and (d) shall not apply if at the time of acquisition:~~

~~(1) The issuing business entity has net assets of \$10,000,000 or more;~~

~~(2) the issuing business entity has a net worth of \$1,000,000 or more; and~~

~~(3) the issuing business entity has an aggregate market value of \$500,000,000 or more.~~

~~(h)(b) As used in this section:~~

~~(1) "Business entity" includes a sole proprietorship, corporation, limited liability company, association, partnership, joint stock company, joint venture, mutual fund, trust, joint tenancy or similar form of business organization, whether organized for profit or not-for-profit.~~

~~(2) "Equity interest" means any of the following:~~

~~(A) Common stock;~~

~~(B) trust certificate;~~

~~(C) equity investment in an investment company other than a money market mutual fund permitted under K.S.A. 40-2b24, and amendments thereto;~~

~~(D) investment in a common trust fund of a bank regulated by a federal or state agency;~~

~~(E) an ownership interest in minerals, oil or gas, the rights to which have been separated from the underlying fee interest in the real estate where the minerals, oil or gas are located;~~

(F) instruments ~~which~~ *that* are mandatorily, or at the option of the issuer, convertible to equity;

(G) limited partnership interests;

(H) member interests in limited liability companies;

(I) warrants or other rights to acquire equity interests that are created by the person that owns or would issue the equity to be acquired; or

(J) any other security representing an ownership interest in a business entity.

Sec. 3. K.S.A. 40-2b06 and 40-2b07 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the
SENATE, and passed that body

President of the Senate.

Secretary of the Senate.

Passed the HOUSE _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.