

SB176

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2004 APR -7 P 3:09

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

*Regular Session, 2004*

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**ENROLLED**

*Committee Substitute for*

SENATE BILL NO. 176

(By Senator MURKIN )

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PASSED MARCH 13, 2004

In Effect 90 DAYS FROM Passage

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

## ENROLLED

COMMITTEE SUBSTITUTE

FOR

# Senate Bill No. 176

(SENATOR MINARD, *original sponsor*)

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[Passed March 13, 2004; in effect ninety days from passage.]

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AN ACT to amend and reenact §33-3-6 of the code of West Virginia, 1931, as amended; to amend and reenact §33-8-1, §33-8-2, §33-8-3, §33-8-4, §33-8-5, §33-8-6, §33-8-7, §33-8-8, §33-8-9, §33-8-10, §33-8-11, §33-8-12, §33-8-13, §33-8-14, §33-8-15, §33-8-16, §33-8-17, §33-8-18, §33-8-19, §33-8-20, §33-8-21, §33-8-22, §33-8-23, §33-8-24 and §33-8-25 of said code; to amend said code by adding thereto seven new sections, designated §33-8-26, §33-8-27, §33-8-28, §33-8-29, §33-8-30, §33-8-31 and §33-8-32; to amend and reenact §33-9-3 of said code; to amend and reenact §33-22-11 of said code; to amend and reenact §33-23-31 of said code; to amend and reenact §33-24-10 of said code; to amend and reenact §33-25A-4 of said code; to amend and reenact §33-25D-5 of said code; and to amend and reenact §33-27-2a of said code, all relating to investments and investment practices of insurance companies; and correcting

references to amended sections of article eight, chapter thirty-three of said code.

*Be it enacted by the Legislature of West Virginia:*

That §33-3-6 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §33-8-1, §33-8-2, §33-8-3, §33-8-4, §33-8-5, §33-8-6, §33-8-7, §33-8-8, §33-8-9, §33-8-10, §33-8-11, §33-8-12, §33-8-13, §33-8-14, §33-8-15, §33-8-16, §33-8-17, §33-8-18, §33-8-19, §33-8-20, §33-8-21, §33-8-22, §33-8-23, §33-8-24 and §33-8-25 of said code be amended and reenacted; that said code be amended by adding thereto seven new sections, designated §33-8-26, §33-8-27, §33-8-28, §33-8-29, §33-8-30, §33-8-31 and §33-8-32; that §33-9-3 of said code be amended and reenacted; that §33-22-11 of said code be amended and reenacted; that §33-23-31 of said code be amended and reenacted; that §33-24-10 of said code be amended and reenacted; that §33-25A-4 of said code be amended and reenacted; that §33-25D-5 of said code be amended and reenacted; and that §33-27-2a of said code be amended and reenacted, all to read as follows:

**ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.**

**§33-3-6. Property and casualty, financial guaranty and mortgage guaranty insurers - Deposit requirements.**

1 The commissioner shall not issue a license to any insurer  
2 unless it has deposited and maintained in trust with the  
3 state treasurer, for the protection of its policyholders or its  
4 policyholders and creditors, cash or government securities  
5 eligible for the investment of capital funds of domestic  
6 insurers (of the type described in paragraph (A) or (B),  
7 subdivision (1), subsection (a), section eleven, article eight  
8 of this chapter or paragraph (A), (B) or (C), subdivision (3)  
9 of said subsection under this chapter in the amount of one  
10 hundred thousand dollars; except:

11 (a) As to foreign insurers in lieu of the deposit or part of  
12 a deposit with the state treasurer, the commissioner may  
13 accept the current certificate of the state insurance

14 supervisory official of any other state that a like deposit  
15 by the insurer is being maintained in public custody or in  
16 a depository approved by the supervisory official in that  
17 state in trust for the purpose of protection of all policy-  
18 holders or policyholders and creditors of the insurer in the  
19 United States.

20 (b) As to alien insurers in lieu of the deposit or part of a  
21 deposit with the state treasurer, the commissioner may  
22 accept evidence satisfactory to him or her that the insurer  
23 maintains within the United States in public depositories,  
24 or in trust institutions within the United States approved  
25 by the commissioner, assets available for discharge of its  
26 United States insurance obligations which are in an  
27 amount not less than the outstanding liabilities of the  
28 insurer arising out of its insurance transactions in the  
29 United States, together with an amount equal to the  
30 deposit required under this section for other insurers  
31 requesting license to transact like kinds of insurance.

**ARTICLE 8. INVESTMENTS.**

**§33-8-1. Purpose and scope.**

1 (a) The purpose of this article is to protect the interests  
2 of insureds by promoting insurer solvency and financial  
3 strength. This will be accomplished through the applica-  
4 tion of investment standards that facilitate a reasonable  
5 balance of the following objectives:

6 (1) To preserve principal;

7 (2) To assure reasonable diversification as to type of  
8 investment, issuer and credit quality; and

9 (3) To allow insurers to allocate investments in a manner  
10 consistent with principles of prudent investment manage-  
11 ment to achieve an adequate return so that obligations to  
12 insureds are adequately met and financial strength is  
13 sufficient to cover reasonably foreseeable contingencies.

14 (b) This article applies only to investments and invest-  
15 ment practices of domestic insurers and United States  
16 branches of alien insurers entered through this state. This  
17 article does not apply to separate accounts of an insurer  
18 except as provided in article thirteen-a of this chapter.

19 (c) This recodification of former article eight preserves  
20 and continues prior limitations contained in section  
21 106(a)(1) or (2) of the Secondary Mortgage Market En-  
22 hancement Act of 1984 ("SMMEA"), an act of the Congress  
23 of the United States adopted by the acts of the Legislature  
24 in 1991 albeit under separate sections of the same article.  
25 Pursuant to section 106(b) of SMMEA, this section prohib-  
26 its domestic insurers from exercising the investment  
27 authority granted any person, trust, corporation, partner-  
28 ship, association, business trust or business entity pursu-  
29 ant to section 106(a)(1) or (2) of that act.

**§33-8-2. Definitions.**

1 The following terms are defined for purposes of this  
2 article:

3 (1) "Acceptable collateral" means:

4 (A) As to securities lending transactions and for the  
5 purpose of calculating counter party exposure amount,  
6 cash, cash equivalents, letters of credit, direct obligations  
7 of, or securities that are fully guaranteed as to principal  
8 and interest by, the government of the United States or  
9 any agency of the United States, or by the federal national  
10 mortgage association or the federal home loan mortgage  
11 corporation, and as to lending foreign securities, sovereign  
12 debt rated 1 by the securities valuation office ("SVO") of  
13 the national association of insurance commissioners;

14 (B) As to repurchase transactions, cash, cash equivalents  
15 and direct obligations of, or securities that are fully  
16 guaranteed as to principal and interest by, the government  
17 of the United States or an agency of the United States, or

18 by the federal national mortgage association or the federal  
19 home loan mortgage corporation; and

20 (C) As to reverse repurchase transactions, cash and cash  
21 equivalents.

22 (2) "Acceptable private mortgage insurance" means  
23 insurance written by a private insurer protecting a mort-  
24 gage lender against loss occasioned by a mortgage loan  
25 default and issued by a licensed mortgage insurance  
26 company, with an SVO 1 designation or a rating issued by  
27 a nationally recognized statistical rating organization  
28 equivalent to an SVO 1 designation, that covers losses to  
29 an eighty percent loan-to-value ratio.

30 (3) "Accident and sickness insurance" means protection  
31 which provides payment of benefits for covered sickness or  
32 accidental injury, excluding credit insurance, disability  
33 insurance, accidental death and dismemberment insurance  
34 and long-term care insurance.

35 (4) "Accident and sickness insurer" means a licensed life  
36 or sickness insurer or health service corporation whose  
37 insurance premiums and required statutory reserves for  
38 accident and sickness insurance constitute at least  
39 ninety-five percent of total premium considerations or  
40 total statutory required reserves, respectively.

41 (5) "Admitted assets" means assets permitted to be  
42 reported as admitted assets on the statutory financial  
43 statement of the insurer most recently required to be filed  
44 with the commissioner, but excluding assets of separate  
45 accounts, the investments of which are not subject to the  
46 provisions of this article.

47 (6) "Affiliate" means, as to any person, another person  
48 that, directly or indirectly through one or more intermedi-  
49 aries, controls, is controlled by or is under common control  
50 with the person.

51 (7) "Asset-backed security" means a security or other  
52 instrument, excluding a mutual fund, evidencing an  
53 interest in, or the right to receive payments from, or  
54 payable from distributions on, an asset, a pool of assets or  
55 specifically divisible cash flows which are legally trans-  
56 ferred to a trust or another special purpose bank-  
57 ruptcy-remote business entity, on the following conditions:

58 (A) The trust or other business entity is established solely  
59 for the purpose of acquiring specific types of assets or  
60 rights to cash flows, issuing securities and other instru-  
61 ments representing an interest in or right to receive cash  
62 flows from those assets or rights and engaging in activities  
63 required to service the assets or rights and any credit  
64 enhancement or support features held by the trust or other  
65 business entity; and

66 (B) The assets of the trust or other business entity consist  
67 solely of interest bearing obligations or other contractual  
68 obligations representing the right to receive payment from  
69 the cash flows from the assets or rights. However, the  
70 existence of credit enhancements, such as letters of credit  
71 or guarantees, or support features such as swap agree-  
72 ments, does not cause a security or other instrument to be  
73 ineligible as an asset-backed security.

74 (8) "Business entity" includes a sole proprietorship,  
75 corporation, limited liability company, association,  
76 partnership, joint stock company, joint venture, mutual  
77 fund, trust, joint tenancy or other similar form of business  
78 organization, whether organized for-profit or  
79 not-for-profit.

80 (9) "Cap" means an agreement obligating the seller to  
81 make payments to the buyer, with each payment based on  
82 the amount by which a reference price or level or the  
83 performance or value of one or more underlying interests  
84 exceeds a predetermined number, sometimes called the  
85 strike rate or strike price.

86 (10) "Capital and surplus" means the sum of the capital  
87 and surplus of the insurer required to be shown on the  
88 statutory financial statement of the insurer most recently  
89 required to be filed with the commissioner.

90 (11) "Cash equivalents" means short-term, highly rated  
91 and highly liquid investments or securities readily con-  
92 vertible to known amounts of cash without penalty and so  
93 near maturity that they present insignificant risk of  
94 change in value. Cash equivalents include government  
95 money market mutual funds and class one money market  
96 mutual funds. For purposes of this definition:

97 (A) "Short-term" means investments with a remaining  
98 term to maturity of ninety days or less; and

99 (B) "Highly rated" means an investment rated "P-1" by  
100 Moody's Investors Service, Inc., or "A-1" by Standard and  
101 Poor's division of the McGraw Hill Companies, Inc., or its  
102 equivalent rating by a nationally recognized statistical  
103 rating organization recognized by the SVO.

104 (12) "Class one bond mutual fund" means a mutual fund  
105 that at all times qualifies for investment using the bond  
106 class one reserve factor under the purposes and procedures  
107 of the securities valuation office of the national associa-  
108 tion of insurance commissioners, or any successor publica-  
109 tion.

110 (13) "Class one money market mutual fund" means a  
111 money market mutual fund that at all times qualifies for  
112 investment using the bond class one reserve factor under  
113 the purposes and procedures of the securities valuation  
114 office or any successor publication.

115 (14) "Collar" means an agreement to receive payments as  
116 the buyer of an option, cap or floor and to make payments  
117 as the seller of a different option, cap or floor.

118 (15) "Commercial mortgage loan" means a loan secured  
119 by a mortgage, other than a residential mortgage loan.



120 (16) "Construction loan" means a loan of less than three  
121 years in term, made for financing the cost of construction  
122 of a building or other improvement to real estate, that is  
123 secured by the real estate.

124 (17) "Control" means the possession, directly or indi-  
125 rectly, of the power to direct or cause the direction of the  
126 management and policies of a person, whether through the  
127 ownership of voting securities, by contract (other than a  
128 commercial contract for goods or nonmanagement ser-  
129 vices), or otherwise, unless the power is the result of an  
130 official position with or corporate office held by the  
131 person. Control will be presumed to exist if a person,  
132 directly or indirectly, owns, controls, holds with the power  
133 to vote or holds proxies representing ten percent or more  
134 of the voting securities of another person. This presump-  
135 tion may be rebutted by a showing that control does not  
136 exist in fact. The commissioner may determine, after  
137 furnishing all interested persons notice and an opportunity  
138 to be heard and making specific findings of fact to support  
139 the determination, that control exists in fact, notwith-  
140 standing the absence of a presumption to that effect.

141 (18) "Counterparty exposure amount" means:

142 (A) The net amount of credit risk attributable to a  
143 derivative instrument entered into with a business entity  
144 other than through a qualified exchange, qualified foreign  
145 exchange, or cleared through a qualified clearinghouse  
146 ("over-the-counter derivative instrument"). The amount  
147 of credit risk equals:

148 (i) The market value of the over-the-counter derivative  
149 instrument if the liquidation of the derivative instrument  
150 would result in a final cash payment to the insurer; or

151 (ii) Zero if the liquidation of the derivative  
152 instrument would not result in a final cash payment to the  
153 insurer.

154 (B) If over-the-counter derivative instruments are  
155 entered into under a written master agreement which  
156 provides for netting of payments owed by the respective  
157 parties and the domiciliary jurisdiction of the  
158 counterparty is either within the United States or if not  
159 within the United States, within a foreign jurisdiction  
160 listed in the purposes and procedures of the securities  
161 valuation office as eligible for netting, the net amount of  
162 credit risk will be the greater of zero or the net sum of:

163 (i) The market value of the over-the-counter derivative  
164 instruments entered into under the agreement, the liquida-  
165 tion of which would result in a final cash payment to the  
166 insurer; and

167 (ii) The market value of the over-the-counter derivative  
168 instruments entered into under the agreement, the liquida-  
169 tion of which would result in a final cash payment by the  
170 insurer to the business entity.

171 (C) For open transactions, market value will be deter-  
172 mined at the end of the most recent quarter of the insurer's  
173 fiscal year and will be reduced by the market value of  
174 acceptable collateral held by the insurer or placed in  
175 escrow by one or both parties.

176 (19) "Covered" means that an insurer owns or can  
177 immediately acquire, through the exercise of options,  
178 warrants or conversion rights already owned, the underly-  
179 ing interest in order to fulfill or secure its obligations  
180 under a call option, cap or floor it has written, or has set  
181 aside under a custodial or escrow agreement cash or cash  
182 equivalents with a market value equal to the amount  
183 required to fulfill its obligations under a put option it has  
184 written, in an income generation transaction.

185 (20) "Credit tenant loan" means a mortgage loan which  
186 is made primarily in reliance on the credit standing of a  
187 major tenant, structured with an assignment of the rental

188 payments to the lender with real estate pledged as collat-  
189 eral in the form of a first lien.

190 (21) "Derivative instrument" means an agreement,  
191 option, instrument or a series or combination of those  
192 instruments:

193 (A) To make or take delivery of, or assume or relinquish,  
194 a specified amount of one or more underlying interests, or  
195 to make a cash settlement in lieu thereof; or that has a  
196 price, performance, value or cash flow based primarily  
197 upon the actual or expected price, level, performance,  
198 value or cash flow of one or more underlying interests.

199 (B) Derivative instruments include options, warrants  
200 used in a hedging transaction and not attached to another  
201 financial instrument, caps, floors, collars, swaps, forwards,  
202 futures and any other agreements, options or instruments  
203 substantially similar to those instruments or any series or  
204 combination thereof and any agreements, options or  
205 instruments permitted under rules adopted under section  
206 eight of this article. Derivative instruments does not  
207 include an investment authorized by sections eleven  
208 through seventeen, inclusive, nineteen and twenty-four  
209 through thirty, inclusive, of this article.

210 (22) "Derivative transaction" means a transaction  
211 involving the use of one or more derivative instruments.

212 (23) "Direct" or "directly," when used in connection  
213 with an obligation, means that the designated obligor is  
214 primarily liable on the instrument representing the  
215 obligation.

216 (24) "Dollar roll transaction" means two simultaneous  
217 transactions with different settlement dates no more than  
218 ninety-six days apart, so that in the transaction with the  
219 earlier settlement date, an insurer sells to a business  
220 entity, and in the other transaction the insurer is obligated  
221 to purchase from the same business entity substantially  
222 similar securities that are asset-backed securities issued,

223 assumed or guaranteed by the government national  
224 mortgage association, the federal national mortgage  
225 association or the federal home loan mortgage corporation  
226 or their respective successors.

227 (25) "Domestic jurisdiction" means the United States,  
228 Canada, any state, any province of Canada or any political  
229 subdivision of any of those jurisdictions.

230 (26) "Equity interest" means any of the following that  
231 are not rated credit instruments:

232 (A) Common stock;

233 (B) Preferred stock;

234 (C) Trust certificates;

235 (D) Equity investment in an investment company other  
236 than a money market mutual fund or a class one bond  
237 mutual fund;

238 (E) Investment in a common trust fund of a bank regu-  
239 lated by a federal or state agency;

240 (F) An ownership interest in minerals, oil or gas, the  
241 rights to which have been separated from the underlying  
242 fee interest in the real estate where the minerals, oil or gas  
243 are located;

244 (G) Instruments which are mandatorily, or at the option  
245 of the issuer, convertible to equity;

246 (H) Limited partnership interests and those general  
247 partnership interests authorized under subdivision (4),  
248 section five of this article;

249 (I) Member interests in limited liability companies;

250 (J) Warrants or other rights to acquire equity interests  
251 that are created by the person that owns or would issue the  
252 equity to be acquired; or

253 (K) Instruments that would be rated credit instruments  
254 except for the provisions of paragraph (B), subdivision (70)  
255 of this section.

256 (27) "Equivalent securities" means:

257 (A) In a securities lending transaction, securities that are  
258 identical to the loaned securities in all features including  
259 the amount of the loaned securities, except as to certificate  
260 number if held in physical form, but if any different  
261 security will be exchanged for a loaned security by recapitalization, merger, consolidation or other corporate action,  
262 the different security shall be considered to be the loaned  
263 security;  
264 security;

265 (B) In a repurchase transaction, securities that are  
266 identical to the purchased securities in all features including  
267 the amount of the purchased securities, except as to  
268 the certificate number if held in physical form; or

269 (C) In a reverse repurchase transaction, securities that  
270 are identical to the sold securities in all features including  
271 the amount of the sold securities, except as to the certificate  
272 number if held in physical form.

273 (28) "Floor" means an agreement obligating the seller to  
274 make payments to the buyer in which each payment is  
275 based on the amount by which that a predetermined  
276 number, sometimes called the floor rate or price, exceeds  
277 a reference price, level, performance or value of one or  
278 more underlying interests.

279 (29) "Foreign currency" means a currency other than  
280 that of a domestic jurisdiction.

281 (30) "Foreign investment" means an investment in a  
282 foreign jurisdiction, or an investment in a person, real  
283 estate or asset domiciled in a foreign jurisdiction, that is  
284 substantially of the same type as those eligible for investment under this article, other than under sections seventeen and thirty of this article. An investment will not be  
285  
286

287 considered to be foreign if the issuing person, qualified  
288 primary credit source or qualified guarantor is a domestic  
289 jurisdiction or a person domiciled in a domestic jurisdic-  
290 tion, unless:

291 (A) The issuing person is a shell business entity; and

292 (B) The investment is not assumed, accepted, guaranteed  
293 or insured or otherwise backed by a domestic jurisdiction  
294 or a person, that is not a shell business entity, domiciled in  
295 a domestic jurisdiction.

296 (C) For purposes of this definition:

297 (i) "Shell business entity" means a business entity having  
298 no economic substance, except as a vehicle for owning  
299 interests in assets issued, owned or previously owned by a  
300 person domiciled in a foreign jurisdiction;

301 (ii) "Qualified guarantor" means a guarantor against  
302 which an insurer has a direct claim for full and timely  
303 payment, evidenced by a contractual right for which an  
304 enforcement action can be brought in a domestic jurisdic-  
305 tion; and

306 (iii) "Qualified primary credit source" means the credit  
307 source to which an insurer looks for payment as to an  
308 investment and against which an insurer has a direct claim  
309 for full and timely payment, evidenced by a contractual  
310 right for which an enforcement action can be brought in a  
311 domestic jurisdiction.

312 (31) "Foreign jurisdiction" means a jurisdiction other  
313 than a domestic jurisdiction.

314 (32) "Forward" means an agreement (other than a  
315 future) to make or take delivery of, or effect a cash settle-  
316 ment based on the actual or expected price, level, perfor-  
317 mance or value of, one or more underlying interests.

318 (33) "Future" means an agreement, traded on a qualified  
319 exchange or qualified foreign exchange, to make or take

320 delivery of, or effect a cash settlement based on the actual  
321 or expected price, level, performance or value of, one or  
322 more underlying interests.

