

## CHAPTER 36

## S.B. No. 114

An Act authorizing and limiting investments of Texas life, health or accident insurers; adding Article 3.33, Insurance Code; and declaring an emergency.

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1.** Chapter 3, Insurance Code, as amended, is amended by adding Article 3.33 to read as follows:

*“Article 3.33. Authorized Investments and Loans for Capital Stock Domestic Life, Health and Accident Insurance Companies.*

*“Section 1. SCOPE. This article and the rules promulgated to interpret and implement it shall apply to all domestic companies as defined in Section 5 of Article 3.01 of this code and other insurers specifically made subject to the provisions hereof. Articles 3.39, 3.40, and 3.40-1 of this code shall not be applicable to such companies, but such articles shall continue to be applicable to insurance companies chartered under Chapters 9, 10, 12, 13, 14, and 22 of this code. This article shall not limit or restrict the investments in or transactions with or within subsidiaries and affiliates which are made pursuant to the authority of the Texas Insurance Holding Company System Regulatory Act (Article 21.49-1, Insurance Code).*

*“Section 2. PURPOSE. The purpose of this article is to protect and further the interests of insureds, insurers, creditors, and the public by providing standards for the development and administration of plans for the investment of the assets of insurers. Such plans should seek a reasonable relationship of liabilities and assets as to term and nature.*

*“Section 3. INSURERS’ INVESTMENT PLANS. (a) The board of directors of each insurer or corresponding authority designated by the charter, bylaws, or plan of operations of an insurer which has no board of directors shall:*

*“(1) adopt a written investment plan consistent with the provision of this article which specifies quality, maturity, and diversification of investments and is appropriate for the business conducted by the insurer and its capital and surplus;*

*“(2) at least annually, review the adequacy of such investment plan and the implementation thereof.*

*“(b) The insurer shall maintain the investment plan in its principal office and shall provide same to the commissioner or his designee upon request, and such plans shall be maintained as a privileged and confidential document by the Commissioner of Insurance or his designee and it shall not be subject to public disclosure. The insurer shall maintain investment records covering each transaction. Such investment records shall contain a reference to the subsection of this article and, if appropriate, other provision of law that authorizes the investment. At all times, the insurer shall be able to demonstrate that its investments are within the limitations prescribed in this article.*

*“Section 4. AUTHORIZED INVESTMENTS AND LOANS. Subject to the limitations and restrictions herein contained, the investments and loans described in the following subsections, and none other, are authorized for the insurers subject hereto:*

*“(a) United States Government Bonds. Bonds, evidences of indebtedness or obligations of the United States of America, or bonds, evidences of indebtedness or obligations guaranteed as to principal and interest by the full faith and credit of the United States of America, and bonds,*

evidences of indebtedness, or obligations of agencies and instrumentalities of the government of the United States of America;

“(b) *Other Governmental Bonds.* Bonds, evidences of indebtedness or obligations of governmental units in the United States, Canada, or any province or city of Canada, and of the instrumentalities of such governmental units; provided:

“(1) such governmental unit or instrumentality is not in default in the payment of principal or interest in any of its obligations; and

“(2) investments in the obligations of any one governmental unit or instrumentality may not exceed 20 percent of the insurer’s capital and surplus;

“(c) *Corporate Bonds.* Bonds, evidences of indebtedness or obligations of corporations organized under the laws of the United States of America or its states; provided:

“(1) any such corporation must be solvent with at least \$1,000,000 of net worth as of the date of its latest annual or more recent certified audited financial statement or will have at least \$1,000,000 of net worth after completion of a securities offering which is being subscribed to by the insurer, or the obligation is guaranteed as to principal and interest by a solvent corporation meeting such net worth requirements which is organized under the laws of the United States of America or one of its states;

“(2) investments in the obligations of any one corporation may not exceed 20 percent of the insurer’s capital and surplus; and

“(3) the aggregate of all investments under this subsection may not exceed:

“(A) one hundred percent of the insurer’s assets (excluding, however, those assets representing the minimum capital required for the insurer), but only if more than 75 percent of the total amount invested by the insurer in such bonds, evidences of indebtedness, or obligations of any such corporations qualifying under Subdivision (1) of this subsection are rated either: (i) AA or better by Standard and Poor’s Bond Ratings service; or (ii) Aa or better by Moody’s Bond Ratings service; or

