

SENATE BILL No. 306

AN ACT concerning insurance companies; relating to investments; amending K.S.A. 40-2a08, 40-2a14, 40-2a28, 40-2b07, 40-2b12 and 40-2b29 and K.S.A. 2013 Supp. 40-2a27 and 40-2b28 and repealing the existing sections.

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

Section 1. K.S.A. 40-2a08 is hereby amended to read as follows: 40-2a08. Any insurance company other than life 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 the ~~common stock~~ *equity interests* of any ~~corporation~~ *business entity* organized and doing business 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; or of any other country or subdivision thereof; in an amount, based upon cost, not exceeding 15% of its admitted assets ~~or not exceeding the combined capital and surplus, whichever is the lesser,~~ 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, within 45 days following the end of the calendar quarter to which the interim statement pertains. Such insurance company may write exchange traded, covered call options on ~~shares~~ *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 ~~common stocks~~ *equity interests* and the writing of call options shall be further limited as follows: *provided in subsections (a) through (g) except that subsections (a) through (e) shall only apply to an amount that exceeds 7.5% of any insurance company's admitted assets.*

(a) The obligations, if any, shown on the last published annual statement of such ~~corporation~~ *business entity* must be eligible for investment under K.S.A. 40-2a05, and amendments thereto;

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

(c) the ~~stock~~ *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 ~~company~~ *business entity* shall have earnings in three of the last five years preceding the date of acquisition;

(e) ~~investments in common stock in any one corporation shall at no time exceed 2% of the admitted assets of the investing insurance company determined on the basis of the cost of such shares to the insurance company at time of purchase, and at no time shall an insurance company purchase more than 5% of the outstanding shares of stock of any one given corporation 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 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 the time of purchase;~~

(f) ~~stock~~ *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 ~~share~~ *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 ~~corporation~~ *business entity* has net assets of \$10,000,000 or more;

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

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

(h) *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 other 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. 40-2a22, 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 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. 2. K.S.A. 40-2a14 is hereby amended to read as follows: 40-2a14. Any insurance company other than life heretofore or hereafter organized under any law of this state may invest 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 loans secured by collateral consisting of a pledge of bonds, securities, stock or evidences of indebtedness qualified in ~~K.S.A. 40-2a01 to 40-2a08, inclusive; article 2a of chapter 40 of the Kansas Statutes Annotated, and amendments thereto.~~ ~~Provided Except; That~~ the amount of the loan is not in excess of eighty percent (80%) shall not exceed 80% of the market value of the ~~securities; asset securing the loan.~~ ~~Provided further, That~~ ~~In addition,~~ all restrictions, limitations or conditions placed on any security investment authorized within ~~K.S.A. 40-2a01 to 40-2a08, inclusive article 2a of chapter 40 of the Kansas Statutes Annotated, and amendments thereto,~~ shall apply to the collateral securities pledged to the payment of loans authorized in this section.

Sec. 3. K.S.A. 2013 Supp. 40-2a27 is hereby amended to read as follows: 40-2a27. (a) No insurance company shall acquire, directly or indirectly, any medium grade or lower grade obligation of any institution if, after giving effect to any such acquisition, the aggregate amount of all medium grade and lower grade obligations then held by such insurer would exceed 20% of its admitted assets. Within this limitation no more than 10% of its admitted assets shall consist of lower grade obligations; no more than three percent of its admitted assets shall consist of obligations designated “5” or “6” in the valuations of securities manual; and, no more than one percent of its admitted assets shall consist of obligations designated “6” in the valuations of securities manual. Attaining or exceeding the limit of any one category shall not preclude an insurer from acquiring obligations in other categories subject to the specific and multi-category limits.

(b) No insurer organized under the laws of this state may invest more than one percent of its admitted assets in medium grade obligations issued, guaranteed or insured by any one institution nor may it invest more than one-half of one percent of its admitted assets in lower grade obligations issued, guaranteed or insured by any one institution. In no event, shall such insurer invest more than one percent of its admitted assets in any medium or lower grade obligations issued, guaranteed or insured by any one institution.

(c) Nothing contained in this act shall prohibit an insurer from acquiring any obligations which it has committed to acquire if the insurer would have been permitted to acquire that obligation pursuant to this act on the date on which such insurer committed to purchase that obligation.

(d) Notwithstanding the limitations of subsection (b) an insurer may acquire an obligation of an institution in which the insurer already has one or more obligations, if the obligation is acquired in order to protect an investment previously made in the obligations of the institution, except

all such acquired obligations shall not exceed one-half of one percent of the insurer's admitted assets.