323 (34) "Government money market mutual fund" means a  
324 money market mutual fund that at all times:

325 (A) Invests only in obligations issued, guaranteed or  
326 insured by the federal government of the United States or  
327 collateralized repurchase agreements composed of these  
328 obligations; and

329 (B) Qualifies for investment without a reserve under the  
330 purposes and procedures of the securities valuation office  
331 or any successor publication.

332 (35) "Government-sponsored enterprise" means a:

333 (A) Governmental agency; or

334 (B) Corporation, limited liability company, association,  
335 partnership, joint stock company, joint venture, trust or  
336 other entity or instrumentality organized under the laws  
337 of any domestic jurisdiction to accomplish a public policy  
338 or other governmental purpose.

339 (36) "Guaranteed or insured", when used in connection  
340 with an obligation acquired under this article, means that  
341 the guarantor or insurer has agreed to:

342 (A) Perform or insure the obligation of the obligor or  
343 purchase the obligation; or

344 (B) Be unconditionally obligated until the obligation is  
345 repaid to maintain in the obligor a minimum net worth,  
346 fixed charge coverage, stockholders' equity or sufficient  
347 liquidity to enable the obligor to pay the obligation in full.

348 (37) "Hedging transaction" means a derivative transac-  
349 tion which is entered into and maintained to reduce:

350 (A) The risk of a change in the value, yield, price, cash  
351 flow or quantity of assets or liabilities which the insurer

352 has acquired or incurred or anticipates acquiring or  
353 incurring; or

354 (B) The currency exchange rate risk or the degree of  
355 exposure as to assets or liabilities which an insurer has  
356 acquired or incurred or anticipates acquiring or incurring.

357 (38) "High grade investment" means a rated credit  
358 instrument rated 1 or 2 by the SVO.

359 (39) "Income" means, as to a security, interest, accrual of  
360 discount, dividends or other distributions, such as rights,  
361 tax or assessment credits, warrants and distributions in  
362 kind.

363 (40) "Income generation transaction" means a derivative  
364 transaction involving the writing of covered call options,  
365 covered put options, covered caps or covered floors that is  
366 intended to generate income or enhance return.

367 (41) "Initial margin" means the amount of cash, securi-  
368 ties or other consideration initially required to be depos-  
369 ited to establish a futures position.

370 (42) "Insurance future" means a future relating to an  
371 index or pool that is based on insurance-related items.

372 (43) "Insurance futures option" means an option on an  
373 insurance future.

374 (44) "Investment company" means an investment  
375 company as defined in section 3(a) of the Investment  
376 Company Act of 1940, as amended, and a person described  
377 in section 3(c) of that act.

378 (45) "Investment company series" means an investment  
379 portfolio of an investment company that is organized as a  
380 series company and to which assets of the investment  
381 company have been specifically allocated.

382 (46) "Investment practices" means transactions of the  
383 types described in sections sixteen, eighteen, twenty-nine  
384 or thirty-one of this article.



385 (47) "Investment subsidiary" means a subsidiary of an  
386 insurer engaged or organized to engage exclusively in the  
387 ownership and management of assets authorized as  
388 investments for the insurer if each subsidiary agrees to  
389 limit its investment in any asset so that its investments  
390 will not cause the amount of the total investment of the  
391 insurer to exceed any of the investment limitations or  
392 avoid any other provisions of this article applicable to the  
393 insurer. As used in this subdivision, the total investment  
394 of the insurer shall include:

395 (A) Direct investment by the insurer in an asset; and

396 (B) The insurer's proportionate share of an investment in  
397 an asset by an investment subsidiary of the insurer, which  
398 shall be calculated by multiplying the amount of the  
399 subsidiary's investment by the percentage of the insurer's  
400 ownership interest in the subsidiary.

401 (48) "Investment strategy" means the techniques and  
402 methods used by an insurer to meet its investment objec-  
403 tives, such as active bond portfolio management, passive  
404 bond portfolio management, interest rate anticipation,  
405 growth investing and value investing.

406 (49) "Letter of credit" means a clean, irrevocable and  
407 unconditional letter of credit issued or confirmed by, and  
408 payable and presentable at, a financial institution on the  
409 list of financial institutions meeting the standards for  
410 issuing letters of credit under the purposes and procedures  
411 of the securities valuation office or any successor publica-  
412 tion. To constitute acceptable collateral for the purposes  
413 of sections sixteen and twenty-nine of this article, a letter  
414 of credit must have an expiration date beyond the term of  
415 the subject transaction.

416 (50) "Limited liability company" means a business  
417 organization, excluding partnerships and ordinary busi-  
418 ness corporations, organized or operating under the laws  
419 of the United States or any state thereof that limits the

420 personal liability of investors to the equity investment of  
421 the investor in the business entity.

422 (51) "Lower grade investment" means a rated credit  
423 instrument rated 4, 5 or 6 by the SVO.

424 (52) "Market value" means:

425 (A) As to cash and letters of credit, the amounts of the  
426 cash and letters of credit; and

427 (B) As to a security as of any date, the price for the  
428 security on that date obtained from a generally recognized  
429 source or the most recent quotation from such a source or,  
430 to the extent no generally recognized source exists, the  
431 price for the security as determined in good faith by the  
432 parties to a transaction, plus accrued but unpaid income  
433 on the security to the extent not included in the price as of  
434 that date.

435 (53) "Medium grade investment" means a rated credit  
436 instrument rated 3 by the SVO.

437 (54) "Money market mutual fund" means a mutual fund  
438 that meets the conditions of 17 code of federal regulations  
439 par. 270.2a-7, under the Investment Company Act of 1940,  
440 as amended or renumbered.

441 (55) "Mortgage loan" means an obligation secured by a  
442 mortgage, deed of trust, trust deed or other consensual lien  
443 on real estate.

444 (56) "Multilateral development bank" means an interna-  
445 tional development organization of which the United  
446 States is a member.

447 (57) "Mutual fund" means an investment company or, in  
448 the case of an investment company that is organized as a  
449 series company, an investment company series that, in  
450 either case, is registered with the United States securities  
451 and exchange commission under the Investment Company  
452 Act of 1940, as amended.

453 (58) "NAIC" means the national association of insurance  
454 commissioners.

455 (59) "Obligation" means a bond, note, debenture, trust  
456 certificate including an equipment certificate, production  
457 payment, negotiable bank certificate of deposit, bankers'  
458 acceptance, credit tenant loan, loan secured by financing  
459 net leases and other evidence of indebtedness for the  
460 payment of money (or participations, certificates or other  
461 evidences of an interest in any of the foregoing), whether  
462 constituting a general obligation of the issuer or payable  
463 only out of certain revenues or certain funds pledged or  
464 otherwise dedicated for payment.

465 (60) "Option" means an agreement giving the buyer the  
466 right to buy or receive (a "call option"), sell or deliver (a  
467 "put option"), enter into, extend or terminate or effect a  
468 cash settlement based on the actual or expected price,  
469 level, performance or value of one or more underlying  
470 interests.

471 (61) "Person" means an individual, a business entity, a  
472 multilateral development bank or a government or quasi-  
473 governmental body, such as a political subdivision or a  
474 government-sponsored enterprise.

475 (62) "Potential exposure" means the amount determined  
476 in accordance with the NAIC annual statement instruc-  
477 tions.

478 (63) "Preferred stock" means preferred, preference or  
479 guaranteed stock of a business entity authorized to issue  
480 the stock, that has a preference in liquidation over the  
481 common stock of the business entity.

482 (64) "Qualified bank" means:

483 (A) A national bank, state bank or trust company that at  
484 all times is no less than adequately capitalized as deter-  
485 mined by standards adopted by United States banking

486 regulators and that is either regulated by state banking  
487 laws or is a member of the federal reserve system; or

488 (B) A bank or trust company incorporated or organized  
489 under the laws of a country other than the United States  
490 that is regulated as a bank or trust company by that  
491 country's government or an agency of the government and  
492 that at all times is no less than adequately capitalized as  
493 determined by the standards adopted by international  
494 banking authorities.

495 (65) "Qualified business entity" means a business entity  
496 that is:

497 (A) An issuer of obligations or preferred stock that are  
498 rated 1 or 2 by the SVO or an issuer of obligations, pre-  
499 ferred stock or derivative instruments that are rated the  
500 equivalent of 1 or 2 by the SVO or by a nationally recog-  
501 nized statistical rating organization recognized by the  
502 SVO; or

503 (B) A primary dealer in United States government  
504 securities, recognized by the Federal Reserve Bank of New  
505 York.

506 (66) "Qualified clearinghouse" means a clearinghouse  
507 for, and subject to the rules of, a qualified exchange or a  
508 qualified foreign exchange, which provides clearing  
509 services, including acting as a counterparty to each of the  
510 parties to a transaction so that the parties no longer have  
511 credit risk as to each other.

512 (67) "Qualified exchange" means:

513 (A) A securities exchange registered as a national  
514 securities exchange, or a securities market regulated under  
515 the Securities Exchange Act of 1934, as amended;

516 (B) A board of trade or commodities exchange desig-  
517 nated as a contract market by the commodity futures  
518 trading commission or any successor thereof;

519 (C) Private offerings, resales and trading through  
520 automated linkages (PORTAL);

521 (D) A designated offshore securities market as defined in  
522 securities exchange commission regulation S, 17 C. F. R.  
523 part 230, as amended; or

524 (E) A qualified foreign exchange.

525 (68) "Qualified foreign exchange" means a foreign  
526 exchange, board of trade or contract market located  
527 outside the United States, its territories or possessions:

528 (A) That has received regulatory comparability relief  
529 under commodity futures trading commission (CFTC) rule  
530 30.10 (as set forth in appendix C to part 30 of the CFTC's  
531 regulations, 17 C. F. R. part 30);

532 (B) That is, or its members are, subject to the jurisdiction  
533 of a foreign futures authority that has received regulatory  
534 comparability relief under CFTC rule 30.10 (as set forth in  
535 appendix C to part 30 of the CFTC's regulations, 17 C. F.  
536 R. part 30) as to futures transactions in the jurisdiction  
537 where the exchange, board of trade or contract market is  
538 located; or

539 (C) Upon which foreign stock index futures contracts are  
540 listed that are the subject of no-action relief issued by the  
541 CFTC's office of general counsel, provided that an ex-  
542 change, board of trade or contract market that qualifies as  
543 a "qualified foreign exchange" only under this subdivision  
544 shall only be a "qualified foreign exchange" as to foreign  
545 stock index futures contracts that are the subject of  
546 no-action relief.

547 (69) "Rated credit instrument" means:

548 (A) A contractual right to receive cash or another rated  
549 credit instrument from another entity which:

550 (i) Is rated or required to be rated by the SVO;

551 (ii) In the case of an instrument with a maturity of three  
552 hundred ninety-seven days or less, is issued, guaranteed or  
553 insured by an entity that is rated by, or another obligation  
554 of the entity is rated by, the SVO or by a nationally  
555 recognized statistical rating organization recognized by  
556 the SVO;

557 (iii) In the case of an instrument with a maturity of  
558 ninety days or less, is issued by a qualified bank;

559 (iv) Is a share of a class one bond mutual fund; or

560 (v) Is a share of a money market mutual fund.

561 (B) However, "rated credit instrument" does not mean:

562 (i) An instrument that is mandatorily, or at the option of  
563 the issuer, convertible to an equity interest; or

564 (ii) A security that has a par value and whose terms  
565 provide that the issuer's net obligation to repay all or part  
566 of the security's par value is determined by reference to  
567 the performance of an equity, a commodity, a foreign  
568 currency or an index of equities, commodities, foreign  
569 currencies or combinations thereof.

570 (70) "Real estate" means:

571 (A) Real property, including: Interests in real property,  
572 such as leaseholds, minerals and oil and gas that have not  
573 been separated from the underlying fee interest; improve-  
574 ments and fixtures located on or in real property; and the  
575 seller's equity in a contract providing for a deed of real  
576 estate.

577 (B) As to a mortgage on a leasehold estate, real estate  
578 shall include the leasehold estate only if it has an unex-  
579 pired term (including renewal options exercisable at the  
580 option of the lessee) extending beyond the scheduled  
581 maturity date of the obligation that is secured by a  
582 mortgage on the leasehold estate by a period equal to at

583 least twenty percent of the original term of the obligation  
584 or ten years, whichever is greater.

585 (71) "Replication transaction" means a derivative  
586 transaction that is intended to replicate the performance  
587 of one or more assets that an insurer is authorized to  
588 acquire under this article. A derivative transaction that is  
589 entered into as a hedging transaction will not be consid-  
590 ered a replication transaction.

591 (72) "Repurchase transaction" means a transaction in  
592 which an insurer purchases securities from a business  
593 entity that is obligated to repurchase the purchased  
594 securities or equivalent securities from the insurer at a  
595 specified price, either within a specified period of time or  
596 upon demand.

597 (73) "Required liabilities" means total liabilities re-  
598 quired to be reported on the statutory financial statement  
599 of the insurer most recently required to be filed with the  
600 commissioner.

601 (74) "Residential mortgage loan" means a loan primarily  
602 secured by a mortgage on real estate improved with a  
603 one-to-four family residence.

604 (75) "Reverse repurchase transaction" means a transac-  
605 tion in which an insurer sells securities to a business entity  
606 and is obligated to repurchase the sold securities or  
607 equivalent securities from the business entity at a specified  
608 price, either within a specified period of time or upon  
609 demand.

610 (76) "Secured location" means the contiguous real estate  
611 owned by one person.

612 (77) "Securities lending transaction" means a transac-  
613 tion in which securities are loaned by an insurer to a  
614 business entity that is obligated to return the loaned  
615 securities or equivalent securities to the insurer, either  
616 within a specified period of time or upon demand.

617 (78) "Series company" means an investment company  
618 that is organized as a series company, as defined in rule  
619 18f-2(a) adopted under the Investment Company Act of  
620 1940, as amended.

621 (79) "Sinking fund stock" means preferred stock that:

622 (A) Is subject to a mandatory sinking fund or similar  
623 arrangement that will provide for the redemption (or open  
624 market purchase) of the entire issue over a period not  
625 longer than forty years from the date of acquisition; and

626 (B) Provides for mandatory sinking fund installments (or  
627 open market purchases) commencing not more than ten  
628 and one-half years from the date of issue, with the sinking  
629 fund installments providing for the purchase or redemp-  
630 tion, on a cumulative basis commencing ten years from the  
631 date of issue, of at least two and one-half percent per year  
632 of the original number of shares of that issue of preferred  
633 stock.

634 (80) "Special rated credit instrument" means a rated  
635 credit instrument that is:

636 (A) An instrument that is structured so that, if it is held  
637 until retired by or on behalf of the issuer, its rate of return,  
638 based on its purchase cost and any cash flow stream  
639 possible under the structure of the transaction, may  
640 become negative due to reasons other than the credit risk  
641 associated with the issuer of the instrument; however, a  
642 rated credit instrument will not be a special rated credit  
643 instrument under this subdivision if it is:

644 (i) A share in a class one bond mutual fund;

645 (ii) An instrument, other than an asset-backed security,  
646 with payments of par value fixed as to amount and timing,  
647 or callable but in any event payable only at par or greater,  
648 and interest or dividend cash flows that are based on  
649 either a fixed or variable rate determined by reference to  
650 a specified rate or index;



651 (iii) An instrument, other than an asset-backed security,  
652 that has a par value and is purchased at a price no greater  
653 than one hundred ten percent of par;

654 (iv) An instrument, including an asset-backed security,  
655 whose rate of return would become negative only as a  
656 result of a prepayment due to casualty, condemnation or  
657 economic obsolescence of collateral or change of law;

658 (v) An asset-backed security that relies on collateral that  
659 meets the requirements of subparagraph (ii) of this para-  
660 graph, the par value of which collateral:

661 (I) Is not permitted to be paid sooner than one half of the  
662 remaining term to maturity from the date of acquisition;

663 (II) Is permitted to be paid prior to maturity only at a  
664 premium sufficient to provide a yield to maturity for the  
665 investment, considering the amount prepaid and reinvest-  
666 ment rates at the time of early repayment, at least equal to  
667 the yield to maturity of the initial investment; or

668 (III) Is permitted to be paid prior to maturity at a  
669 premium at least equal to the yield of a treasury issue of  
670 comparable remaining life; or

671 (vi) An asset-backed security that relies on cash flows  
672 from assets that are not prepayable at any time at par, but  
673 is not otherwise governed by subparagraph (v) of this  
674 paragraph, if the asset-backed security has a par value  
675 reflecting principal payments to be received if held until  
676 retired by or on behalf of the issuer and is purchased at a  
677 price no greater than one hundred five percent of such par  
678 amount.

679 (B) An asset-backed security that:

680 (i) Relies on cash flows from assets that are prepayable  
681 at par at any time;

682 (ii) Does not make payments of par that are fixed as to  
683 amount and timing; and

684 (iii) Has a negative rate of return at the time of acqui-  
685 sition if a prepayment threshold assumption is used with the  
686 prepayment threshold assumption defined as either:

687 (I) Two times the prepayment expectation reported by a  
688 recognized, publicly available source as being the median  
689 of expectations contributed by broker dealers or other  
690 entities, except insurers, engaged in the business of selling  
691 or evaluating the securities or assets. The prepayment  
692 expectation used in this calculation shall be, at the in-  
693 surer's election, the prepayment expectation for  
694 pass-through securities of the federal national mortgage  
695 association, the federal home loan mortgage corporation,  
696 the government national mortgage association or for other  
697 assets of the same type as the assets that underlie the  
698 asset-backed security, in either case with a gross weighted  
699 average coupon comparable to the gross weighted average  
700 coupon of the assets that underlie the asset-backed  
701 security; or

702 (II) Another prepayment threshold assumption specified  
703 by the commissioner by rule promulgated under section  
704 eight of this article.

705 (C) For purposes of paragraph (B) of this subdivision, if  
706 the asset-backed security is purchased in combination  
707 with one or more other asset-backed securities that are  
708 supported by identical underlying collateral, the insurer  
709 shall calculate the rate of return for these specific com-  
710 bined asset-backed securities in combination. The insurer  
711 must maintain documentation demonstrating that the  
712 securities were acquired and are continuing to be held in  
713 combination.

714 (81) "State" means a state, territory or possession of the  
715 United States of America, the District of Columbia or the  
716 Commonwealth of Puerto Rico.

717 (82) "Substantially similar securities" means securities  
718 that meet all criteria for substantially similar specified in

719 the NAIC accounting practices and procedures manual, as  
720 amended, and in an amount that constitutes good delivery  
721 form as determined from time to time by the public  
722 securities administration.

723 (83) "SVO" means the securities valuation office of the  
724 NAIC or any successor office established by the NAIC.

725 (84) "Swap" means an agreement to exchange or to net  
726 payments at one or more times based on the actual or  
727 expected price, level, performance or value of one or more  
728 underlying interests.

729 (85) "Underlying interest" means the assets, liabilities,  
730 other interests or a combination thereof underlying a  
731 derivative instrument, such as any one or more securities,  
732 currencies, rates, indices, commodities or derivative  
733 instruments.

734 (86) "Unrestricted surplus" means the amount by which  
735 total admitted assets exceed one hundred twenty-five  
736 percent of the insurer's required liabilities.

737 (87) "Warrant" means an instrument that gives the  
738 holder the right to purchase an underlying financial  
739 instrument at a given price and time or at a series of prices  
740 and times outlined in the warrant agreement. Warrants  
741 may be issued alone or in connection with the sale of other  
742 securities, for example, as part of a merger or recapitaliza-  
743 tion agreement, or to facilitate divestiture of the securities  
744 of another business entity.

**§33-8-3. General investment qualifications.**

1 (a) Insurers shall acquire, hold or invest in investments  
2 or engage in investment practices as set forth in this  
3 article. Investments not conforming to this article will not  
4 be admitted assets.

5 (b) Subject to subsection (c) of this section, an insurer  
6 may not acquire or hold an investment as an admitted  
7 asset unless at the time of acquisition it is:

8 (1) Eligible for the payment or accrual of interest or  
9 discount (whether in cash or other securities), eligible to  
10 receive dividends or other distributions or is otherwise  
11 income producing; or

12 (2) Acquired under subsection (c), section fifteen of this  
13 article; sections sixteen, eighteen or twenty of this article;  
14 subsection (c), section twenty-eight of this article; sections  
15 twenty-nine, thirty-one or thirty-two of this article; or  
16 under the authority of sections of the code other than this  
17 article.

18 (c) An insurer may acquire or hold as admitted assets  
19 investments that do not otherwise qualify as provided in  
20 this article if the insurer has not acquired them for the  
21 purpose of circumventing any limitations contained in this  
22 article, if the insurer acquires the investments in the  
23 following circumstances and the insurer complies with the  
24 provisions of sections five and seven of this article as to  
25 the investments:

26 (1) As payment on account of existing indebtedness or in  
27 connection with the refinancing, restructuring or workout  
28 of existing indebtedness, if taken to protect the insurer's  
29 interest in that investment;

30 (2) As realization on collateral for an obligation;

31 (3) In connection with an otherwise qualified investment  
32 or investment practice, as interest on or a dividend or  
33 other distribution related to the investment or investment  
34 practice or in connection with the refinancing of the  
35 investment, in each case for no additional or only nominal  
36 consideration;

37 (4) Under a lawful and bona fide agreement of recapital-  
38 ization or voluntary or involuntary reorganization in  
39 connection with an investment held by the insurer; or

40 (5) Under a bulk reinsurance, merger or consolidation  
41 transaction approved by the commissioner if the assets

42 constitute admissible investments for the ceding, merged  
43 or consolidated companies.

44 (d) An investment or portion of an investment acquired  
45 by an insurer under subsection (c) of this section shall  
46 become a nonadmitted asset three years (or five years in  
47 the case of mortgage loans and real estate) from the date  
48 of its acquisition, unless within that period the investment  
49 has become a qualified investment under a section of this  
50 article other than subsection (c) of this section, but an  
51 investment acquired under an agreement of bulk reinsur-  
52 ance, merger or consolidation may be qualified for a longer  
53 period if so provided in the plan for reinsurance, merger or  
54 consolidation as approved by the commissioner. Upon  
55 application by the insurer and a showing that the  
56 nonadmission of an asset held under said subsection would  
57 materially injure the interests of the insurer, the commis-  
58 sioner may extend the period for admissibility for an  
59 additional reasonable period of time.

60 (e) Except as provided in subsections (f) and (h) of this  
61 section, an investment shall qualify under this article if, on  
62 the date the insurer committed to acquire the investment  
63 or on the date of its acquisition, it would have qualified  
64 under this article. For the purposes of determining  
65 limitations contained in this article, an insurer shall give  
66 appropriate recognition to any commitments to acquire  
67 investments.

68 (f) Investments held and investment transactions entered  
69 into before the effective date of this article are valid as  
70 follows:

71 (1) An investment held as an admitted asset by an  
72 insurer on the effective date of this article which qualified  
73 under applicable law in effect before the effective date  
74 remains qualified as an admitted asset under this article;  
75 and

76 (2) Each specific transaction constituting an investment  
77 practice of the type described in this article that was

78 lawfully entered into by an insurer and was in effect on  
79 the effective date of this article continues to be permitted  
80 under this article until its expiration or termination under  
81 its terms;

82 (g) Unless otherwise specified, an investment limitation  
83 computed on the basis of an insurer's admitted assets or  
84 capital and surplus relates to the amount required to be  
85 shown on the statutory balance sheet of the insurer most  
86 recently required to be filed with the commissioner. For  
87 purposes of computing any limitation based upon admitted  
88 assets, the insurer shall deduct from the amount of its  
89 admitted assets the amount of the liability recorded on its  
90 statutory balance sheet for:

91 (1) The return of acceptable collateral received in a  
92 reverse repurchase transaction or a securities lending  
93 transaction;

94 (2) Cash received in a dollar roll transaction; and

95 (3) The amount reported as borrowed money in the most  
96 recently filed financial statement to the extent not in-  
97 cluded in subdivisions (1) and (2) of this subsection.

98 (h) An investment qualified, in whole or in part, for  
99 acquisition or holding as an admitted asset may be quali-  
100 fied or requalified at the time of acquisition or a later date,  
101 in whole or in part, under any other section, if the relevant  
102 conditions contained in the other section are satisfied at  
103 the time of qualification or requalification.

104 (i) An insurer shall maintain documentation demonstrat-  
105 ing that investments were acquired in accordance with this  
106 article, and specifying the section of this article under  
107 which they were acquired.

108 (j) An insurer may not enter into an agreement to  
109 purchase securities in advance of their issuance for resale  
110 to the public as part of a distribution of the securities by  
111 the issuer or otherwise guarantee the distribution, except

112 that an insurer may acquire privately placed securities  
113 with registration rights.

114 (k) Notwithstanding the provisions of this article, the  
115 commissioner, for good cause, may order under the state's  
116 administrative procedures or equivalent, an insurer to  
117 nonadmit, limit, dispose of, withdraw from or discontinue  
118 an investment or investment practice. The authority of the  
119 commissioner under this subsection is in addition to any  
120 other authority of the commissioner.

121 (l) Insurance futures and insurance futures options are  
122 not considered investments or investment practices for  
123 purposes of this article.

**§33-8-4. Authorization of investments by the board of directors.**

1 (a) An insurer's board of directors shall adopt a written  
2 plan for acquiring and holding investments and for  
3 engaging in investment practices that specifies guidelines  
4 as to the quality, maturity and diversification of invest-  
5 ments and other specifications including investment  
6 strategies intended to assure that the investments and  
7 investment practices are appropriate for the business  
8 conducted by the insurer, its liquidity needs and its capital  
9 and surplus. The board shall review and assess the in-  
10 surer's technical investment and administrative capabili-  
11 ties and expertise before adopting a written plan concern-  
12 ing an investment strategy or investment practice.

13 (b) Investments acquired and held under this article shall  
14 be acquired and held under the supervision and direction  
15 of the board of directors of the insurer. The board of  
16 directors shall evidence by formal resolution, at least  
17 annually, that it has determined whether all investments  
18 have been made in accordance with delegations, standards,  
19 limitations and investment objectives prescribed by the  
20 board or a committee of the board charged with the  
21 responsibility to direct its investments.

22 (c) On no less than a quarterly basis, and more often if  
23 considered appropriate, an insurer's board of directors or  
24 committee of the board of directors shall:

25 (1) Receive and review a summary report on the insurer's  
26 investment portfolio, its investment activities and invest-  
27 ment practices engaged in under delegated authority, in  
28 order to determine whether the investment activity of the  
29 insurer is consistent with its written plan; and

30 (2) Review and revise, as appropriate, the written plan.

31 (d) In discharging its duties under this section, the board  
32 of directors shall require that records of any authoriza-  
33 tions or approvals, other documentation as the board may  
34 require and reports of any action taken under authority  
35 delegated under the plan referred to in subsection (a) of  
36 this section shall be made available on a regular basis to  
37 the board of directors.

38 (e) In discharging their duties under this section, the  
39 directors of an insurer shall perform their duties in good  
40 faith and with that degree of care that ordinarily prudent  
41 individuals in like positions would use under similar  
42 circumstances.

43 (f) If an insurer does not have a board of directors, all  
44 references to the board of directors in this article shall be  
45 considered to be references to the governing body of the  
46 insurer having authority equivalent to that of a board of  
47 directors.

**§33-8-5. Prohibited investments.**

1 An insurer may not, directly or indirectly:

2 (a) Invest in an obligation or security or make a guaran-  
3 tee for the benefit of or in favor of an officer or director of  
4 the insurer, except as provided in section six of this article;

5 (b) Invest in an obligation or security, make a guarantee  
6 for the benefit of or in favor of, or make other investments



7 in a business entity of which ten percent or more of the  
8 voting securities or equity interests are owned directly or  
9 indirectly by or for the benefit of one or more officers or  
10 directors of the insurer, except as authorized in article  
11 twenty-seven of this chapter or provided in section six of  
12 this article;

13 (c) Engage on its own behalf or through one or more  
14 affiliates in a transaction or series of transactions designed  
15 to evade the prohibitions of this article;

16 (d) Invest in a partnership as a general partner, except  
17 that an insurer may make an investment as a general  
18 partner:

19 (1) If all other partners in the partnership are subsidiar-  
20 ies of the insurer;

21 (2) For the purpose of meeting cash calls committed to  
22 prior to the effective date of this article, completing those  
23 specific projects or activities of the partnership in which  
24 the insurer was a general partner as of the effective date of  
25 this article that had been undertaken as of that date, or  
26 making capital improvements to property owned by the  
27 partnership on the effective date of this article if the  
28 insurer was a general partner as of that date; or

29 (3) In accordance with subsection (c), section three of  
30 this article, this paragraph does not prohibit a subsidiary  
31 or other affiliate of the insurer from becoming a general  
32 partner; or

33 (e) Invest in or lend its funds upon the security of shares  
34 of its own stock, except that an insurer may acquire shares  
35 of its own stock for the following purposes, but the shares  
36 may not be admitted assets of the insurer:

37 (1) Conversion of a stock insurer into a mutual or  
38 reciprocal insurer or a mutual or reciprocal insurer into a  
39 stock insurer;

40 (2) Issuance to the insurer's officers, employees or agents  
41 in connection with a plan approved by the commissioner  
42 for converting a publicly held insurer into a privately held  
43 insurer or in connection with other stock option and  
44 employee benefit plans; or

45 (3) In accordance with any other plan approved by the  
46 commissioner.

**§33-8-6. Loans to officers and directors.**

1 (a) Except as provided in subsection (b) of this section,  
2 an insurer may not, without the prior written approval of  
3 the commissioner, directly or indirectly:

4 (1) Make a loan to or other investment in an officer or  
5 director of the insurer or a person in which the officer or  
6 director has any direct or indirect financial interest;

7 (2) Make a guarantee for the benefit of or in favor of an  
8 officer or director of the insurer or a person in which the  
9 officer or director has any direct or indirect financial  
10 interest; or

11 (3) Enter into an agreement for the purchase or sale of  
12 property from or to an officer or director of the insurer or  
13 a person in which the officer or director has any direct or  
14 indirect financial interest.

15 (b) For purposes of this section, an officer or director  
16 may not be determined to have a financial interest by  
17 reason of an interest that is held directly or indirectly  
18 through the ownership of equity interests representing less  
19 than two percent of all outstanding equity interests issued  
20 by a person that is a party to the transaction, or solely by  
21 reason of that individual's position as a director or officer  
22 of a person that is a party to the transaction.

23 (c) This subsection does not permit an investment that is  
24 prohibited by section five of this article.

25 (d) This subsection does not apply to a transaction  
26 between an insurer and any of its subsidiaries or affiliates

27 that is entered into in compliance with article  
28 twenty-seven of this chapter, other than a transaction  
29 between an insurer and its officer or director.

30 (e) An insurer may make, without the prior written  
31 approval of the commissioner:

32 (1) Policy loans in accordance with the terms of the  
33 policy or contract and section nineteen of this article;

34 (2) Advances to officers or directors for expenses reason-  
35 ably expected to be incurred in the ordinary course of the  
36 insurer's business or guarantees associated with credit or  
37 charge cards issued or credit extended for the purpose of  
38 financing these expenses;

39 (3) Loans secured by the principal residence of an  
40 existing or new officer of the insurer made in connection  
41 with the officer's relocation at the insurer's request, if the  
42 loans comply with the requirements of section fifteen or  
43 twenty-eight of this article and the terms and conditions  
44 otherwise are the same as those generally available from  
45 unaffiliated third parties;

46 (4) Secured loans to an existing or new officer of the  
47 insurer made in connection with the officer's relocation at  
48 the insurer's request, if the loans:

49 (A) Do not have a term exceeding two years;

50 (B) Are required to finance mortgage loans outstanding  
51 at the same time on the prior and new residences of the  
52 officer;

53 (C) Do not exceed an amount equal to the equity of the  
54 officer in the prior residence; and

55 (D) Are required to be fully repaid upon the earlier of the  
56 end of the two-year period or the sale of the prior resi-  
57 dence; and

58 (5) Loans and advances to officers or directors made in  
59 compliance with state or federal law specifically related to

60 the loans and advances by a regulated noninsurance  
61 subsidiary or affiliate of the insurer in the ordinary course  
62 of business and on terms no more favorable than available  
63 to other customers of the entity.

**§33-8-7. Valuation of investments.**

1 For the purposes of this article, the value or amount of  
2 an investment acquired or held, or an investment practice  
3 engaged in, under this article, unless otherwise specified in  
4 this code, is the value at which assets of an insurer are  
5 required to be reported for statutory accounting purposes  
6 as determined in accordance with procedures prescribed in  
7 published accounting and valuation standards of the  
8 NAIC, including the purposes and procedures of the  
9 securities valuation office, the valuation of securities  
10 manual, the accounting practices and procedures manual,  
11 the annual statement instructions or any successor valua-  
12 tion procedures officially adopted by the NAIC.

**§33-8-8. Rules.**

1 The commissioner may, in accordance with article one,  
2 chapter twenty-nine-a of this code, promulgate rules  
3 implementing the provisions of this article.

**§33-8-9. Life and health insurers - Applicability.**

1 Sections ten through twenty, inclusive, of this article  
2 apply to the investments and investment practices of life  
3 and health insurers, subject to the provisions of subsection  
4 (b), section one of this article.

**§33-8-10. Same - General three percent diversification, medium  
and lower grade investments and Canadian invest-  
ments.**

1 (a) Except as otherwise specified in this article, an  
2 insurer may not acquire, directly or indirectly through an  
3 investment subsidiary, an investment under this article if,  
4 as a result of and after giving effect to the investment, the  
5 insurer would hold more than three percent of its admitted

6 assets in investments of all kinds issued, assumed, ac-  
7 cepted, insured or guaranteed by a single person, or five  
8 percent of its admitted assets in investments in the voting  
9 securities of a depository institution or any company that  
10 controls the institution.

11 (b) This three-percent limitation does not apply to the  
12 aggregate amounts insured by a single financial guaranty  
13 insurer with the highest generic rating issued by a nation-  
14 ally recognized statistical rating organization.

15 (c) Asset-backed securities are not subject to the limita-  
16 tions of subsection (a) of this section, however, an insurer  
17 may not acquire an asset-backed security if, as a result of  
18 and after giving effect to the investment, the aggregate  
19 amount of asset-backed securities secured by or evidenc-  
20 ing an interest in a single asset or single pool of assets held  
21 by a trust or other business entity, then held by the insurer  
22 would exceed three percent of its admitted assets.

23 (d) *Medium and lower grade investments.* –

24 An insurer may not acquire, directly or indirectly  
25 through an investment subsidiary, an investment under  
26 sections eleven, fourteen and seventeen of this article or  
27 counterparty exposure under subsection (d), section  
28 eighteen of this article if, as a result of and after giving  
29 effect to the investment:

30 (1) The aggregate amount of medium and lower grade  
31 investments then held by the insurer would exceed twenty  
32 percent of its admitted assets;

33 (2) The aggregate amount of lower grade investments  
34 then held by the insurer would exceed ten percent of its  
35 admitted assets;

36 (3) The aggregate amount of investments rated 5 or 6 by  
37 the SVO then held by the insurer would exceed three  
38 percent of its admitted assets;

39 (4) The aggregate amount of investments rated 6 by the  
40 SVO then held by the insurer would exceed one percent of  
41 its admitted assets; or

42 (5) The aggregate amount of medium and lower grade  
43 investments then held by the insurer that receive as cash  
44 income less than the equivalent yield for treasury issues  
45 with a comparative average life, would exceed one percent  
46 of its admitted assets.

47 (e) An insurer may not acquire, directly or indirectly  
48 through an investment subsidiary, an investment under  
49 sections eleven, fourteen and seventeen of this article or  
50 counterparty exposure under subsection (d), section  
51 eighteen of this article if, as a result of and after giving  
52 effect to the investment:

53 (1) The aggregate amount of medium and lower grade  
54 investments issued, assumed, guaranteed, accepted or  
55 insured by any one person or, as to asset-backed securities  
56 secured by or evidencing an interest in a single asset or  
57 pool of assets, then held by the insurer would exceed one  
58 percent of its admitted assets;

59 (2) The aggregate amount of lower grade investments  
60 issued, assumed, guaranteed, accepted or insured by any  
61 one person or, as to asset-backed securities secured by or  
62 evidencing an interest in a single asset or pool of assets,  
63 then held by the insurer would exceed one half of one  
64 percent of its admitted assets; or

65 (3) If an insurer attains or exceeds the limit of any one  
66 rating category referred to in this subsection, the insurer  
67 will not be precluded from acquiring investments in other  
68 rating categories subject to the specific and multicategory  
69 limits applicable to those investments.

70 (f) *Canadian investments.* –

71 An insurer may not acquire, directly or indirectly  
72 through an investment subsidiary, a Canadian investment

73 authorized by this article if, as a result of and after giving  
74 effect to the investment, the aggregate amount of these  
75 investments then held by the insurer would exceed forty  
76 percent of its admitted assets, or if the aggregate amount  
77 of Canadian investments not acquired under subdivision  
78 (2), section eleven of this article then held by the insurer  
79 would exceed twenty-five percent of its admitted assets.

80 (g) However, as to an insurer that is authorized to do  
81 business in Canada or that has outstanding insurance,  
82 annuity or reinsurance contracts on lives or risks resident  
83 or located in Canada and denominated in Canadian  
84 currency, the limitations of subsection (f) of this section  
85 shall be increased by the greater of:

86 (1) The amount the insurer is required by Canadian law  
87 to invest in Canada or to be denominated in Canadian  
88 currency; or

89 (2) One hundred fifteen percent of the amount of its  
90 reserves and other obligations under contracts on lives or  
91 risks resident or located in Canada.

**§33-8-11. Same - Rated credit instruments.**

1 (a) Subject to the limitations of subsection (b) of this  
2 section, an insurer may acquire rated credit instruments:

3 (1) Subject to the limitations of subsection (b), section  
4 ten of this article, but not to the limitations of subsection  
5 (a), section ten of this article, an insurer may acquire rated  
6 credit instruments issued, assumed, guaranteed or insured  
7 by:

8 (A) The United States; or

9 (B) A government-sponsored enterprise of the United  
10 States, if the instruments of the government-sponsored  
11 enterprise are assumed, guaranteed or insured by the  
12 United States or are otherwise backed or supported by the  
13 full faith and credit of the United States.

14 (2) Subject to the limitations of subsection (b), section  
15 ten of this article, but not to the limitations of subsection  
16 (a) of said section, an insurer may acquire rated credit  
17 instruments issued, assumed, guaranteed or insured by:

18 (A) Canada; or

19 (B) A government-sponsored enterprise of Canada, if the  
20 instruments of the government-sponsored enterprise are  
21 assumed, guaranteed or insured by Canada or are other-  
22 wise backed or supported by the full faith and credit of  
23 Canada. However, an insurer may not acquire an instru-  
24 ment under this subdivision if, as a result of and after  
25 giving effect to the investment, the aggregate amount of  
26 investments then held by the insurer under this subdivi-  
27 sion would exceed forty percent of its admitted assets.

28 (3) Subject to the limitations of subsection (b), section  
29 ten of this article, but not to the limitations of subsection  
30 (a) of said section, an insurer may acquire rated credit  
31 instruments, excluding asset-backed securities:

32 (A) Issued by a government money market mutual fund,  
33 a class one money market mutual fund or a class one bond  
34 mutual fund;

35 (B) Issued, assumed, guaranteed or insured by a govern-  
36 ment-sponsored enterprise of the United States other than  
37 those eligible under subsection (a) of this section;

38 (C) Issued, assumed, guaranteed or insured by a state, if  
39 the instruments are general obligations of the state; or

40 (D) Issued by a multilateral development bank. How-  
41 ever, an insurer may not acquire an instrument of any one  
42 fund, any one enterprise or entity or any one state under  
43 this subdivision if, as a result of and after giving effect to  
44 the investment, the aggregate amount of investments then  
45 held in any one fund, enterprise or entity or state under  
46 this subdivision would exceed ten percent of its admitted  
47 assets.



48 (4) Subject to the limitations of section ten of this article,  
49 an insurer may acquire preferred stocks that are not  
50 foreign investments and that meet the requirements of  
51 rated credit instruments if, as a result of and after giving  
52 effect to the investment:

53 (A) The aggregate amount of preferred stocks then held  
54 by the insurer under this subdivision does not exceed  
55 twenty percent of its admitted assets; and

56 (B) The aggregate amount of preferred stocks then held  
57 by the insurer under this subdivision which are not sinking  
58 fund stocks or rated P1 or P2 by the SVO does not exceed  
59 ten percent of its admitted assets.

60 (5) Subject to the limitations of section ten of this article,  
61 in addition to those investments eligible under subdivi-  
62 sions (1), (2), (3) and (4) of this section, an insurer may  
63 acquire rated credit instruments that are not foreign  
64 investments.

65 (b) An insurer may not acquire special rated credit  
66 instruments under this section if, as a result of and after  
67 giving effect to the investment, the aggregate amount of  
68 special rated credit instruments then held by the insurer  
69 would exceed five percent of its admitted assets.

**§33-8-12. Same - Insurer investment pools.**

1 (a) An insurer may acquire investments in investment  
2 pools that:

3 (1) Invest only in:

4 (A) Obligations that are rated 1 or 2 by the SVO or have  
5 an equivalent of an SVO 1 or 2 rating (or, in the absence of  
6 a 1 or 2 rating or equivalent rating, the issuer has out-  
7 standing obligations with an SVO 1 or 2 or equivalent  
8 rating) by a nationally recognized statistical rating  
9 organization recognized by the SVO and have:

10 (i) A remaining maturity of three hundred ninety-seven  
11 days or less or a put that entitles the holder to receive the  
12 principal amount of the obligation which may be exercised  
13 through maturity at specified intervals not exceeding three  
14 hundred ninety-seven days; or

15 (ii) A remaining maturity of three years or less and a  
16 floating interest rate that resets no less frequently than  
17 quarterly on the basis of a current short-term index  
18 (federal funds, prime rate, treasury bills, London inter-  
19 bank offered rate (LIBOR) or commercial paper) and is  
20 subject to no maximum limit, if the obligations do not  
21 have an interest rate that varies inversely to market  
22 interest rate changes;

23 (B) Government money market mutual funds or class one  
24 money market mutual funds; or

25 (C) Securities lending, repurchase and reverse repur-  
26 chase transactions that meet all the requirements of  
27 section sixteen of this article, except the quantitative  
28 limitations of subdivision (4), section sixteen of this  
29 article; or

30 (2) Invest only in investments which an insurer may  
31 acquire under this article, if the insurer's proportionate  
32 interest in the amount invested in these investments does  
33 not exceed the applicable limits of this article.