(e) Nothing contained in this act shall prohibit an insurer to which this act applies from acquiring an obligation as a result of a restructuring of a medium or lower grade obligation already held or require such insurer to sell or otherwise dispose of any obligation legally acquired prior to the effective date of this act.

(f) Nothing contained in this act shall permit or be construed as permitting an insurer to exceed, alter or otherwise circumvent any of the limitations or restrictions applicable to the investments authorized by ~~K.S.A. 40-2a01 et seq.~~ *article 2a of chapter 40 of the Kansas Statutes Annotated*, and amendments thereto.

~~(g) Notwithstanding the provisions of K.S.A. 40-2a16, and amendments thereto, the total investment in medium and lower grade securities shall not exceed the limitations set forth in this section.~~

~~(h)~~(g) The board of directors of any insurance company organized under the laws of this state which acquires or invests, directly or indirectly, more than two percent of its admitted assets in medium grade and lower grade obligations, shall adopt a written plan for the making of such investments. The plan, in addition to guidelines with respect to the quality of the issues invested in, shall contain diversification standards acceptable to the commissioner which may include, but not be limited to, standards for issuer, industry, duration, liquidity and geographic location.

Sec. 4. K.S.A. 40-2a28 is hereby amended to read as follows: 40-2a28.

(a) Any insurance company other than life 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 asset-backed securities, subject to the following:

(1) To be an admitted asset under this section, an asset-backed security must, at the time of acquisition, be designated "1" or "2" by the national association of insurance commissioners in its most recently published valuations of securities manual or supplement thereto;

(2) the investment in any one issue of asset-backed securities shall not exceed 2% of the admitted assets of the investing insurance company as shown by its last annual report or a more recent quarterly financial statement filed with the commissioner. Each issue designated as provided in paragraph (1) shall constitute a single issue regardless of any other obligations or securities issued by the same or any affiliated issuer; ~~and~~

~~(3) the investing company's aggregate investment in asset-backed securities as provided in this section shall not exceed 20% of the admitted assets of such company, as shown by such company's last annual report as filed with the 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, within 45 days following the end of the calendar quarter to which the interim statement pertains.~~

(b) As used in this section:

(1) "Asset-backed security" means any security or other instrument representing or evidencing an interest in, a loan to, a participation in a loan to, or any other right to receive payments from a business entity of any type or form, which has as its primary business activity the acquisition and holding of financial assets, directly or through a trustee, for the benefit of such business entity's debt or equity holders; *and*

(2) "financial asset" means a single asset or a pool of assets consisting of interest-bearing obligations or other contractual obligations representing or constituting the right to receive payment from the asset or pool of assets.

Sec. 5. K.S.A. 40-2b07 is hereby amended to read as follows: 40-2b07.

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 ~~common stock equity interests~~ *equity interests* of any ~~corporation~~ *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, in an amount, based upon cost, not exceeding 15% of its admitted assets ~~or not~~

exceeding the combined capital and surplus, whichever is the lesser, 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, within 45 days following the end of the calendar quarter to which the interim statement pertains. Such life insurance company may write exchange traded, covered call options on ~~shares~~ 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 ~~common stocks~~ equity interests and the writing of call options shall be further limited as follows: provided in subsections (a) through (g) except that subsections (a) through (e) 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 ~~corporation~~ 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 ~~stock~~ 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 ~~company~~ business entity shall have earnings in three of the last five years preceding the date of acquisition;

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

(f) ~~stock~~ 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 ~~share~~ 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 ~~corporation~~ business entity has net assets of \$10,000,000 or more;

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

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

(h) 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 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. 6. K.S.A. 40-2b12 is hereby amended to read as follows: 40-2b12. 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 loans secured by collateral consisting of a pledge of bonds, mortgages, securities, stock or evidence of indebtedness qualified in ~~K.S.A. 40-2b01 to 40-2b09, inclusive; article 2b of chapter 40 of the Kansas Statutes Annotated, and amendments thereto.~~ ~~Provided, That Except,~~ the amount of the loan ~~is not in excess of eighty percent (80%) shall not exceed 80% of the market value of the securities asset securing the loan.~~ ~~And provided further, That~~ In addition, all restrictions, limitations or conditions placed on any security investment authorized within ~~K.S.A. 40-2b01 to 40-2b09, inclusive; article 2b of chapter 40 of the Kansas Statutes Annotated, and amendments thereto,~~ shall apply to the collateral securities pledged to the payment of loans authorized in this section.