34 (b) For an investment in an investment pool to be  
35 qualified under this article, the investment pool may not:

36 (1) Acquire securities issued, assumed, guaranteed or  
37 insured by the insurer or an affiliate of the insurer;

38 (2) Borrow or incur any indebtedness for borrowed  
39 money, except for securities lending and reverse repur-  
40 chase transactions that meet the requirements of section  
41 sixteen of this article except the quantitative limitations  
42 of subdivision (4), section sixteen of this article; or

43 (3) Permit the aggregate value of securities then loaned  
44 or sold to, purchased from or invested in any one business  
45 entity under this section to exceed ten percent of the total  
46 assets of the investment pool.

47 (c) The limitations of subsection (a), section ten of this  
48 article do not apply to an insurer's investment in an  
49 investment pool, however, an insurer may not acquire an  
50 investment in an investment pool under this section if, as  
51 a result of and after giving effect to the investment, the  
52 aggregate amount of investments then held by the insurer  
53 under this section:

54 (1) In any one investment pool would exceed ten percent  
55 of its admitted assets;

56 (2) In all investment pools investing in investments  
57 permitted under subdivision (2), subsection (a) of this  
58 section would exceed twenty-five percent of its admitted  
59 assets; or

60 (3) In all investment pools would exceed thirty-five  
61 percent of its admitted assets.

62 (d) For an investment in an investment pool to be  
63 qualified under this article, the manager of the investment  
64 pool shall:

65 (1) Be organized under the laws of the United States or  
66 a state and designated as the pool manager in a pooling  
67 agreement;

68 (2) Be the insurer, an affiliated insurer or a business  
69 entity affiliated with the insurer, a qualified bank, a  
70 business entity registered under the Investment Advisors  
71 Act of 1940, as amended, or, in the case of a reciprocal  
72 insurer or interinsurance exchange, its attorney-in-fact, or  
73 in the case of a United States branch of an alien insurer,  
74 its United States manager or affiliates or subsidiaries of its  
75 United States manager;

76 (3) Compile and maintain detailed accounting records  
77 setting forth:

78 (A) The cash receipts and disbursements reflecting each  
79 participant's proportionate investment in the investment  
80 pool;

81 (B) A complete description of all underlying assets of the  
82 investment pool (including amount, interest rate, maturity  
83 date (if any) and other appropriate designations); and

84 (C) Other records which, on a daily basis, allow third  
85 parties to verify each participant's investment in the  
86 investment pool; and

87 (4) Maintain the assets of the investment pool in one or  
88 more accounts, in the name of or on behalf of the invest-  
89 ment pool, under a custody agreement with a qualified  
90 bank. The custody agreement shall:

91 (A) State and recognize the claims and rights of each  
92 participant;

93 (B) Acknowledge that the underlying assets of the  
94 investment pool are held solely for the benefit of each  
95 participant in proportion to the aggregate amount of its  
96 investments in the investment pool; and

97 (C) Contain an agreement that the underlying assets of  
98 the investment pool may not be commingled with the  
99 general assets of the custodian qualified bank or any other  
100 person.

101 (e) The pooling agreement for each investment pool shall  
102 be in writing and shall provide that:

103 (1) An insurer and its affiliated insurers or, in the case of  
104 an investment pool investing solely in investments permit-  
105 ted under subdivision (1), subsection (a) of this section, the  
106 insurer and its subsidiaries, affiliates or any pension or  
107 profit sharing plan of the insurer, its subsidiaries and  
108 affiliates or, in the case of a United States branch of an

109 alien insurer, affiliates or subsidiaries of its United States  
110 manager, shall, at all times, hold one hundred percent of  
111 the interests in the investment pool;

112 (2) The underlying assets of the investment pool may not  
113 be commingled with the general assets of the pool manager  
114 or any other person;

115 (3) In proportion to the aggregate amount of each pool  
116 participant's interest in the investment pool:

117 (A) Each participant owns an undivided interest in the  
118 underlying assets of the investment pool; and

119 (B) The underlying assets of the investment pool are held  
120 solely for the benefit of each participant;

121 (4) A participant, or in the event of the participant's  
122 insolvency, bankruptcy or receivership, its trustee, receiver  
123 or other successor-in-interest, may withdraw all or any  
124 portion of its investment from the investment pool under  
125 the terms of the pooling agreement;

126 (5) Withdrawals may be made on demand without  
127 penalty or other assessment on any business day, but  
128 settlement of funds shall occur within a reasonable and  
129 customary period thereafter not to exceed five business  
130 days. Distributions under this subdivision shall be calcu-  
131 lated in each case net of all then applicable fees and  
132 expenses of the investment pool. The pooling agreement  
133 shall provide that the pool manager shall distribute to a  
134 participant, at the discretion of the pool manager:

135 (A) In cash, the then fair market value of the partici-  
136 pant's pro rata share of each underlying asset of the  
137 investment pool;

138 (B) In kind, a pro rata share of each underlying asset; or

139 (C) In a combination of cash and in kind distributions, a  
140 pro rata share in each underlying asset; and

141 (6) The pool manager shall make the records of the  
142 investment pool available for inspection by the commis-  
143 sioner.

**§33-8-13. Same - Equity interests.**

1 (a) Subject to the limitations of section ten of this article,  
2 an insurer may acquire equity interests in business entities  
3 organized under the laws of any domestic jurisdiction.

4 (b) An insurer may not acquire an investment under this  
5 section if, as a result of and after giving effect to the  
6 investment, the aggregate amount of investments then held  
7 by the insurer under this section would exceed twenty  
8 percent of its admitted assets, or the amount of equity  
9 interests then held by the insurer that are not listed on a  
10 qualified exchange would exceed five percent of its  
11 admitted assets. An accident and sickness insurer, health  
12 maintenance organization, hospital service corporation,  
13 medical service corporation, dental service corporation, or  
14 health service corporation is not subject to this section but  
15 is subject to the same aggregate limitation on equity  
16 interests as a property and casualty insurer under section  
17 twenty-six of this article and also to the provisions of  
18 section twenty-two of this article.

19 (c) An insurer may not acquire under this section any  
20 investments that the insurer may acquire under section  
21 fifteen of this article.

22 (d) An insurer may not short sell equity investments  
23 unless the insurer covers the short sale by owning the  
24 equity investment or an unrestricted right to the equity  
25 instrument exercisable within six months of the short sale.

**§33-8-14. Same - Tangible personal property under lease.**

1 (a) Subject to the limitations of section ten of this article,  
2 an insurer may acquire tangible personal property or  
3 equity interests in tangible personal property located or  
4 used wholly, or in part, within a domestic jurisdiction

5 either directly or indirectly through limited partnership  
6 interests and general partnership interests not otherwise  
7 prohibited by subdivision (4), section five of this article,  
8 joint ventures, stock of an investment subsidiary or  
9 membership interests in a limited liability company, trust  
10 certificates or other similar instruments.

11 (b) Investments acquired under subsection (a) of this  
12 section are eligible only if:

13 (1) The property is subject to a lease or other agreement  
14 with a person whose rated credit instruments in the  
15 amount of the purchase price of the personal property the  
16 insurer could then acquire under section eleven of this  
17 article; and

18 (2) The lease or other agreement provides the insurer the  
19 right to receive rental, purchase or other fixed payments  
20 for the use or purchase of the property, and the aggregate  
21 value of the payments, together with the estimated resid-  
22 ual value of the property at the end of its useful life and  
23 the estimated tax benefits to the insurer resulting from  
24 ownership of the property, shall be adequate to return the  
25 cost of the insurer's investment in the property, plus a  
26 return considered adequate by the insurer.

27 (c) The insurer shall compute the amount of each invest-  
28 ment under this section on the basis of the out-of-pocket  
29 purchase price and applicable related expenses paid by the  
30 insurer for the investment, net of each borrowing made to  
31 finance the purchase price and expenses, to the extent the  
32 borrowing is without recourse to the insurer.

33 (d) An insurer may not acquire an investment under this  
34 section if, as a result of and after giving effect to the  
35 investment, the aggregate amount of all investments then  
36 held by the insurer under this section would exceed:

37 (1) Two percent of its admitted assets; or

38 (2) One half of one percent of its admitted assets as to  
39 any single item of tangible personal property.

40 (e) For purposes of determining compliance with the  
41 limitations of section ten of this article, investments  
42 acquired by an insurer under this section shall be aggre-  
43 gated with those acquired under section eleven of this  
44 article, and each lessee of the property under a lease  
45 referred to in this section shall be considered the issuer of  
46 an obligation in the amount of the investment of the  
47 insurer in the property determined as provided in subsec-  
48 tion (c) of this section.

49 (f) Nothing in this section is applicable to tangible  
50 personal property lease arrangements between an insurer  
51 and its subsidiaries and affiliates under a cost sharing  
52 arrangement or agreement permitted under article  
53 twenty-seven of this chapter.

**§33-8-15. Same - Mortgage loans and real estate.**

1 (a) Subject to the limitations of section ten of this article,  
2 an insurer may acquire, either directly, indirectly through  
3 limited partnership interests and general partnership  
4 interests not otherwise prohibited by subsection (d),  
5 section five of this article, joint ventures, stock of an  
6 investment subsidiary or membership interests in a limited  
7 liability company, trust certificates, or other similar  
8 instruments, obligations secured by mortgages on real  
9 estate situated within a domestic jurisdiction, but a  
10 mortgage loan which is secured by other than a first lien  
11 may not be acquired unless the insurer is the holder of the  
12 first lien. The obligations held by the insurer and any  
13 obligations with an equal lien priority may not, at the time  
14 of acquisition of the obligation, exceed:

15 (1) Ninety percent of the fair market value of the real  
16 estate, if the mortgage loan is secured by a purchase  
17 money mortgage or like security received by the insurer  
18 upon disposition of the real estate;

19 (2) Eighty percent of the fair market value of the real  
20 estate, if the mortgage loan requires immediate scheduled



21 payment in periodic installments of principal and interest,  
22 has an amortization period of thirty years or less and  
23 periodic payments made no less frequently than annually.  
24 Each periodic payment shall be sufficient to assure that at  
25 all times the outstanding principal balance of the mort-  
26 gage loan is not greater than the outstanding principal  
27 balance that would be outstanding under a mortgage loan  
28 with the same original principal balance, with the same  
29 interest rate and requiring equal payments of principal  
30 and interest with the same frequency over the same  
31 amortization period. Mortgage loans permitted under this  
32 subsection are permitted notwithstanding the fact that  
33 they provide for a payment of the principal balance prior  
34 to the end of the period of amortization of the loan. For  
35 residential mortgage loans, the eighty percent limitation  
36 may be increased to ninety-seven percent if acceptable  
37 private mortgage insurance has been obtained; or

38 (3) Seventy-five percent of the fair market value of the  
39 real estate for mortgage loans that do not meet the re-  
40 quirements of subdivision (1) or (2) of this subsection.

41 (b) For purposes of subsection (a) of this section, the  
42 amount of an obligation required to be included in the  
43 calculation of the loan-to-value ratio may be reduced to  
44 the extent the obligation is insured by the federal housing  
45 administration or guaranteed by the administrator of  
46 veterans affairs, or their successors.

47 (c) A mortgage loan that is held by an insurer under  
48 subsection (f), section three of this article or acquired  
49 under this section and is restructured in a manner that  
50 meets the requirements of a restructured mortgage loan in  
51 accordance with the NAIC accounting practices and  
52 procedures manual or successor publication continues to  
53 qualify as a mortgage loan under this article.

54 (d) Subject to the limitations of section ten of this  
55 article, credit lease transactions that do not qualify for  
56 investment under section eleven of this article with the

57 following characteristics are exempt from the provisions  
58 of subsection (a) of this section:

59 (1) The loan amortizes over the initial fixed lease term at  
60 least in an amount sufficient so that the loan balance at  
61 the end of the lease term does not exceed the original  
62 appraised value of the real estate;

63 (2) The lease payments cover or exceed the total debt  
64 service over the life of the loan;

65 (3) A tenant or its affiliated entity whose rated credit  
66 instruments have an SVO 1 or 2 designation or a compara-  
67 ble rating from a nationally recognized statistical rating  
68 organization recognized by the SVO has a full faith and  
69 credit obligation to make the lease payments;

70 (4) The insurer holds or is the beneficial holder of a first  
71 lien mortgage on the real estate;

72 (5) The expenses of the real estate are passed through to  
73 the tenant, excluding exterior, structural, parking and  
74 heating, ventilation and air conditioning replacement  
75 expenses, unless annual escrow contributions, from cash  
76 flows derived from the lease payments, cover the expense  
77 shortfall; and

78 (6) There is a perfected assignment of the rents due  
79 pursuant to the lease to, or for the benefit of, the insurer.

80 (e) An insurer may acquire, manage and dispose of real  
81 estate situated in a domestic jurisdiction either directly or  
82 indirectly through limited partnership interests and  
83 general partnership interests not otherwise prohibited by  
84 subsection (d), section five of this article, joint ventures,  
85 stock of an investment subsidiary or membership interests  
86 in a limited liability company, trust certificates or other  
87 similar instruments. The real estate shall be income  
88 producing or intended for improvement or development  
89 for investment purposes under an existing program (in

90 which case the real estate shall be considered to be income  
91 producing).

92 (f) Income producing real estate that is acquired, man-  
93 aged or disposed of pursuant to subsection (e) of this  
94 section may be subject to mortgages, liens or other encum-  
95 brances, the amount of which may, to the extent that the  
96 obligations secured by the mortgages, liens or encum-  
97 brances are without recourse to the insurer, be deducted  
98 from the amount of the investment of the insurer in the  
99 real estate for purposes of determining compliance with  
100 subsections (i) and (j) of this section.

101 (g) An insurer may acquire, manage, and dispose of real  
102 estate for the convenient accommodation of the insurer's  
103 (which may include its affiliates) business operations,  
104 including home office, branch office and field office  
105 operations, as follows:

106 (1) Real estate acquired under this subsection may  
107 include excess space for rent to others, if the excess space,  
108 valued at its fair market value, would otherwise be a  
109 permitted investment under subsection (e) of this section  
110 and is qualified by the insurer;

111 (2) The real estate acquired under this subsection may be  
112 subject to one or more mortgages, liens or other encum-  
113 brances, the amount of which may, to the extent that the  
114 obligations secured by the mortgages, liens or encum-  
115 brances are without recourse to the insurer, be deducted  
116 from the amount of the investment of the insurer in the  
117 real estate for purposes of determining compliance with  
118 subsection (k) of this section; and

119 (3) For purposes of this subsection, business operations  
120 may not include that portion of real estate used for the  
121 direct provision of health care services by an accident and  
122 sickness insurer for its insureds. An insurer may acquire  
123 real estate used for these purposes under subsection (e) of  
124 this section.

125 (h) An insurer may not acquire an investment under  
126 subsection (a) of this section if, as a result of and after  
127 giving effect to the investment, the aggregate amount of all  
128 investments then held by the insurer under subsection (a)  
129 of this section would exceed:

130 (1) One percent of its admitted assets in mortgage loans  
131 covering any one secured location;

132 (2) One quarter of one percent of its admitted assets in  
133 construction loans covering any one secured location; or

134 (3) Two percent of its admitted assets in construction  
135 loans in the aggregate.

136 (i) An insurer may not acquire an investment under  
137 subsections (e) and (f) of this section if, as a result of and  
138 after giving effect to the investment and any outstanding  
139 guarantees made by the insurer in connection with the  
140 investment, the aggregate amount of investments then held  
141 by the insurer under subsections (e) and (f) of this section  
142 plus the guarantees then outstanding would exceed:

143 (1) One percent of its admitted assets in one parcel or  
144 group of contiguous parcels of real estate, except that this  
145 limitation may not apply to that portion of real estate used  
146 for the direct provision of health care services by an  
147 accident and sickness insurer for its insureds, such as  
148 hospitals, medical clinics, medical professional buildings  
149 or other health facilities used for the purpose of providing  
150 health services; or

151 (2) Fifteen percent of its admitted assets in the aggre-  
152 gate, but not more than five percent of its admitted assets  
153 as to properties that are to be improved or developed.

154 (j) An insurer may not acquire an investment under  
155 subsection (a) or (e) of this section if, as a result of and  
156 after giving effect to the investment and any guarantees  
157 made by the insurer in connection with the investment, the  
158 aggregate amount of all investments then held by the

159 insurer under subsections (a) and (e) of this section plus  
160 the guarantees then outstanding would exceed forty-five  
161 percent of its admitted assets. However, an insurer may  
162 exceed this limitation by no more than thirty percent of its  
163 admitted assets if:

164 (1) This increased amount is invested only in residential  
165 mortgage loans;

166 (2) The insurer has no more than ten percent of its  
167 admitted assets invested in mortgage loans other than  
168 residential mortgage loans;

169 (3) The loan-to-value ratio of each residential mortgage  
170 loan does not exceed sixty percent at the time the mort-  
171 gage loan is qualified under this increased authority and  
172 the fair market value is supported by an appraisal no more  
173 than two years old, prepared by an independent appraiser;

174 (4) A single mortgage loan qualified under this increased  
175 authority may not exceed one half of one percent of its  
176 admitted assets;

177 (5) The insurer files with the commissioner, and receives  
178 approval from the commissioner for, a plan that is de-  
179 signed to result in a portfolio of residential mortgage loans  
180 that is sufficiently geographically diversified; and

181 (6) The insurer agrees to file annually with the commis-  
182 sioner records that demonstrate that its portfolio of  
183 residential mortgage loans is geographically diversified in  
184 accordance with the plan.

185 (k) The limitations of section ten of this article do not  
186 apply to an insurer's acquisition of real estate under  
187 subsection (g) of this section. An insurer may not acquire  
188 real estate under said subsection if, as a result of and after  
189 giving effect to the acquisition, the aggregate amount of  
190 real estate then held by the insurer under said subsection  
191 would exceed ten percent of its admitted assets. With the

192 permission of the commissioner, additional amounts of  
193 real estate may be acquired under said subsection.

**§33-8-16. Same - Securities lending, repurchase, reverse repurchase and dollar roll transactions.**

1 (a) An insurer may enter into securities lending, repurchase,  
2 reverse repurchase and dollar roll transactions with  
3 business entities, subject to the following requirements:

4 (1) The insurer's board of directors shall adopt a written  
5 plan that is consistent with the requirements of the written  
6 plan in subsection (a), section four of this article that  
7 specifies guidelines and objectives to be followed, such as:

8 (A) A description of how cash received will be invested  
9 or used for general corporate purposes of the insurer;

10 (B) Operational procedures to manage interest rate risk,  
11 counterparty default risk, the conditions under which  
12 proceeds from reverse repurchase transactions may be  
13 used in the ordinary course of business and the use of  
14 acceptable collateral in a manner that reflects the liquidity  
15 needs of the transaction; and

16 (C) The extent to which the insurer may engage in these  
17 transactions.

18 (2) The insurer shall enter into a written agreement for  
19 all transactions authorized in this section other than dollar  
20 roll transactions. The written agreement shall require that  
21 each transaction terminate no more than one year from its  
22 inception or upon the earlier demand of the insurer. The  
23 agreement shall be with the business entity counterparty,  
24 but for securities lending transactions, the agreement shall  
25 be with an agent acting on behalf of the insurer, if the  
26 agent is a qualified business entity, and if the agreement:

27 (A) Requires the agent to enter into separate agreements  
28 with each counterparty that are consistent with the  
29 requirements of this section; and

30 (B) Prohibits securities lending transactions under the  
31 agreement with the agent or its affiliates.

32 (3) Cash received in a transaction under this section shall  
33 be invested in accordance with this article and in a manner  
34 that recognizes the liquidity needs of the transaction or  
35 used by the insurer for its general corporate purposes. For  
36 so long as the transaction remains outstanding, the  
37 insurer, its agent or custodian shall maintain, as to accept-  
38 able collateral received in a transaction under this section,  
39 either physically or through the book entry systems of the  
40 federal reserve, depository trust company, participants  
41 trust company or other securities depositories approved by  
42 the commissioner:

43 (A) Possession of the acceptable collateral;

44 (B) A perfected security interest in the acceptable  
45 collateral; or

46 (C) In the case of a jurisdiction outside of the United  
47 States, title to, or rights of a secured creditor to, the  
48 acceptable collateral.

49 (4) In a securities lending transaction, the insurer shall  
50 receive acceptable collateral having a market value as of  
51 the transaction date at least equal to one hundred two  
52 percent of the market value of the securities loaned by the  
53 insurer in the transaction as of that date. If at any time  
54 the market value of the acceptable collateral is less than  
55 the market value of the loaned securities, the business  
56 entity counterparty shall be obligated to deliver additional  
57 acceptable collateral, the market value of which, together  
58 with the market value of all acceptable collateral then  
59 held in connection with the transaction, at least equals one  
60 hundred two percent of the market value of the loaned  
61 securities.

62 (5) In a reverse repurchase transaction, other than a  
63 dollar roll transaction, the insurer shall receive acceptable  
64 collateral having a market value as of the transaction date

65 at least equal to ninety-five percent of the market value of  
66 the securities transferred by the insurer in the transaction  
67 as of that date. If at any time the market value of the  
68 acceptable collateral is less than ninety-five percent of the  
69 market value of the securities so transferred, the business  
70 entity counterparty is obligated to deliver additional  
71 acceptable collateral, the market value of which, together  
72 with the market value of all acceptable collateral then  
73 held in connection with the transaction, at least equals  
74 ninety-five percent of the market value of the transferred  
75 securities.

76 (6) In a dollar roll transaction, the insurer shall receive  
77 cash in an amount at least equal to the market value of the  
78 securities transferred by the insurer in the transaction as  
79 of the transaction date.

80 (7) In a repurchase transaction, the insurer shall receive  
81 as acceptable collateral transferred securities having a  
82 market value at least equal to one hundred two percent of  
83 the purchase price paid by the insurer for the securities.  
84 If at any time the market value of the acceptable collateral  
85 is less than one hundred percent of the purchase price paid  
86 by the insurer, the business entity counterparty is obli-  
87 gated to provide additional acceptable collateral, the  
88 market value of which, together with the market value of  
89 all acceptable collateral then held in connection with the  
90 transaction, at least equals one hundred two percent of the  
91 purchase price. Securities acquired by an insurer in a  
92 repurchase transaction may not be sold in a reverse  
93 repurchase transaction, loaned in a securities lending  
94 transaction or otherwise pledged.

95 (b) The limitations of sections ten and seventeen of this  
96 article do not apply to the business entity counterparty  
97 exposure created by transactions under this section. For  
98 purposes of calculations made to determine compliance  
99 with this subsection, no effect will be given to the insurer's  
100 future obligation to resell securities, in the case of a  
101 repurchase transaction, or to repurchase securities, in the



102 case of a reverse repurchase transaction. An insurer may  
103 not enter into a transaction under this section if, as a  
104 result of and after giving effect to the transaction:

105 (1) The aggregate amount of securities then loaned, sold  
106 to or purchased from any one business entity counterparty  
107 under this section would exceed five percent of its admit-  
108 ted assets. In calculating the amount sold to or purchased  
109 from a business entity counterparty under repurchase or  
110 reverse repurchase transactions, effect will be given to  
111 netting provisions under a master written agreement; or

112 (2) The aggregate amount of all securities then loaned,  
113 sold to or purchased from all business entities under this  
114 section would exceed forty percent of its admitted assets.

**§33-8-17. Same - Foreign investments and foreign currency  
exposure.**

1 (a) Subject to the limitations of section ten of this article,  
2 an insurer may acquire foreign investments, or engage in  
3 investment practices with persons of or in foreign jurisdic-  
4 tions, of substantially the same types as those that an  
5 insurer is permitted to acquire under this article, other  
6 than of the type permitted under section twelve of this  
7 article, if, as a result and after giving effect to the invest-  
8 ment:

9 (1) The aggregate amount of foreign investments then  
10 held by the insurer under this subsection does not exceed  
11 twenty percent of its admitted assets; and

12 (2) The aggregate amount of foreign investments then  
13 held by the insurer under this subsection in a single  
14 foreign jurisdiction does not exceed ten percent of its  
15 admitted assets as to a foreign jurisdiction that has a  
16 sovereign debt rating of SVO 1 or three percent of its  
17 admitted assets as to any other foreign jurisdiction.

18 (b) Subject to the limitations of section ten of this  
19 article, an insurer may acquire investments, or engage in

20 investment practices denominated in foreign currencies,  
21 whether or not they are foreign investments acquired  
22 under subsection (a) of this section, or additional foreign  
23 currency exposure as a result of the termination or expira-  
24 tion of a hedging transaction with respect to investments  
25 denominated in a foreign currency, if:

26 (1) The aggregate amount of investments then held by  
27 the insurer under this subsection denominated in foreign  
28 currencies does not exceed ten percent of its admitted  
29 assets; and

30 (2) The aggregate amount of investments then held by  
31 the insurer under this subsection denominated in the  
32 foreign currency of a single foreign jurisdiction does not  
33 exceed ten percent of its admitted assets as to a foreign  
34 jurisdiction that has a sovereign debt rating of SVO 1 or  
35 three percent of its admitted assets as to any other foreign  
36 jurisdiction; an investment will not be considered denomi-  
37 nated in a foreign currency if the acquiring insurer enters  
38 into one or more contracts in transactions permitted under  
39 section eighteen of this article and the business entity  
40 counterparty agrees under the contract or contracts to  
41 exchange all payments made on the foreign currency  
42 denominated investment for United States currency at a  
43 rate which effectively insulates the investment cash flows  
44 against future changes in currency exchange rates during  
45 the period the contract or contracts are in effect.

46 (c) In addition to investments permitted under subsec-  
47 tions (a) and (b) of this section, an insurer that is autho-  
48 rized to do business in a foreign jurisdiction, and that has  
49 outstanding insurance, annuity or reinsurance contracts on  
50 lives or risks resident or located in that foreign jurisdiction  
51 and denominated in foreign currency of that jurisdiction,  
52 may acquire foreign investments respecting that foreign  
53 jurisdiction, and may acquire investments denominated in  
54 the currency of that jurisdiction, subject to the limitations  
55 of section ten of this article. However, investments made  
56 under this subsection in obligations of foreign govern-

57 ments, their political subdivisions and govern-  
58 ment-sponsored enterprises will not be subject to the  
59 limitations of section ten of this article if those invest-  
60 ments carry an SVO rating of 1 or 2. The aggregate  
61 amount of investments acquired by the insurer under this  
62 subsection may not exceed the greater of:

63 (1) The amount the insurer is required by the law of the  
64 foreign jurisdiction to invest in the foreign jurisdiction; or

65 (2) One hundred fifteen percent of the amount of its  
66 reserves, net of reinsurance, and other obligations under  
67 the contracts on lives or risks resident or located in the  
68 foreign jurisdiction.

69 (d) In addition to investments permitted under subsec-  
70 tions (a) and (b) of this section, an insurer that is not  
71 authorized to do business in a foreign jurisdiction, but  
72 which has outstanding insurance, annuity or reinsurance  
73 contracts on lives or risks resident or located in that  
74 foreign jurisdiction and denominated in foreign currency  
75 of that jurisdiction, may acquire foreign investments  
76 respecting that foreign jurisdiction, and may acquire  
77 investments denominated in the currency of that jurisdic-  
78 tion subject to the limitations of section ten of this article.  
79 However, investments made under this subsection in  
80 obligations of foreign governments, their political subdivi-  
81 sions and government-sponsored enterprises are not  
82 subject to the limitations of section ten of this article if  
83 those investments carry an SVO rating of 1 or 2. The  
84 aggregate amount of investments acquired by the insurer  
85 under this subsection may not exceed one hundred five  
86 percent of the amount of its reserves, net of reinsurance,  
87 and other obligations under the contracts on lives or risks  
88 resident or located in the foreign jurisdiction.

89 (e) Investments acquired under this section shall be  
90 aggregated with investments of the same types made under  
91 all other sections of this article, and in a similar manner,  
92 for purposes of determining compliance with the limita-

93 tions, if any, contained in the other sections. Investments  
94 in obligations of foreign governments, their political  
95 subdivisions and government-sponsored enterprises of  
96 these persons, except for those exempted under subsec-  
97 tions (c) and (d) of this section, are subject to the limita-  
98 tions of section ten of this article.

**§33-8-18. Same - Derivative transactions.**

1 (a) An insurer may, directly or indirectly through an  
2 investment subsidiary, engage in derivative transactions  
3 under this section under the following conditions:

4 (1) An insurer may use derivative instruments under this  
5 section to engage in hedging transactions and certain  
6 income generation transactions, as these terms may be  
7 further defined in rules promulgated by the commissioner.

8 (2) An insurer shall be able to demonstrate to the com-  
9 missioner the intended hedging characteristics and the  
10 ongoing effectiveness of the derivative transaction or  
11 combination of the transactions through cash flow testing  
12 or other appropriate analyses.

13 (b) An insurer may enter into hedging transactions under  
14 this section if, as a result of and after giving effect to the  
15 transaction:

16 (1) The aggregate statement value of options, caps, floors  
17 and warrants not attached to another financial instrument  
18 purchased and used in hedging transactions does not  
19 exceed seven and one-half percent of its admitted assets;

20 (2) The aggregate statement value of options, caps and  
21 floors written in hedging transactions does not exceed  
22 three percent of its admitted assets; and

23 (3) The aggregate potential exposure of collars, swaps,  
24 forwards and futures used in hedging transactions does  
25 not exceed six and one-half percent of its admitted assets.

26 (c) An insurer may only enter into the following types of  
27 income generation transactions if as a result of and after  
28 giving effect to the transactions, the aggregate statement  
29 value of the fixed income assets that are subject to call or  
30 that generate the cash flows for payments under the caps  
31 or floors, plus the face value of fixed income securities  
32 underlying a derivative instrument subject to call, plus the  
33 amount of the purchase obligations under the puts, does  
34 not exceed ten percent of its admitted assets:

35 (1) Sales of covered call options on noncallable fixed  
36 income securities, callable fixed income securities if the  
37 option expires by its terms prior to the end of the noncall-  
38 able period or derivative instruments based on fixed  
39 income securities;

40 (2) Sales of covered call options on equity securities, if  
41 the insurer holds in its portfolio, or can immediately  
42 acquire through the exercise of options, warrants or  
43 conversion rights already owned, the equity securities  
44 subject to call during the complete term of the call option  
45 sold;

46 (3) Sales of covered puts on investments that the insurer  
47 is permitted to acquire under this article, if the insurer has  
48 escrowed, or entered into a custodian agreement segregat-  
49 ing, cash or cash equivalents with a market value equal to  
50 the amount of its purchase obligations under the put  
51 during the complete term of the put option sold; or

52 (4) Sales of covered caps or floors, if the insurer holds in  
53 its portfolio the investments generating the cash flow to  
54 make the required payments under the caps or floors  
55 during the complete term that the cap or floor is outstand-  
56 ing.

57 (d) An insurer shall include all counterparty exposure  
58 amounts in determining compliance with the limitations of  
59 section ten of this article.

60 (e) Pursuant to rules promulgated under section eight of  
61 this article, the commissioner may approve additional  
62 transactions involving the use of derivative instruments in  
63 excess of the limits of subsection (b) of this section or for  
64 other risk management purposes under rules promulgated  
65 by the commissioner, but replication transactions may not  
66 be permitted for other than risk management purposes.

**§33-8-19. Same - Policy loans.**

1 A life insurer may lend to a policyholder on the security  
2 of the cash surrender value of the policyholder's policy a  
3 sum not exceeding the legal reserve that the insurer is  
4 required to maintain on the policy.

**§33-8-20. Same - Additional investment authority.**

1 (a) Solely for the purpose of acquiring investments that  
2 exceed the quantitative limitations of sections ten through  
3 seventeen, inclusive, of this article, an insurer may acquire  
4 under this subsection an investment, or engage in invest-  
5 ment practices described in section sixteen of this article,  
6 but an insurer may not acquire an investment, or engage  
7 in investment practices described in said section, under  
8 this subsection if, as a result of and after giving effect to  
9 the transaction:

10 (1) The aggregate amount of investments then held by an  
11 insurer under this subsection would exceed three percent  
12 of its admitted assets; or

13 (2) The aggregate amount of investments as to one  
14 limitation in sections ten through seventeen, inclusive, of  
15 this article then held by the insurer under this subsection  
16 would exceed one percent of its admitted assets.

17 (b) In addition to the authority provided under subsec-  
18 tion (a) of this section, an insurer may acquire under this  
19 subsection an investment of any kind, or engage in invest-  
20 ment practices described in section sixteen of this article,  
21 that are not specifically prohibited by this article, without

22 regard to the categories, conditions, standards or other  
23 limitations of sections ten through seventeen, inclusive, of  
24 this article if, as a result of and after giving effect to the  
25 transaction, the aggregate amount of investments then  
26 held under this subsection would not exceed the lesser of:

27 (1) Ten percent of its admitted assets; or

28 (2) Seventy-five percent of its capital and surplus.  
29 However, an insurer may not acquire any investment or  
30 engage in any investment practice under this subsection if,  
31 as a result of and after giving effect to the transaction, the  
32 aggregate amount of all investments in any one person  
33 then held by the insurer under this subsection would  
34 exceed three percent of its admitted assets.

35 (c) In addition to the investments acquired under subsec-  
36 tions (a) and (b) of this section, an insurer may acquire  
37 under this subsection an investment of any kind, or engage  
38 in investment practices described in section sixteen of this  
39 article, that are not specifically prohibited by this article  
40 without regard to any limitations of sections ten through  
41 seventeen, inclusive, of this article if:

42 (1) The commissioner grants prior approval;

43 (2) The insurer demonstrates that its investments are  
44 being made in a prudent manner and that the additional  
45 amounts will be invested in a prudent manner; and

46 (3) As a result of and after giving effect to the transac-  
47 tion the aggregate amount of investments then held by the  
48 insurer under this subsection does not exceed the greater  
49 of:

50 (A) Twenty-five percent of its capital and surplus; or

51 (B) One hundred percent of capital and surplus less ten  
52 percent of its admitted assets.

53 (d) An investment prohibited under section five of this  
54 article, not permitted under section eighteen of this article

55 or additional derivative instruments acquired under said  
56 section may not be acquired under this section.

**§33-8-21. Property and casualty, financial guaranty and mortgage guaranty insurers - Applicability.**

1 Sections twenty-two through thirty-two, inclusive, of  
2 this article apply to the investments and investment  
3 practices of property and casualty, financial guaranty and  
4 mortgage guaranty insurers, subject to the provisions of  
5 subsection (b), section one of this article.

**§33-8-22. Same - Reserve requirements.**

1 (a) Subject to all other limitations and requirements of  
2 this article, a property and casualty, financial guaranty,  
3 mortgage guaranty or accident and sickness insurer shall  
4 maintain an amount at least equal to one hundred percent  
5 of adjusted loss reserves and loss adjustment expense  
6 reserves, one hundred percent of adjusted unearned  
7 premium reserves and one hundred percent of statutorily  
8 required policy and contract reserves in:

9 (1) Cash and cash equivalents;

10 (2) High and medium grade investments that qualify  
11 under section twenty-four or twenty-five of this article;

12 (3) Equity interests that qualify under section twenty-six  
13 of this article and that are traded on a qualified exchange;

14 (4) Investments of the type set forth in section thirty of  
15 this article if the investments are rated in the highest  
16 generic rating category by a nationally recognized statisti-  
17 cal rating organization recognized by the SVO for rating  
18 foreign jurisdictions and if any foreign currency exposure  
19 is effectively hedged through the maturity date of the  
20 investments;

21 (5) Qualifying investments of the type set forth in  
22 subdivision (2), (3) or (4) of this subsection that are ac-  
23 quired under section thirty-two of this article;



24 (6) Interest and dividends receivable on qualifying  
25 investments of the type set forth in subdivisions (1)  
26 through (5), inclusive, of this subsection; or

27 (7) Reinsurance recoverable on paid losses.

28 (b) For purposes of determining the amount of assets to  
29 be maintained under subsection (a) of this section, the  
30 calculation of adjusted loss reserves and loss adjustment  
31 expense reserves, adjusted unearned premium reserves and  
32 statutorily required policy and contract reserves shall be  
33 based on the amounts reported as of the most recent  
34 annual or quarterly statement date.

35 (1) Adjusted loss reserves and loss adjustment expense  
36 reserves shall be equal to the sum of the amounts derived  
37 from the following calculations:

38 (A) The result of each amount reported by the insurer as  
39 losses and loss adjustment expenses unpaid for each  
40 accident year for each individual line of business; multi-  
41 plied by

42 (B) The discount factor that is applicable to the line of  
43 business and accident year published by the internal  
44 revenue service under Section 846 of the Internal Revenue  
45 Code, as amended, for the calendar year that corresponds  
46 to the most recent annual statement of the insurer; minus

47 (C) Accrued retrospective premiums discounted by an  
48 average discount factor. The discount factor shall be  
49 calculated by dividing the losses and loss adjustment  
50 expenses unpaid after discounting (the product of sub-  
51 paragraphs (i) and (ii) of this paragraph) by loss and loss  
52 adjustment expense reserves before discounting subpara-  
53 graph (i) of this paragraph.

54 (D) For purposes of these calculations, the losses and loss  
55 adjustment expenses unpaid shall be determined net of  
56 anticipated salvage and subrogation, and gross of any  
57 discount for the time value of money or tabular discount.

58 (2) Adjusted unearned premium reserves shall be equal  
59 to the result of the following calculation:

60 (A) The amount reported by the insurer as unearned  
61 premium reserves; minus

62 (B) The admitted asset amounts reported by the insurer  
63 as:

64 (i) Premiums in and agents' balances in the course of  
65 collection, accident and sickness premiums due and unpaid  
66 and uncollected premiums for accident and sickness  
67 premiums;

68 (ii) Premiums, agents' balances and installments booked  
69 but deferred and not yet due; and

70 (iii) Bills receivable, taken for premium.

71 (3) Statutorily required policy and contract reserves also  
72 include, in the case of a financial guaranty insurer, or a  
73 mortgage guaranty insurer the contingency reserves, and  
74 with respect to accident and sickness insurers the addi-  
75 tional or contingency reserves, prescribed by the NAIC in  
76 the accounting practices and procedures manual as  
77 amended.

78 (c) *Monitoring and reporting.* —

79 A property and casualty, financial guaranty, mortgage  
80 guaranty or accident and health sickness insurer shall  
81 supplement its annual statement with a reconciliation and  
82 summary of its assets and reserve requirements as required  
83 in subsection (a) of this section. A reconciliation and  
84 summary showing that an insurer's assets as required in  
85 said subsection are greater than or equal to its  
86 undiscounted reserves referred to in said subsection are  
87 sufficient to satisfy this requirement. Upon prior notifica-  
88 tion, the commissioner may require an insurer to submit a  
89 reconciliation and summary with any quarterly statement  
90 filed during the calendar year.

91 (d) If a property and casualty, financial guaranty,  
92 mortgage guaranty or accident and sickness insurer's  
93 assets and reserves do not comply with subsections (a) and  
94 (b) of this section, the insurer shall notify the commis-  
95 sioner immediately of the amount by which the reserve  
96 requirements exceed the annual statement value of the  
97 qualifying assets, explain why the deficiency exists and  
98 within thirty days of the date of the notice propose a plan  
99 of action to remedy the deficiency.

100 (e) If the commissioner determines that an insurer is not  
101 in compliance with subsection (a) of this section, the  
102 commissioner shall require the insurer to eliminate the  
103 condition causing the noncompliance within a specified  
104 time from the date the notice of the commissioner's  
105 requirement is mailed or delivered to the insurer. If an  
106 insurer fails to comply with the commissioner's require-  
107 ment the insurer is considered to be in hazardous financial  
108 condition, and the commissioner may take one or more of  
109 the actions authorized by law as to insurers in hazardous  
110 financial condition.

**§33-8-23. Same - General five percent diversification, medium  
and lower grade investments and Canadian invest-  
ments.**

1 (a) Except as otherwise specified in this article, an  
2 insurer may not acquire directly or indirectly through an  
3 investment subsidiary an investment under this article if,  
4 as a result of and after giving effect to the investment, the  
5 insurer would hold more than five percent of its admitted  
6 assets in investments of all kinds issued, assumed, ac-  
7 cepted, insured or guaranteed by a single person.

8 (b) The five percent limitation set forth in subsection (a)  
9 of this section does not apply to the aggregate amounts  
10 insured by a single financial guaranty insurer with the  
11 highest generic rating issued by a nationally recognized  
12 statistical rating organization.

13 (c) Asset-backed securities are not subject to the limita-  
14 tions of subsection (a) of this section, however an insurer  
15 may not acquire an asset-backed security if, as a result of  
16 and after giving effect to the investment, the aggregate  
17 amount of asset-backed securities secured by or evidenc-  
18 ing an interest in a single asset or single pool of assets held  
19 by a trust or other business entity, then held by the insurer  
20 would exceed five percent of its admitted assets.