Sec. 7. K.S.A. 2013 Supp. 40-2b28 is hereby amended to read as follows: 40-2b28. (a) No insurance company shall acquire, directly or indirectly, any medium grade or lower grade obligation of any institution if, after giving effect to any such acquisition, the aggregate amount of all medium grade and lower grade obligations then held by such insurer would exceed 20% of its admitted assets. Within this limitation no more than 10% of its admitted assets shall consist of lower grade obligations; no more than three percent of its admitted assets shall consist of obligations designated “5” or “6” in the valuations of securities manual; and, no more than one percent of its admitted assets shall consist of obligations designated “6” in the valuations of securities manual. Attaining or exceeding the limit of any one category shall not preclude an insurer from acquiring obligations in other categories subject to the specific and multi-category limits.

(b) No insurer organized under the laws of this state may invest more than one percent of its admitted assets in medium grade obligations issued, guaranteed or insured by any one institution nor may it invest more than one-half of one percent of its admitted assets in lower grade obligations issued, guaranteed or insured by any one institution. In no event, shall such insurer invest more than one percent of its admitted assets in any medium or lower grade obligations issued, guaranteed or insured by any one institution.

(c) Nothing contained in this act shall prohibit an insurer from acquiring any obligations which it has committed to acquire if the insurer would have been permitted to acquire that obligation pursuant to this act on the date on which such insurer committed to purchase that obligation.

(d) Notwithstanding the limitations of subsection (b), an insurer may acquire an obligation of an institution in which the insurer already has one or more obligations, if the obligation is acquired in order to protect an investment previously made in the obligations of the institution, except that all such acquired obligations shall not exceed one-half of one percent of the insurer’s admitted assets.

(e) Nothing contained in this act shall prohibit an insurer to which this act applies from acquiring an obligation as a result of a restructuring of a medium or lower grade obligation already held or require such insurer to sell or otherwise dispose of any obligation legally acquired prior to the effective date of this act.

(f) Nothing contained in this act shall permit or be construed as permitting an insurer to exceed, alter or otherwise circumvent any of the limitations or restrictions applicable to the investments authorized by ~~K.S.A. 40-2b01 et seq., article 2b of chapter 40 of the Kansas Statutes Annotated,~~ and amendments thereto.

~~(g) Notwithstanding the provisions of K.S.A. 40-2b13, and amendments thereto, the total investment in medium and lower grade securities shall not exceed the limitations set forth in this section.~~

~~(h)~~(g) The board of directors of any insurance company organized under the laws of this state which acquires or invests, directly or indirectly,

more than two percent of its admitted assets in medium grade and lower grade obligations, shall adopt a written plan for the making of such investments. The plan, in addition to guidelines with respect to the quality of the issues invested in, shall contain diversification standards acceptable to the commissioner which may include, but not be limited to, standards for issuer, industry, duration, liquidity and geographic location.

Sec. 8. K.S.A. 40-2b29 is hereby amended to read as follows: 40-2b29.

(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 asset-backed securities, subject to the following:

(1) To be an admitted asset under this section, an asset-backed security must, at the time of acquisition, be designated "1" or "2" by the national association of insurance commissioners in its most recently published valuations of securities manual or supplement thereto; and

(2) the investment in any one issue of asset-backed securities shall not exceed 2% of the admitted assets of the life insurance company as shown by its last annual report or a more recent quarterly financial statement filed with the commissioner. Each issue designated as provided in paragraph (1) shall constitute a single issue regardless of any other obligations or securities issued by the same or any affiliated issuer; and

~~(3) the life insurance company's aggregate investment in asset-backed securities as provided in this section shall not exceed 20% of the admitted assets of such company, as shown by such company's last annual report as filed with the 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, within 45 days following the end of the calendar quarter to which the interim statement pertains.~~

(b) As used in this section:

(1) "Asset-backed security" means any security or other instrument representing or evidencing an interest in, a loan to, a participation in a loan to, or any other right to receive payments from a business entity of any type or form, which has as its primary business activity the acquisition and holding of financial assets, directly or through a trustee, for the benefit of such business entity's debt or equity holders; and

(2) "financial asset" means a single asset or a pool of assets consisting of interest-bearing obligations or other contractual obligations representing or constituting the right to receive payment from the asset or pool of assets.

Sec. 9. K.S.A. 40-2a08, 40-2a14, 40-2a28, 40-2b07, 40-2b12 and 40-2b29 and K.S.A. 2013 Supp. 40-2a27 and 40-2b28 are hereby repealed.

Sec. 10. 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.