21 (d) An insurer may not acquire, directly or indirectly  
22 through an investment subsidiary, an investment under  
23 sections twenty-four, twenty-seven and thirty of this  
24 article or counterparty exposure under subsection (d),  
25 section thirty-one of this article if, as a result of and after  
26 giving effect to the investment:

27 (1) The aggregate amount of all medium and lower grade  
28 investments then held by the insurer would exceed twenty  
29 percent of its admitted assets;

30 (2) The aggregate amount of lower grade investments  
31 then held by the insurer would exceed ten percent of its  
32 admitted assets;

33 (3) The aggregate amount of investments rated 5 or 6 by  
34 the SVO then held by the insurer would exceed five  
35 percent of its admitted assets;

36 (4) The aggregate amount of investments rated 6 by the  
37 SVO then held by the insurer would exceed one percent of  
38 its admitted assets; or

39 (5) The aggregate amount of medium and lower grade  
40 investments then held by the insurer that receive as cash  
41 income less than the equivalent yield for treasury issues  
42 with a comparative average life, would exceed one percent  
43 of its admitted assets.

44 (e) An insurer may not acquire, directly or indirectly  
45 through an investment subsidiary, an investment under  
46 section twenty-four, twenty-seven or thirty of this article

47 or counterparty exposure under subsection (d), section  
48 thirty-one of this article if, as a result of and after giving  
49 effect to the investment:

50 (1) The aggregate amount of medium and lower grade  
51 investments issued, assumed, guaranteed, accepted or  
52 insured by any one person or, as to asset-backed securities  
53 secured by or evidencing an interest in a single asset or  
54 pool of assets, then held by the insurer would exceed one  
55 percent of its admitted assets; or

56 (2) The aggregate amount of lower grade investments  
57 issued, assumed, guaranteed, accepted or insured by any  
58 one person or, as to asset-backed securities secured by or  
59 evidencing an interest in a single asset or pool of assets,  
60 then held by the insurer would exceed one half of one  
61 percent of its admitted assets.

62 (f) If an insurer attains or exceeds the limit of any one  
63 rating category referred to in subsection (d) or (e) of this  
64 section, the insurer may not be precluded from acquiring  
65 investments in other rating categories subject to the  
66 specific and multicategory limits applicable to those  
67 investments.

68 (g) An insurer may not acquire, directly or indirectly  
69 through an investment subsidiary, any Canadian invest-  
70 ments authorized by this article, if as a result of and after  
71 giving effect to the investment, the aggregate amount of  
72 these investments then held by the insurer would exceed  
73 forty percent of its admitted assets, or if the aggregate  
74 amount of Canadian investments not acquired under  
75 subsection (b), section twenty-four of this article then held  
76 by the insurer would exceed twenty-five percent of its  
77 admitted assets. However, as to an insurer that is autho-  
78 rized to do business in Canada or that has outstanding  
79 insurance, annuity or reinsurance contracts on lives or  
80 risks resident or located in Canada and denominated in  
81 Canadian currency, the limitations of this subsection shall  
82 be increased by the greater of:

83 (1) The amount the insurer is required by Canadian law  
84 to invest in Canada or to be denominated in Canadian  
85 currency; or

86 (2) One hundred twenty-five percent of the amount of its  
87 reserves and other obligations under contracts on risks  
88 resident or located in Canada.

**§33-8-24. Same - Rated credit instruments.**

1 (a) Subject to the limitations of subsection (b), section  
2 twenty-three of this article, but not to the limitations of  
3 subsection (a) of said section, an insurer may acquire rated  
4 credit instruments issued, assumed, guaranteed or insured  
5 by:

6 (1) The United States; or

7 (2) A government-sponsored enterprise of the United  
8 States, if the instruments of the government-sponsored  
9 enterprise are assumed, guaranteed or insured by the  
10 United States or are otherwise backed or supported by the  
11 full faith and credit of the United States.

12 (b) Subject to the limitations of subsections (d), (e) and  
13 (f), section twenty-three of this article, but not to the  
14 limitations of subsections (a), (b) and (c) of said section, an  
15 insurer may acquire rated credit instruments issued,  
16 assumed, guaranteed or insured by:

17 (1) Canada; or

18 (2) A government-sponsored enterprise of Canada, if the  
19 instruments of the government-sponsored enterprise are  
20 assumed, guaranteed or insured by Canada or are other-  
21 wise backed or supported by the full faith and credit of  
22 Canada; however, an insurer may not acquire an instru-  
23 ment under this subdivision if, as a result of and after  
24 giving effect to the investment, the aggregate amount of  
25 investments then held by the insurer under this subsection  
26 would exceed forty percent of its admitted assets.

27 (c) Subject to the limitations of subsections (d), (e) and  
28 (f), section twenty-three of this article, but not to the  
29 limitations of subsections (a), (b) and (c) of said section, an  
30 insurer may acquire rated credit instruments, excluding  
31 asset-backed securities:

32 (1) Issued by a government money market mutual fund,  
33 a class one money market mutual fund or a class one bond  
34 mutual fund;

35 (2) Issued, assumed, guaranteed or insured by a govern-  
36 ment-sponsored enterprise of the United States other than  
37 those eligible under subsection (a) of this section;

38 (3) Issued, assumed, guaranteed or insured by a state, if  
39 the instruments are general obligations of the state; or

40 (4) Issued by a multilateral development bank. However,  
41 an insurer may not acquire an instrument of any one fund,  
42 any one enterprise or entity, or any one state under this  
43 subsection if, as a result of and after giving effect to the  
44 investment, the aggregate amount of investments then held  
45 in any one fund, enterprise or entity or state under this  
46 subsection would exceed ten percent of its admitted assets.

47 (d) Subject to the limitations of section twenty-three of  
48 this article, an insurer may acquire preferred stocks that  
49 are not foreign investments and that meet the require-  
50 ments of rated credit instruments if, as a result of and  
51 after giving effect to the investment:

52 (1) The aggregate amount of preferred stocks then held  
53 by the insurer under this subsection does not exceed  
54 twenty percent of its admitted assets; and

55 (2) The aggregate amount of preferred stocks then held  
56 by the insurer under this subsection which are not sinking  
57 fund stocks or rated P1 or P2 by the SVO does not exceed  
58 ten percent of its admitted assets.

59 (e) Subject to the limitations of section twenty-three of  
60 this article in addition to those investments eligible under

61 subsections (a), (b), (c) and (d) of this section, an insurer  
62 may acquire rated credit instruments that are not foreign  
63 investments.

64 (f) An insurer may not acquire special rated credit  
65 instruments under this section if, as a result of and after  
66 giving effect to the investment, the aggregate amount of  
67 special rated credit instruments then held by the insurer  
68 would exceed five percent of its admitted assets.

**§33-8-25. Same - Insurer investment pools.**

1 (a) An insurer may acquire investments in investment  
2 pools that:

3 (1) Invest only in:

4 (A) Obligations that are rated 1 or 2 by the SVO or have  
5 an equivalent of an SVO 1 or 2 rating (or, in the absence of  
6 a 1 or 2 rating or equivalent rating, the issuer has out-  
7 standing obligations with an SVO 1 or 2 or equivalent  
8 rating) by a nationally recognized statistical rating  
9 organization recognized by the SVO and have:

10 (i) A remaining maturity of three hundred ninety-seven  
11 days or less or a put that entitles the holder to receive the  
12 principal amount of the obligation which put may be  
13 exercised through maturity at specified intervals not  
14 exceeding three hundred ninety-seven days; or

15 (ii) A remaining maturity of three years or less and a  
16 floating interest rate that resets no less frequently than  
17 quarterly on the basis of a current short-term index  
18 (federal funds, prime rate, treasury bills, LIBOR or  
19 commercial paper) and is subject to no maximum limit, if  
20 the obligations do not have an interest rate that varies  
21 inversely to market interest rate changes;

22 (B) Government money market mutual funds or class one  
23 money market mutual funds; or



24 (C) Securities lending, repurchase and reverse repur-  
25 chase transactions that meet all the requirements of  
26 section twenty-nine of this article, except the quantitative  
27 limitations of subsection (b), section twenty-nine of this  
28 article; or

29 (2) Invest only in investments which an insurer may  
30 acquire under this article, if the insurer's proportionate  
31 interest in the amount invested in these investments does  
32 not exceed the applicable limits of this article.

33 (b) For an investment in an investment pool to be  
34 qualified under this article, the investment pool may not:

35 (1) Acquire securities issued, assumed, guaranteed or  
36 insured by the insurer or an affiliate of the insurer;

37 (2) Borrow or incur any indebtedness for borrowed  
38 money, except for securities lending and reverse repur-  
39 chase transactions that meet the requirements of section  
40 twenty-nine of this article except the quantitative limita-  
41 tions of subsection (b), section twenty-nine of this article;  
42 or

43 (3) Permit the aggregate value of securities then loaned  
44 or sold to, purchased from or invested in any one business  
45 entity under this section to exceed ten percent of the total  
46 assets of the investment pool.

47 (c) The limitations of subsection (a), section twenty-three  
48 of this article do not apply to an insurer's investment in an  
49 investment pool, however an insurer may not acquire an  
50 investment in an investment pool under this section if, as  
51 a result of and after giving effect to the investment, the  
52 aggregate amount of investments then held by the insurer  
53 under this section:

54 (1) In any one investment pool would exceed ten percent  
55 of its admitted assets;

56 (2) In all investment pools investing in investments  
57 permitted under subdivision (2), subsection (a) of this

58 section would exceed twenty-five percent of its admitted  
59 assets; or

60 (3) In all investment pools would exceed forty percent of  
61 its admitted assets.

62 (d) For an investment in an investment pool to be  
63 qualified under this article, the manager of the investment  
64 pool shall:

65 (1) Be organized under the laws of the United States or  
66 a state and designated as the pool manager in a pooling  
67 agreement;

68 (2) Be the insurer, an affiliated insurer or a business  
69 entity affiliated with the insurer, a qualified bank, a  
70 business entity registered under the Investment Advisors  
71 Act of 1940, as amended, or, in the case of a reciprocal  
72 insurer or interinsurance exchange, its attorney-in-fact, or  
73 in the case of a United States branch of an alien insurer,  
74 its United States manager or affiliates or subsidiaries of its  
75 United States manager;

76 (3) Compile and maintain detailed accounting records  
77 setting forth:

78 (A) The cash receipts and disbursements reflecting each  
79 participant's proportionate investment in the investment  
80 pool;

81 (B) A complete description of all underlying assets of the  
82 investment pool (including amount, interest rate, maturity  
83 date (if any) and other appropriate designations); and

84 (C) Other records which, on a daily basis, allow third  
85 parties to verify each participant's investment in the  
86 investment pool; and

87 (4) Maintain the assets of the investment pool in one or  
88 more accounts, in the name of or on behalf of the invest-  
89 ment pool, under a custody agreement with a qualified  
90 bank. The custody agreement shall:

91 (A) State and recognize the claims and rights of each  
92 participant;

93 (B) Acknowledge that the underlying assets of the  
94 investment pool are held solely for the benefit of each  
95 participant in proportion to the aggregate amount of its  
96 investments in the investment pool; and

97 (C) Contain an agreement that the underlying assets of  
98 the investment pool may not be commingled with the  
99 general assets of the custodian qualified bank or any other  
100 person.

101 (e) The pooling agreement for each investment pool shall  
102 be in writing and shall provide that:

103 (1) An insurer and its affiliated insurers or, in the case of  
104 an investment pool investing solely in investments permit-  
105 ted under subdivision (1), subsection (a) of this section, the  
106 insurer and its subsidiaries, affiliates or any pension or  
107 profit sharing plan of the insurer, its subsidiaries and  
108 affiliates or, in the case of a United States branch of an  
109 alien insurer, affiliates or subsidiaries of its United States  
110 manager, shall, at all times, hold one hundred percent of  
111 the interests in the investment pool;

112 (2) The underlying assets of the investment pool may not  
113 be commingled with the general assets of the pool manager  
114 or any other person;

115 (3) In proportion to the aggregate amount of each pool  
116 participant's interest in the investment pool:

117 (A) Each participant owns an undivided interest in the  
118 underlying assets of the investment pool; and

119 (B) The underlying assets of the investment pool are held  
120 solely for the benefit of each participant;

121 (4) A participant, or in the event of the participant's  
122 insolvency, bankruptcy or receivership, its trustee, receiver  
123 or other successor-in-interest, may withdraw all or any

124 portion of its investment from the investment pool under  
125 the terms of the pooling agreement;

126 (5) Withdrawals may be made on demand without  
127 penalty or other assessment on any business day, but  
128 settlement of funds shall occur within a reasonable and  
129 customary period thereafter not to exceed five business  
130 days. Distributions under this subdivision shall be calcu-  
131 lated in each case net of all then applicable fees and  
132 expenses of the investment pool. The pooling agreement  
133 shall provide that the pool manager shall distribute to a  
134 participant, at the discretion of the pool manager:

135 (A) In cash, the then fair market value of the partici-  
136 pant's pro rata share of each underlying asset of the  
137 investment pool;

138 (B) In kind, a pro rata share of each underlying asset; or

139 (C) In a combination of cash and in kind distributions, a  
140 pro rata share in each underlying asset; and

141 (6) The pool manager shall make the records of the  
142 investment pool available for inspection by the commis-  
143 sioner.

**§33-8-26. Same - Equity interests.**

1 (a) Subject to the limitations of section twenty-three of  
2 this article, an insurer may acquire equity interests in  
3 business entities organized under the laws of any domestic  
4 jurisdiction.

5 (b) An insurer may not acquire an investment under this  
6 section if, as a result of and after giving effect to the  
7 investment, the aggregate amount of investments then held  
8 by the insurer under this section would exceed the greater  
9 of twenty-five percent of its admitted assets or one  
10 hundred percent of its surplus as regards policyholders:  
11 *Provided*, The aggregate investments of a health mainte-  
12 nance organization may not exceed the greater of thirty

13 percent of its admitted assets or one hundred percent of its  
14 total capital and surplus.

15 (c) An insurer may not acquire under this section any  
16 investments that the insurer may acquire under section  
17 twenty-eight of this article.

18 (d) An insurer may not short sell equity investments  
19 unless the insurer covers the short sale by owning the  
20 equity investment or an unrestricted right to the equity  
21 instrument exercisable within six months of the short sale.

**§33-8-27. Same - Tangible personal property under lease.**

1 (a) Subject to the limitations of section twenty-three of  
2 this article, an insurer may acquire tangible personal  
3 property or equity interests therein located or used, wholly  
4 or in part, within a domestic jurisdiction either directly or  
5 indirectly through limited partnership interests and  
6 general partnership interests not otherwise prohibited by  
7 subdivision (d), section five of this article, joint ventures,  
8 stock of an investment subsidiary or membership interests  
9 in a limited liability company, trust certificates or other  
10 similar instruments.

11 (b) Investments acquired under subsection (a) of this  
12 section are eligible only if:

13 (1) The property is subject to a lease or other agreement  
14 with a person whose rated credit instruments in the  
15 amount of the purchase price of the personal property the  
16 insurer could then acquire under section twenty-four of  
17 this article; and

18 (2) The lease or other agreement provides the insurer the  
19 right to receive rental, purchase or other fixed payments  
20 for the use or purchase of the property, and the aggregate  
21 value of the payments, together with the estimated resid-  
22 ual value of the property at the end of its useful life and  
23 the estimated tax benefits to the insurer resulting from  
24 ownership of the property, is adequate to return the cost

25 of the insurer's investment in the property, plus a return  
26 considered adequate by the insurer.

27 (c) The insurer shall compute the amount of each invest-  
28 ment under this section on the basis of the out-of-pocket  
29 purchase price and applicable related expenses paid by the  
30 insurer for the investment, net of each borrowing made to  
31 finance the purchase price and expenses, to the extent the  
32 borrowing is without recourse to the insurer.

33 (d) An insurer may not acquire an investment under this  
34 section if, as a result of and after giving effect to the  
35 investment, the aggregate amount of all investments then  
36 held by the insurer under this section would exceed:

37 (1) Two percent of its admitted assets; or

38 (2) One half of one percent of its admitted assets as to  
39 any single item of tangible personal property.

40 (e) For purposes of determining compliance with the  
41 limitations of section twenty-three of this article, invest-  
42 ments acquired by an insurer under this section shall be  
43 aggregated with those acquired under section twenty-four  
44 of this article, and each lessee of the property under a lease  
45 referred to in this section shall be considered the issuer of  
46 an obligation in the amount of the investment of the  
47 insurer in the property determined as provided in subsec-  
48 tion (c) of this section.

49 (f) Nothing in this section is applicable to tangible  
50 personal property lease arrangements between an insurer  
51 and its subsidiaries and affiliates under a cost sharing  
52 arrangement or agreement permitted under this article.

**§33-8-28. Same - Mortgage loans and real estate.**

1 (a) Subject to the limitations of section twenty-three of  
2 this article, an insurer may acquire, either directly,  
3 indirectly through limited partnership interests and  
4 general partnership interests not otherwise prohibited by  
5 subdivision (4), section five of this article, joint ventures,

6 stock of an investment subsidiary or membership interests  
7 in a limited liability company, trust certificates, or other  
8 similar instruments, obligations secured by mortgages on  
9 real estate situated within a domestic jurisdiction, but a  
10 mortgage loan which is secured by other than a first lien  
11 may not be acquired unless the insurer is the holder of the  
12 first lien. The obligations held by the insurer and any  
13 obligations with an equal lien priority, may not, at the  
14 time of acquisition of the obligation, exceed:

15 (1) Ninety percent of the fair market value of the real  
16 estate, if the mortgage loan is secured by a purchase  
17 money mortgage or like security received by the insurer  
18 upon disposition of the real estate;

19 (2) Eighty percent of the fair market value of the real  
20 estate, if the mortgage loan requires immediate scheduled  
21 payment in periodic installments of principal and interest,  
22 has an amortization period of thirty years or less and  
23 periodic payments made no less frequently than annually.  
24 Each periodic payment shall be sufficient to assure that at  
25 all times the outstanding principal balance of the mort-  
26 gage loan is not greater than the outstanding principal  
27 balance which would be outstanding under a mortgage  
28 loan with the same original principal balance, with the  
29 same interest rate and requiring equal payments of  
30 principal and interest with the same frequency over the  
31 same amortization period. Mortgage loans permitted  
32 under this subsection are permitted notwithstanding the  
33 fact that they provide for a payment of the principal  
34 balance prior to the end of the period of amortization of  
35 the loan. For residential mortgage loans, the eighty  
36 percent limitation may be increased to ninety-seven  
37 percent if acceptable private mortgage insurance has been  
38 obtained; or

39 (3) Seventy-five percent of the fair market value of  
40 the real estate for mortgage loans that do not meet  
41 the requirements of subdivision (1) or (2) of this subsec-  
42 tion.

43 (b) For purposes of subsection (a) of this section, the  
44 amount of an obligation required to be included in the  
45 calculation of the loan-to-value ratio may be reduced to  
46 the extent the obligation is insured by the federal housing  
47 administration or guaranteed by the administrator of  
48 veterans affairs, or their successors.

49 (c) A mortgage loan that is held by an insurer under  
50 subsection (f), section three of this article or acquired  
51 under this section and is restructured in a manner that  
52 meets the requirements of a restructured mortgage loan in  
53 accordance with the NAIC accounting practices and  
54 procedures manual or successor publication continues to  
55 qualify as a mortgage loan under this article.

56 (d) Subject to the limitations of section twenty-three of  
57 this article, credit lease transactions that do not qualify for  
58 investment under section twenty-four of this article with  
59 the following characteristics are exempt from the provi-  
60 sions of subsection (a) of this section:

61 (1) The loan amortizes over the initial fixed lease term at  
62 least in an amount sufficient so that the loan balance at  
63 the end of the lease term does not exceed the original  
64 appraised value of the real estate;

65 (2) The lease payments cover or exceed the total debt  
66 service over the life of the loan;

67 (3) A tenant or its affiliated entity whose rated credit  
68 instruments have a SVO 1 or 2 designation or a compara-  
69 ble rating from a nationally recognized statistical rating  
70 organization recognized by the SVO has a full faith and  
71 credit obligation to make the lease payments;

72 (4) The insurer holds or is the beneficial holder of a first  
73 lien mortgage on the real estate;

74 (5) The expenses of the real estate are passed through to  
75 the tenant, excluding exterior, structural, parking and  
76 heating, ventilation and air conditioning replacement



77 expenses, unless annual escrow contributions, from cash  
78 flows derived from the lease payments, cover the expense  
79 shortfall; and

80 (6) There is a perfected assignment of the rents due  
81 pursuant to the lease to, or for the benefit of, the insurer.

82 (e) An insurer may acquire, manage and dispose of real  
83 estate situated in a domestic jurisdiction either directly or  
84 indirectly through limited partnership interests and  
85 general partnership interests not otherwise prohibited by  
86 subsection (d), section five of this article, joint ventures,  
87 stock of an investment subsidiary or membership interests  
88 in a limited liability company, trust certificates, or other  
89 similar instruments. The real estate shall be income  
90 producing or intended for improvement or development  
91 for investment purposes under an existing program (in  
92 which case the real estate shall be considered to be income  
93 producing).

94 (f) The income producing real estate that is acquired,  
95 managed or disposed of pursuant to subsection (e) of this  
96 section may be subject to mortgages, liens or other encum-  
97 brances, the amount of which may, to the extent that the  
98 obligations secured by the mortgages, liens or encum-  
99 brances are without recourse to the insurer, be deducted  
100 from the amount of the investment of the insurer in the  
101 real estate for purposes of determining compliance with  
102 subsections (i) and (j) of this section.

103 (g) *Real estate for the accommodation of business.* —

104 An insurer may acquire, manage, and dispose of real  
105 estate for the convenient accommodation of the insurer's  
106 (which may include its affiliates) business operations,  
107 including home office, branch office and field office  
108 operations, as follows:

109 (1) Real estate acquired under this subsection may  
110 include excess space for rent to others, if the excess space,  
111 valued at its fair market value, would otherwise be a

112 permitted investment under subsection (e) of this section  
113 and is qualified by the insurer;

114 (2) The real estate acquired under this subsection may be  
115 subject to one or more mortgages, liens or other encum-  
116 brances, the amount of which may, to the extent that the  
117 obligations secured by the mortgages, liens or encum-  
118 brances are without recourse to the insurer, be deducted  
119 from the amount of the investment of the insurer in the  
120 real estate for purposes of determining compliance with  
121 subsection (k) of this section; and

122 (3) For purposes of this subsection, business operations  
123 may not include that portion of real estate used for the  
124 direct provision of health care services by an insurer  
125 whose insurance premiums and required statutory reserves  
126 for accident and sickness insurance constitute at least  
127 ninety-five percent of total premium considerations or  
128 total statutory required reserves, respectively. An insurer  
129 may acquire real estate used for these purposes under  
130 subsection (e) of this section.

131 (h) An insurer may not acquire an investment under  
132 subsection (a) of this section if, as a result of and after  
133 giving effect to the investment, the aggregate amount of all  
134 investments then held by the insurer under subsection (a)  
135 of this section would exceed:

136 (1) One percent of its admitted assets in mortgage loans  
137 covering any one secured location;

138 (2) One quarter of one percent of its admitted assets in  
139 construction loans covering any one secured location; or

140 (3) One percent of its admitted assets in construction  
141 loans in the aggregate.

142 (i) An insurer may not acquire an investment under  
143 subsections (e) and (f) of this section if, as a result of and  
144 after giving effect to the investment and any outstanding  
145 guarantees made by the insurer in connection with the

146 investment, the aggregate amount of investments then held  
147 by the insurer under subsections (e) and (f) of this section  
148 plus the guarantees then outstanding would exceed:

149 (1) One percent of its admitted assets in any one parcel  
150 or group of contiguous parcels of real estate, except that  
151 this limitation may not apply to that portion of real estate  
152 used for the direct provision of health care services by an  
153 insurer whose insurance premiums and required statutory  
154 reserves for accident and sickness constitute at least  
155 ninety-five percent of total premium considerations or  
156 total statutory required reserves, respectively, such as  
157 hospitals, medical clinics, medical professional buildings  
158 or other health facilities used for the purpose of providing  
159 health services; or

160 (2) The lesser of ten percent of its admitted assets or  
161 forty percent of its surplus as regards policyholders in the  
162 aggregate, except for an insurer whose insurance premi-  
163 ums and required statutory reserves for accident and  
164 sickness insurance constitute at least ninety-five percent  
165 of total premium considerations or total statutory required  
166 reserves, respectively, this limitation shall be increased to  
167 fifteen percent of its admitted assets in the aggregate.

168 (j) An insurer may not acquire an investment under  
169 subsection (a) or (b) of this section if, as a result of and  
170 after giving effect to the investment and any guarantees it  
171 has made in connection with the investment, the aggregate  
172 amount of all investments then held by the insurer under  
173 subsections (a) and (b) of this section plus the guarantees  
174 then outstanding would exceed twenty-five percent of its  
175 admitted assets.

176 (k) The limitations of section twenty-three of this article  
177 do not apply to an insurer's acquisition of real estate under  
178 subsection (g) of this section. An insurer may not acquire  
179 real estate under said subsection if, as a result of and after  
180 giving effect to the acquisition, the aggregate amount of  
181 all real estate then held by the insurer under said subsec-

182 tion would exceed ten percent of its admitted assets. With  
183 the permission of the commissioner, additional amounts of  
184 real estate may be acquired under said February 26, 2004  
185 subsection.

**§33-8-29. Same - Securities lending, repurchase, reverse repurchase and dollar roll transactions.**

1 (a) An insurer may enter into securities lending, repurchase,  
2 reverse repurchase and dollar roll transactions with  
3 business entities, subject to the following requirements:

4 (1) The insurer's board of directors shall adopt a written  
5 plan that is consistent with the requirements of the written  
6 plan in subsection (a), section four of this article that  
7 specifies guidelines and objectives to be followed, such as:

8 (A) A description of how cash received will be invested  
9 or used for general corporate purposes of the insurer;

10 (B) Operational procedures to manage interest rate risk,  
11 counterparty default risk, the conditions under which  
12 proceeds from reverse repurchase transactions may be  
13 used in the ordinary course of business and the use of  
14 acceptable collateral in a manner that reflects the liquidity  
15 needs of the transaction; and

16 (C) The extent to which the insurer may engage in these  
17 transactions.

18 (2) The insurer shall enter into a written agreement for  
19 all transactions authorized in this section other than dollar  
20 roll transactions. The written agreement shall require that  
21 each transaction terminate no more than one year from its  
22 inception or upon the earlier demand of the insurer. The  
23 agreement shall be with the business entity counterparty,  
24 but for securities lending transactions, the agreement shall  
25 be with an agent acting on behalf of the insurer, if the  
26 agent is a qualified business entity, and if the agreement:

27 (A) Requires the agent to enter into separate agreements  
28 with each counterparty that are consistent with the  
29 requirements of this section; and

30 (B) Prohibits securities lending transactions under the  
31 agreement with the agent or its affiliates.

32 (3) Cash received in a transaction under this section shall  
33 be invested in accordance with this article and in a manner  
34 that recognizes the liquidity needs of the transaction or  
35 used by the insurer for its general corporate purposes. For  
36 so long as the transaction remains outstanding, the  
37 insurer, its agent or custodian shall maintain, as to accept-  
38 able collateral received in a transaction under this section,  
39 either physically or through the book entry systems of the  
40 federal reserve, depository trust company, participants  
41 trust company or other securities depositories approved by  
42 the commissioner:

43 (A) Possession of the acceptable collateral;

44 (B) A perfected security interest in the acceptable  
45 collateral; or

46 (C) In the case of a jurisdiction outside of the United  
47 States, title to, or rights of a secured creditor to, the  
48 acceptable collateral.

49 (4) In a securities lending transaction, the insurer shall  
50 receive acceptable collateral having a market value as of  
51 the transaction date at least equal to one hundred two  
52 percent of the market value of the securities loaned by the  
53 insurer in the transaction as of that date. If at any time  
54 the market value of the acceptable collateral is less than  
55 the market value of the loaned securities, the business  
56 entity counterparty shall be obligated to deliver additional  
57 acceptable collateral, the market value of which, together  
58 with the market value of all acceptable collateral then  
59 held in connection with the transaction, at least equals one  
60 hundred two percent of the market value of the loaned  
61 securities.

62 (5) In a reverse repurchase transaction, (other than a  
63 dollar roll transaction), the insurer shall receive acceptable  
64 collateral having a market value as of the transaction date  
65 at least equal to ninety-five percent of the market value of  
66 the securities transferred by the insurer in the transaction  
67 as of that date. If at any time the market value of the  
68 acceptable collateral is less than ninety-five percent of the  
69 market value of the securities transferred, the business  
70 entity counterparty is obligated to deliver additional  
71 acceptable collateral, the market value of which, together  
72 with the market value of all acceptable collateral then  
73 held in connection with the transaction, at least equals  
74 ninety-five percent of the market value of the transferred  
75 securities.

76 (6) In a dollar roll transaction, the insurer shall receive  
77 cash in an amount at least equal to the market value of the  
78 securities transferred by the insurer in the transaction as  
79 of the transaction date.

80 (7) In a repurchase transaction, the insurer shall receive  
81 as acceptable collateral transferred securities having a  
82 market value at least equal to one hundred two percent of  
83 the purchase price paid by the insurer for the securities.  
84 If at any time the market value of the acceptable collateral  
85 is less than one hundred percent of the purchase price paid  
86 by the insurer, the business entity counterparty is obli-  
87 gated to provide additional acceptable collateral, the  
88 market value of which, together with the market value of  
89 all acceptable collateral then held in connection with the  
90 transaction, at least equals one hundred two percent of the  
91 purchase price. Securities acquired by an insurer in a  
92 repurchase transaction may not be sold in a reverse  
93 repurchase transaction, loaned in a securities lending  
94 transaction or otherwise pledged.

95 (b) The limitations of sections twenty-three and thirty of  
96 this article do not apply to the business entity  
97 counterparty exposure created by transactions under this  
98 section. For purposes of calculations made to determine

99 compliance with this subdivision, no effect will be given to  
100 the insurer's future obligation to resell securities, in the  
101 case of a repurchase transaction, or to repurchase securi-  
102 ties, in the case of a reverse repurchase transaction. An  
103 insurer may not enter into a transaction under this section  
104 if, as a result of and after giving effect to the transaction:

105 (1) The aggregate amount of securities then loaned, sold  
106 to or purchased from any one business entity counterparty  
107 under this section would exceed five percent of its admit-  
108 ted assets. In calculating the amount sold to or purchased  
109 from a business entity counterparty under repurchase or  
110 reverse repurchase transactions, effect will be given to  
111 netting provisions under a master written agreement; or

112 (2) The aggregate amount of all securities then loaned,  
113 sold to or purchased from all business entities under this  
114 section would exceed forty percent of its admitted assets  
115 but the limitation of this subdivision does not apply to  
116 reverse repurchase transactions for so long as the borrow-  
117 ing is used to meet operational liquidity requirements  
118 resulting from an officially declared catastrophe and  
119 subject to a plan approved by the commissioner.

**§33-8-30. Same - Foreign investments and foreign currency  
exposure.**

1 (a) Subject to the limitations of section twenty-three of  
2 this article, an insurer may acquire foreign investments, or  
3 engage in investment practices with persons of or in  
4 foreign jurisdictions, of substantially the same types as  
5 those that an insurer is permitted to acquire under this  
6 article, other than of the type permitted under section  
7 twenty-five of this article, if, as a result and after giving  
8 effect to the investment:

9 (1) The aggregate amount of foreign investments then  
10 held by the insurer under this subsection does not exceed  
11 twenty percent of its admitted assets; and

12 (2) The aggregate amount of foreign investments then  
13 held by the insurer under this subsection in a single  
14 foreign jurisdiction does not exceed ten percent of its  
15 admitted assets as to a foreign jurisdiction that has a  
16 sovereign debt rating of SVO 1 or five percent of its  
17 admitted assets as to any other foreign jurisdiction.

18 (b) Subject to the limitations of section twenty-three of  
19 this article, an insurer may acquire investments, or engage  
20 in investment practices denominated in foreign currencies,  
21 whether or not they are foreign investments acquired  
22 under subsection (a) of this section, or additional foreign  
23 currency exposure as a result of the termination or expira-  
24 tion of a hedging transaction with respect to investments  
25 denominated in a foreign currency, if:

26 (1) The aggregate amount of investments then held by  
27 the insurer under this subsection denominated in foreign  
28 currencies does not exceed fifteen percent of its admitted  
29 assets; and

30 (2) The aggregate amount of investments then held by  
31 the insurer under this subsection denominated in the  
32 foreign currency of a single foreign jurisdiction does not  
33 exceed ten percent of its admitted assets as to a foreign  
34 jurisdiction that has a sovereign debt rating of SVO 1 or  
35 five percent of its admitted assets as to any other foreign  
36 jurisdiction. However, an investment will not be consid-  
37 ered denominated in a foreign currency if the acquiring  
38 insurer enters into one or more contracts in transactions  
39 permitted under section thirty-one of this article and the  
40 business entity counterparty agrees under the contract or  
41 contracts to exchange all payments made on the foreign  
42 currency denominated investment for United States  
43 currency at a rate which effectively insulates the invest-  
44 ment cash flows against future changes in currency  
45 exchange rates during the period the contract or contracts  
46 are in effect.



47 (c) In addition to investments permitted under subsec-  
48 tions (a) and (b) of this section, an insurer that is autho-  
49 rized to do business in a foreign jurisdiction, and that has  
50 outstanding insurance, annuity or reinsurance contracts on  
51 lives or risks resident or located in that foreign jurisdiction  
52 and denominated in foreign currency of that jurisdiction,  
53 may acquire foreign investments respecting that foreign  
54 jurisdiction, and may acquire investments denominated in  
55 the currency of that jurisdiction, subject to the limitations  
56 of section twenty-three of this article. However, invest-  
57 ments made under this subsection in obligations of foreign  
58 governments, their political subdivisions and govern-  
59 ment-sponsored enterprises are not subject to the limita-  
60 tions of section twenty-three of this article if those invest-  
61 ments carry an SVO rating of 1 or 2. The aggregate  
62 amount of investments acquired by the insurer under this  
63 subsection may not exceed the greater of:

64 (1) The amount the insurer is required by law to invest in  
65 the foreign jurisdiction; or

66 (2) One hundred twenty-five percent of the amount of its  
67 reserves, net of reinsurance, and other obligations under  
68 the contracts. .

69 (d) In addition to investments permitted under subsec-  
70 tions (a) and (b) of this section, an insurer that is not  
71 authorized to do business in a foreign jurisdiction but  
72 which has outstanding insurance, annuity or reinsurance  
73 contracts on lives or risks resident or located in a foreign  
74 jurisdiction and denominated in foreign currency of that  
75 jurisdiction, may acquire foreign investments respecting  
76 that foreign jurisdiction and may acquire investments  
77 denominated in the currency of that jurisdiction subject to  
78 the limitations set forth in section twenty-three of this  
79 article. However, investments made under this subsection  
80 in obligations of foreign governments, their political  
81 subdivisions and government-sponsored enterprises are  
82 not subject to the limitations of section twenty-three of  
83 this article if those investments carry an SVO rating of 1

84 or 2. The aggregate amount of investments acquired by  
85 the insurer under this subsection may not exceed one  
86 hundred five percent of the amount of its reserves, net of  
87 reinsurance, and other obligations under the contracts on  
88 risks resident or located in the foreign jurisdiction.

89 (e) Investments acquired under this section shall be  
90 aggregated with investments of the same types made under  
91 all other sections of this article, and in a similar manner,  
92 for purposes of determining compliance with the limita-  
93 tions, if any, contained in the other sections. Investments  
94 in obligations of foreign governments, their political  
95 subdivisions and government-sponsored enterprises of  
96 these persons, except for those exempted under subsec-  
97 tions (c) and (d) of this section, are subject to the limita-  
98 tions of section twenty-three of this article.

**§33-8-31. Same - Derivative transactions.**

1 (a) An insurer may, directly or indirectly through an  
2 investment subsidiary, engage in derivative transactions  
3 under this section under the following conditions:

4 (1) An insurer may use derivative instruments under this  
5 section to engage in hedging transactions and certain  
6 income generation transactions, as these terms may be  
7 further defined in rules promulgated by the commissioner.

8 (2) An insurer must be able to demonstrate to the  
9 commissioner the intended hedging characteristics and the  
10 ongoing effectiveness of the derivative transaction or  
11 combination of transactions through cash flow testing or  
12 other appropriate analyses.

13 (b) An insurer may enter into hedging transactions under  
14 this section if, as a result of and after giving effect to the  
15 transaction:

16 (1) The aggregate statement value of options, caps, floors  
17 and warrants not attached to another financial instrument

18 purchased and used in hedging transactions does not  
19 exceed seven and one-half percent of its admitted assets;

20 (2) The aggregate statement value of options, caps and  
21 floors written in hedging transactions does not exceed  
22 three percent of its admitted assets; and

23 (3) The aggregate potential exposure of collars, swaps,  
24 forwards and futures used in hedging transactions does  
25 not exceed six and one-half percent of its admitted assets.

26 (c) An insurer may only enter into the following types of  
27 income generation transactions if as a result of and after  
28 giving effect to the transactions, the aggregate statement  
29 value of the fixed income assets that are subject to call  
30 plus the face value of fixed income securities underlying a  
31 derivative instrument subject to call, plus the amount of  
32 the purchase obligations under the puts, does not exceed  
33 ten percent of its admitted assets:

34 (1) Sales of covered call options on noncallable fixed  
35 income securities, callable fixed income securities if the  
36 option expires by its terms prior to the end of the noncall-  
37 able period or derivative instruments based on fixed  
38 income securities;

39 (2) Sales of covered call options on equity securities, if  
40 the insurer holds in its portfolio, or can immediately  
41 acquire through the exercise of options, warrants or  
42 conversion rights already owned, the equity securities  
43 subject to call during the complete term of the call option  
44 sold; or

45 (3) Sales of covered puts on investments that the insurer  
46 is permitted to acquire under this article, if the insurer has  
47 escrowed, or entered into a custodian agreement segregat-  
48 ing, cash or cash equivalents with a market value equal to  
49 the amount of its purchase obligations under the put  
50 during the complete term of the put option sold.

51 (d) An insurer shall include all counterparty exposure  
52 amounts in determining compliance with the limitations of  
53 section twenty-three of this article.

54 (e) Pursuant to rules promulgated under section eight of  
55 this article, the commissioner may approve additional  
56 transactions involving the use of derivative instruments in  
57 excess of the limits of subsection (b) of this section or for  
58 other risk management purposes under rules promulgated  
59 by the commissioner, but replication transactions may not  
60 be permitted for other than risk management purposes.

**§33-8-32. Same - Additional investment authority.**

1 (a) An insurer may acquire under this section invest-  
2 ments, or engage in investment practices, of any kind that  
3 are not specifically prohibited by this article, or engage in  
4 investment practices, without regard to any limitation in  
5 sections twenty-three through thirty of this article, but an  
6 insurer may not acquire an investment or engage in an  
7 investment practice under this section if, as a result of and  
8 after giving effect to the transaction, the aggregate amount  
9 of the investments then held by the insurer under this  
10 section would exceed the greater of:

11 (1) Its unrestricted surplus; or

12 (2) The lesser of:

13 (A) Ten percent of its admitted assets; or

14 (B) Fifty percent of its surplus as regards policyholders.

15 (b) An insurer may not acquire any investment or engage  
16 in any investment practice under subdivision (2), subsec-  
17 tion (a) of this section if, as a result of and after giving  
18 effect to the transaction the aggregate amount of all  
19 investments in any one person then held by the insurer  
20 under that subsection would exceed five percent of its  
21 admitted assets.

**ARTICLE 9. ADMINISTRATION OF DEPOSITS.**

**§33-9-3. Assets eligible for deposit.**

1 (a) All deposits required for a license to transact insur-  
2 ance in West Virginia shall consist of cash or any combina-  
3 tion of the government obligations described in paragraph  
4 (A) or (B), subdivision (1), subsection (a), section eleven,  
5 article eight of this chapter or paragraph (A), (B) or (C),  
6 subdivision (3) of said subsection.

7 (b) All deposits required pursuant to the laws of another  
8 state, province or country, or pursuant to the retaliatory  
9 provision, section sixteen, article three of this chapter,  
10 shall consist of those assets that are required or permitted  
11 by the laws, or as required pursuant to the retaliatory  
12 provision.

**ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.**

**§33-22-11. Surplus or emergency fund.**

1 (a) Each company may accumulate a surplus or emer-  
2 gency fund in an amount determined advisable by its  
3 board of directors.

4 (b) The first twenty-five thousand dollars of the accumu-  
5 lated surplus shall be in cash or invested in government  
6 securities described in subdivision (1) or (2), subsection (a),  
7 section twenty-four, article eight of this chapter or  
8 subdivision (1), (2) or (3), subsection (c) of said section and  
9 the balance of the surplus may be invested in any of the  
10 other classes of investments described in article eight of  
11 this chapter subject to the limitations as to each class  
12 provided therein.

13 (c) All assets of the company other than the accumulated  
14 surplus shall be in cash or invested in the government  
15 securities described in subdivision (1) or (2), subsection (a),  
16 section twenty-four, article eight of this chapter or  
17 subdivision (1), (2) or (3), subsection (c) of said section:  
18 *Provided*, That any company having received an extension

19 of its license to permit it to issue policies of insurance  
20 pursuant to subsection (c), section eight, article  
21 twenty-two of this chapter shall with the prior approval of  
22 the commissioner be permitted to invest all assets of the  
23 company other than the accumulated surplus in the  
24 investments that are authorized by sections twenty-three  
25 through thirty-two, inclusive, of said article.

**ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.**

**§33-23-31. Investments.**

1 (a) A domestic society shall invest its funds only in the  
2 investments that are authorized by sections ten through  
3 twenty, inclusive, article eight of this chapter for the  
4 investment of the assets of domestic insurers.

5 (b) Foreign and alien societies shall have investments of  
6 the same general quality as required of domestic societies,  
7 except that other investments authorized by the laws of  
8 the foreign or alien society's state or country of domicile  
9 may be recognized as assets in the discretion of the  
10 commissioner.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE  
CORPORATIONS, DENTAL SERVICE CORPORATIONS  
AND HEALTH SERVICE CORPORATIONS.**

**§33-24-10. Investments; bonds of corporate officers and em-  
ployees, minimum statutory surplus.**

1 (a) The funds of any corporation shall be invested only as  
2 follows:

3 (1) The first two million dollars of the funds shall be in  
4 cash or government securities of the type described in  
5 paragraph (A) or (B), subdivision (1), subsection (a),  
6 section eleven, article eight of this chapter or paragraph  
7 (A), (B) or (C), subdivision (3) of said subsection.

8 (2) The balance of the funds may be in cash, invested in  
9 the classes of investments described in subdivision (1),  
10 subsection (a), section eleven, article eight of this chapter

11 or invested in the classes of investments described in the  
12 following sections of article eight of this chapter: Subdivi-  
13 sion (4), subsection (a) and section eleven (preferred stock),  
14 section twelve (investment pools), section thirteen (equity  
15 interests), section fourteen (tangible personal property  
16 under lease), section fifteen (mortgage loans and real  
17 estate), section sixteen (securities lending, repurchase,  
18 reverse repurchase and dollar roll transactions), section  
19 seventeen (foreign investments) and section eighteen  
20 (derivative transactions). All investments are subject to all  
21 the restrictions and conditions contained in said article  
22 eight as applying to similar investments of insurers  
23 generally.

24 (b) Every officer or employee of any corporation, who is  
25 entrusted with the handling of its funds, shall furnish, in  
26 an amount fixed by the board of directors of the corpora-  
27 tion, with the approval of the commissioner, a bond with  
28 corporate surety, conditioned upon the faithful perfor-  
29 mance of all his or her duties.

30 (c) A corporation shall have and maintain statutory  
31 surplus funds of at least two million dollars: *Provided,*  
32 That any corporation duly licensed under this article in  
33 West Virginia prior to the effective date of this section  
34 whose surplus requirements are increased by virtue of this  
35 section shall maintain statutory surplus funds of at least  
36 five hundred thousand dollars after the effective date of  
37 this section, and any corporation is then subject to the full  
38 two million dollar statutory surplus requirement.

**ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.**

**§33-25A-4. Issuance of certificate of authority.**

1 (1) Upon receipt of an application for a certificate of  
2 authority, the commissioner shall determine whether the  
3 application for a certificate of authority, with respect to  
4 health care services to be furnished, has demonstrated:

5 (a) The willingness and potential ability of the organiza-  
6 tion to assure that basic health services will be provided in  
7 a manner to enhance and assure both the availability and  
8 accessibility of adequate personnel and facilities;

9 (b) Arrangements for an ongoing evaluation of the  
10 quality of health care provided by the organization and  
11 utilization review which meet those standards required by  
12 the commissioner by rule; and

13 (c) That the organization has a procedure to develop,  
14 compile, evaluate and report statistics relating to the cost  
15 of its operations, the pattern of utilization of its services,  
16 the quality, availability and accessibility of its services  
17 and any other matters reasonably required by rule.

18 (2) The commissioner shall issue or deny a certificate of  
19 authority to any person filing an application within one  
20 hundred twenty days after receipt of the application.  
21 Issuance of a certificate of authority shall be granted upon  
22 payment of the application fee prescribed, if the commis-  
23 sioner is satisfied that the following conditions are met:

24 (a) The health maintenance organization's proposed plan  
25 of operation meets the requirements of subsection (1) of  
26 this section;

27 (b) The health maintenance organization will effectively  
28 provide or arrange for the provision of at least basic health  
29 care services on a prepaid basis except for copayments:  
30 *Provided*, That nothing in this section shall be construed  
31 to relieve a health maintenance organization from the  
32 obligations to provide health care services because of the  
33 nonpayment of copayments unless the enrollee fails to  
34 make payment in at least three instances over any  
35 twelve-month period: *Provided, however*, That nothing in  
36 this section shall permit a health maintenance organiza-  
37 tion to charge copayments to medicare beneficiaries or  
38 medicaid recipients in excess of the copayments permitted



39 under those programs, nor shall a health maintenance  
40 organization be required to provide services to the  
41 medicare beneficiaries or medicaid recipients in excess of  
42 the benefits compensated under those programs;

43 (c) The health maintenance organization is financially  
44 responsible and may reasonably be expected to meet its  
45 obligations to enrollees and prospective enrollees. In  
46 making this determination, the commissioner may con-  
47 sider:

48 (i) The financial soundness of the health maintenance  
49 organization's arrangements for health care services and  
50 the proposed schedule of charges used in connection with  
51 the health care services;

52 (ii) That the health maintenance organization has and  
53 maintains the following:

54 (A) If a for-profit stock corporation, at least one million  
55 dollars of fully paid-in capital stock; or

56 (B) If a nonprofit corporation, at least one million dollars  
57 of statutory surplus funds; and

58 (C) Both for-profit and nonprofit health maintenance  
59 organization, additional surplus funds of at least one  
60 million dollars;

61 (iii) Any arrangements that will guarantee for the  
62 continuation of benefits and payments to providers for  
63 services rendered both prior to and after insolvency for the  
64 duration of the contract period for which payment has  
65 been made, except that benefits to members who are  
66 confined on the date of insolvency in an inpatient facility  
67 shall be continued until their discharge; and

68 (iv) Any agreement with providers for the provision of  
69 health care services;

70 (d) Reasonable provisions have been made for emergency  
71 and out-of-area health care services;

72 (e) The enrollees will be afforded an opportunity to  
73 participate in matters of policy and operation pursuant to  
74 section six of this article;

75 (f) The health maintenance organization has demon-  
76 strated that it will assume full financial risk on a prospec-  
77 tive basis for the provision of health care services, includ-  
78 ing hospital care: *Provided*, That the requirement of this  
79 subdivision shall not prohibit a health maintenance  
80 organization from obtaining reinsurance acceptable to the  
81 commissioner from an accredited reinsurer or making  
82 other arrangements acceptable to the commissioner:

83 (i) For the cost of providing to any enrollee health care  
84 services, the aggregate value of which exceeds four  
85 thousand dollars in any year;

86 (ii) For the cost of providing health care services to its  
87 members on a nonelective emergency basis, or while they  
88 are outside the area served by the organization; or

89 (iii) For not more than ninety-five percent of the amount  
90 by which the health maintenance organization's costs for  
91 any of its fiscal years exceed one hundred five percent of  
92 its income for those fiscal years;

93 (g) The ownership, control and management of the  
94 organization is competent and trustworthy and possesses  
95 managerial experience that would make the proposed  
96 health maintenance organization operation beneficial to  
97 the subscribers. The commissioner may, at his or her  
98 discretion, refuse to grant or continue authority to transact  
99 the business of a health maintenance organization in this  
100 state at any time during which the commissioner has  
101 probable cause to believe that the ownership, control or  
102 management of the organization includes any person  
103 whose business operations are or have been marked by

104 business practices or conduct that is to the detriment of  
105 the public, stockholders, investors or creditors;

106 (h) The health maintenance organization has deposited  
107 and maintained in trust with the state treasurer, for the  
108 protection of its subscribers or its subscribers and credi-  
109 tors, cash or government securities eligible for the invest-  
110 ment of capital funds of domestic insurers as described in  
111 paragraph (A) or (B), subdivision (1), subsection (a),  
112 section eleven, article eight of this chapter or paragraph  
113 (A), (B) or (C), subdivision (3) of said subsection, in the  
114 amount of one hundred thousand dollars; and

115 (i) The health maintenance organization has a quality  
116 assurance program which has been reviewed by the  
117 commissioner or by a nationally recognized accreditation  
118 and review organization approved by the commissioner;  
119 meets at least those standards set forth in section seven-  
120 teen-a of this article; and is determined satisfactory by the  
121 commissioner. If the commissioner determines that the  
122 quality assurance program of a health maintenance  
123 organization is deficient in any significant area, the  
124 commissioner, in addition to other remedies provided in  
125 this chapter, may establish a corrective action plan that  
126 the health maintenance organization must follow as a  
127 condition to the issuance of a certificate of authority:  
128 *Provided*, That in those instances where a health mainte-  
129 nance organization has timely applied for and reasonably  
130 pursued a review of its quality assurance program, but the  
131 review has not been completed, the health maintenance  
132 organization shall submit proof to the commissioner of its  
133 application for that review.

134 (3) A certificate of authority shall be denied only after  
135 compliance with the requirements of section twenty-one of  
136 this article.

137 (4) No person who has not been issued a certificate of  
138 authority shall use the words "health maintenance organi-  
139 zation" or the initials "HMO" in its name, contracts, logo

140 or literature: *Provided*, That persons who are operating  
141 under a contract with, operating in association with,  
142 enrolling enrollees for, or otherwise authorized by a health  
143 maintenance organization licensed under this article to act  
144 on its behalf may use the terms "health maintenance  
145 organization", or "HMO" for the limited purpose of  
146 denoting or explaining their association or relationship  
147 with the authorized health maintenance organization. No  
148 health maintenance organization which has a minority of  
149 board members who are consumers shall use the words  
150 "consumer controlled" in its name or in any way represent  
151 to the public that it is controlled by consumers.

**ARTICLE 25D. PREPAID LIMITED HEALTH SERVICE ORGANIZATION.**

**§33-25D-5. Issuance of certificate of authority.**

1 (a) Upon receipt of an application for a certificate of  
2 authority, the commissioner shall determine whether the  
3 application for a certificate of authority, with respect to  
4 limited health services to be furnished has demonstrated:

5 (1) The willingness and potential ability of the organiza-  
6 tion to assure that limited health services will be provided  
7 in such a manner as to enhance and assure both the  
8 availability and accessibility of adequate personnel and  
9 facilities;

10 (2) Arrangements for an ongoing evaluation of the  
11 quality of health care provided by the organization and  
12 utilization review which meet the minimum standards set  
13 forth in section nineteen of this article;

14 (3) That the organization has a procedure to develop,  
15 compile, evaluate and report statistics relating to the cost  
16 of its operations, the pattern of utilization of its services,  
17 the quality, availability and accessibility of its services  
18 and other matters as may be reasonably required by rule.

19 (b) The commissioner shall issue or deny a certificate of  
20 authority to any person filing an application within one

21 hundred twenty days after receipt of the application.  
22 Issuance of a certificate of authority shall be granted upon  
23 payment of the application fee prescribed, if the commis-  
24 sioner is satisfied that the following conditions are met:

25 (1) The prepaid limited health service organization's  
26 proposed plan of operation meets the requirements of  
27 subsection (a) of this section;

28 (2) The prepaid limited health service organization will  
29 effectively provide or arrange for the provision of no more  
30 than four limited health services on a prepaid basis except  
31 for copayments: *Provided*, That nothing in this section  
32 relieves a prepaid limited health service organization from  
33 the obligations to provide a limited health service because  
34 of the nonpayment of copayments unless the enrollee fails  
35 to make payment in at least three instances over any  
36 twelve-month period: *Provided, however*, That nothing in  
37 this section permits a prepaid limited health service  
38 organization to charge copayments to medicare beneficia-  
39 raries or medicaid recipients in excess of the copayments  
40 permitted under those programs, nor is a prepaid limited  
41 health service organization required to provide a limited  
42 health service to medicare beneficiaries or medicaid  
43 recipients in excess of the benefits compensated under  
44 those programs;

45 (3) The prepaid limited health service organization is  
46 financially responsible and may reasonably be expected to  
47 meet its obligations to enrollees and prospective enrollees.  
48 In making this determination, the commissioner may  
49 consider:

50 (A) The financial soundness of the prepaid limited health  
51 service organization's arrangements for no more than four  
52 limited health services and the proposed schedule of  
53 charges used in connection with each limited health  
54 service offered;

55 (B) Arrangements for maintenance of the minimum  
56 capital and surplus required under section six of this  
57 article;

58 (C) Any arrangements which will guarantee the continu-  
59 ation of benefits and payments to providers for services  
60 rendered both prior to and after insolvency for the dura-  
61 tion of the contract period for which payment has been  
62 made, except that benefits to members who are confined  
63 on the date of insolvency in an inpatient facility shall be  
64 continued until their discharge; and

65 (D) Any agreement with providers for the provision of  
66 limited health care services;

67 (4) The enrollees will be afforded an opportunity to  
68 participate in matters of policy and operation pursuant to  
69 section eight of this article;

70 (5) The prepaid limited health service organization has  
71 demonstrated that it will assume full financial risk on a  
72 prospective basis for the provision of no more than four  
73 limited health services: *Provided*, That notwithstanding  
74 the requirement of this subdivision, a prepaid limited  
75 health service organization may obtain reinsurance  
76 acceptable to the commissioner from an accredited  
77 reinsurer or make other arrangements:

78 (A) For the cost of providing to any enrollee limited  
79 health services, the aggregate value of which exceeds four  
80 thousand dollars in any year;

81 (B) For the cost of providing no more than four limited  
82 health services to its enrollees on a nonelective emergency  
83 basis; or

84 (C) For not more than ninety-five percent of the amount  
85 by which the prepaid limited health service organization's  
86 costs for any of its fiscal years exceed one hundred five  
87 percent of its income for those fiscal years;

88 (6) The ownership, control and management of the  
89 prepaid limited health service organization is competent  
90 and trustworthy and possesses managerial experience that  
91 would make the proposed organization operation benefi-  
92 cial to the subscribers. The commissioner may, at his or  
93 her discretion, refuse to grant or continue authority to  
94 transact the business of a prepaid limited health service  
95 organization in this state at any time during which the  
96 commissioner has probable cause to believe that the  
97 ownership, control or management of the organization  
98 includes any person whose business operations are or have  
99 been marked by business practices or conduct that is to the  
100 detriment of the public, stockholders, investors or credi-  
101 tors; and

102 (7) The prepaid limited health service organization has  
103 deposited and maintained in trust with the state treasurer,  
104 for the protection of its subscribers or its subscribers and  
105 creditors, cash or government securities eligible for the  
106 investment of capital funds of domestic insurers as de-  
107 scribed in paragraph (A) or (B), subdivision (1), subsection  
108 (a), section eleven, article eight of this chapter or para-  
109 graph (A), (B) or (C), subdivision (3) of said subsection, in  
110 the amount of fifty thousand dollars.

111 (c) A certificate of authority may be denied only after  
112 compliance with the requirements of section twenty-three  
113 of this article.

114 (d) No person who has not been issued a certificate of  
115 authority may use the words "prepaid limited health  
116 service organization" or the initials "PLHSO" in its name,  
117 contracts, logo or literature: *Provided*, That persons who  
118 are operating under a contract with, operating in associa-  
119 tion with, enrolling enrollees for, or otherwise authorized  
120 by a prepaid limited health service organization licensed  
121 under this article to act on its behalf may use the terms  
122 "prepaid limited health service organization" or "PLHSO"  
123 for the limited purpose of denoting or explaining their  
124 association or relationship with the authorized prepaid

125 limited health service organization. No prepaid limited  
126 health service organization which has a minority of board  
127 members who are consumers may use the words "con-  
128 sumer controlled" in its name or in any way represent to  
129 the public that it is controlled by consumers.

**ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.**

**§33-27-2a. Subsidiaries of insurers; authorization; investment  
authority; exemptions; qualifications; cessation  
of controls.**

1 (a) Any domestic insurer, either by itself or in coopera-  
2 tion with one or more persons, may organize or acquire  
3 one or more subsidiaries engaged in the following kinds of  
4 business with the commissioner's prior approval:

5 (1) Any kind of insurance business authorized by the  
6 jurisdiction in which it is incorporated;

7 (2) Acting as an insurance agent for its parent or for any  
8 of its parent's insurer subsidiaries;

9 (3) Investing, reinvesting or trading in securities for its  
10 own account, that of its parent, any subsidiary of its  
11 parent, or any affiliate or subsidiary;

12 (4) Management of any investment company subject to  
13 or registered pursuant to the Investment Company Act of  
14 1940, as amended, including related sales and services;

15 (5) Acting as a broker-dealer subject to or registered  
16 pursuant to the Securities Exchange Act of 1934, as  
17 amended;

18 (6) Rendering investment advice to governments, govern-  
19 ment agencies, corporations or other organizations or  
20 groups;

21 (7) Rendering other services related to the operations of  
22 an insurance business, including, but not limited to,  
23 actuarial, loss prevention, safety engineering, data pro-



24 censing, accounting, claims, appraisal and collection services;

25 (8) Ownership and management of assets which the  
26 parent corporation could itself own or manage;

27 (9) Acting as administrative agent for a governmental  
28 instrumentality which is performing an insurance func-  
29 tion;

30 (10) Financing of insurance premiums, agents and other  
31 forms of consumer financing;

32 (11) Any other business activity determined by the  
33 commissioner to be reasonably ancillary to an insurance  
34 business;

35 (12) Owning a corporation or corporations engaged or  
36 organized to engage exclusively in one or more of the  
37 businesses specified in this section; and

38 (13) Organizing or acquiring one or more subsidiaries  
39 that are depository institutions.

40 (b) In addition to investments in common stock, pre-  
41 ferred stock, debt obligations and other securities permit-  
42 ted under any other provision of this chapter, a domestic  
43 insurer may also with the commissioner's prior approval:

44 (1) Invest in common stock, preferred stock, debt obliga-  
45 tions and other securities of one or more subsidiaries,  
46 amounts which do not exceed the lesser of ten percent of  
47 the insurer's assets or fifty percent of the insurer's surplus  
48 as regards policyholders: *Provided*, That after the invest-  
49 ments, the insurer's surplus as regards policyholders will  
50 be reasonable in relation to the insurer's outstanding  
51 liabilities and adequate to its financial needs. In calculat-  
52 ing the amount of the investments, investments in domes-  
53 tic or foreign insurance subsidiaries shall be excluded and  
54 there shall be included:

55 (A) Total net moneys or other consideration expended  
56 and obligations assumed in the acquisition or formation of

57 a subsidiary, including all organizational expenses and  
58 contributions to capital and surplus of the subsidiary  
59 whether or not represented by the purchase of capital  
60 stock or issuance of other securities; and

61 (B) All amounts expended in acquiring additional  
62 common stock, preferred stock, debt obligations and other  
63 securities, and all contributions to the capital or surplus,  
64 of a subsidiary subsequent to its acquisition or formation;

65 (2) Invest any amount in common stock, preferred stock,  
66 debt obligations and other securities of one or more  
67 subsidiaries engaged or organized to engage exclusively in  
68 the ownership and management of assets authorized as  
69 investments for the insurer: *Provided*, That each subsid-  
70 iary agrees to limit its investments in any asset so that the  
71 investments will not cause the amount of the total invest-  
72 ment of the insurer to exceed any of the investment  
73 limitations specified in subdivision (1) of this subsection or  
74 in article eight of this chapter applicable to the insurer.  
75 For the purpose of this subdivision, "the total investment  
76 of the insurer" includes:

77 (A) Any direct investment by the insurer in an asset; and

78 (B) The insurer's proportionate share of any investment  
79 in an asset by any subsidiary of the insurer, which shall be  
80 calculated by multiplying the amount of the subsidiary's  
81 investment by the percentage of the ownership of the  
82 subsidiary.

83 (3) With the approval of the commissioner, invest any  
84 greater amount in common stock, preferred stock, debt  
85 obligations or other securities of one or more subsidiaries:  
86 *Provided*, That after investment the insurer's surplus as  
87 regards policyholders will be reasonable in relation to the  
88 insurer's outstanding liabilities and adequate to its  
89 financial needs.

90 (c) Investments in common stock, preferred stock, debt  
91 obligations or other securities of subsidiaries made

92 pursuant to subsection (b) of this section are not subject to  
93 any of the otherwise applicable restrictions or prohibitions  
94 contained in this chapter applicable to the investments of  
95 insurers.

96 (d) Whether any investment pursuant to subsection (a) or  
97 (b) of this section meets the applicable requirements of  
98 said subsections is to be determined before the investment  
99 is made, by calculating the applicable investment limita-  
100 tions as though the investment had already been made,  
101 taking into account the then outstanding principal balance  
102 on all previous investments in debt obligations, and the  
103 value of all previous investments in equity securities as of  
104 the day they were made, net of any return of capital  
105 invested, not including dividends.

106 (e) If an insurer ceases to control a subsidiary, it shall  
107 dispose of any investment in the subsidiary made pursuant  
108 to this section within three years from the time of the  
109 cessation of control or within any further time prescribed  
110 by the commissioner, unless at any time after the invest-  
111 ment was made, the investment meets the requirements for  
112 investment under any other provision of this chapter and  
113 the insurer has notified the commissioner of compliance  
114 with the provisions of this chapter.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*[Signature]*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Signature]*  
.....  
Clerk of the Senate

*[Signature]*  
.....  
Clerk of the House of Delegates

*[Signature]*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within... *is approved* this the *7<sup>th</sup>*  
Day of *April*, 2004.  
*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 4.1.04

Time 10:00 AM