“(B) eighty percent of the insurer’s assets (excluding, however, those assets representing the minimum capital required for the insurer), but only if more than 50 percent of the total amount invested by the insurer in such bonds, evidences of indebtedness or obligations of any such corporations qualifying under Subdivision (1) of this subsection are rated either: (i) BBB or better by Standard and Poor’s Bond Ratings service; or (ii) Baa or better by Moody’s Bond Ratings service; or

“(C) fifty percent of the insurer’s assets;

“(d) *International Market.* Bonds issued, assumed, or guaranteed by the Interamerican Development Bank, the International Bank for Reconstruction and Development (the World Bank), the Asian Development Bank, and the State of Israel; provided:

“(1) investments in the bonds of any one of the entities specified above may not exceed 10 percent of the insurer’s capital and surplus; and

“(2) the aggregate of all investments made under this subsection may not exceed 10 percent of the insurer’s assets;

“(e) *Policy Loans.* Loans upon the security of the insurer’s own policies not in excess of the amount of the reserve values thereof;

“(f) *Time and Savings Deposits.* Any type or form of savings deposits, time deposits, certificates of deposit, NOW accounts, and money market accounts in solvent banks, savings and loan associations, and credit unions and branches thereof, organized under the laws of the United States of America or its states, when made in accordance with the laws or regulations applicable to such entities; provided the amount of the deposits in any one bank, savings and loan association, or credit union will not exceed the greater of:

“(1) twenty percent of the insurer’s capital and surplus;

“(2) the amount of federal or state deposit insurance coverage pertaining to such deposit; or

“(3) ten percent of the amount of capital, surplus, and undivided profits of the entity receiving such deposits;

“(g) *Equipment Trusts.* Equipment trust obligations or certificates; provided:

“(1) any such obligation or certificate is secured by an interest in transportation equipment that is in whole or in part within the United States of America and the amount of the obligation or certificate may not exceed 90 percent of the value of the equipment;

“(2) the obligation or certificate provides a right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of the transportation equipment;

“(3) investment in any one equipment trust obligation or certificate may not exceed 10 percent of the insurer’s capital and surplus; and

"(4) the aggregate of all investments made under this subsection may not exceed 10 percent of the insurer's assets;

"(h) *Common Stock.* Common stock of any corporation organized under the laws of the United States of America or any of its states, shares of mutual funds doing business under the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), and shares in real estate investment trusts as defined in the Internal Revenue Code of 1954 (26 U.S.C. Section 856); provided:

"(1) any such corporation, other than a mutual fund, must be solvent with at least \$1,000,000 net worth as of the date of its latest annual or more recent certified audited financial statement or will have at least \$1,000,000 of net worth after completion of a securities offering which is being subscribed to by the insurer;

"(2) mutual funds and real estate investment trusts must be solvent with at least \$1,000,000 of net assets as of the date of its latest annual or more recent certified audited financial statement;

"(3) investments in any one corporation, mutual fund, or real estate investment trust may not exceed 10 percent of the insurer's capital and surplus; and

"(4) the aggregate of all investments made under this subsection may not exceed 20 percent of the insurer's assets;

"(i) *Preferred Stock.* Preferred stock of corporations organized under the laws of the United States of America or any of its states; provided:

"(1) such corporation must be solvent with at least \$1,000,000 of net worth as of the date of its latest annual or more recent certified audited financial statement or will have at least \$1,000,000 of net worth after completion of a security offering which is being subscribed to by the insurer;

"(2) investments in the preferred stock of any one corporation will not exceed 20 percent of the insurer's capital and surplus;

"(3) in the aggregate not more than 10 percent of the insurer's assets may be invested in preferred stock, the redemption and retirement of which is not provided for by a sinking fund meeting the standards established by the National Association of Insurance Commissioners to value the preferred stock at cost; and

"(4) the aggregate of all investments made under this subsection may not exceed 40 percent of the insurer's assets;

"(j) *Collateral Loans.* Collateral loans secured by a first lien upon or a valid and perfected first security interest in an asset; provided:

"(1) the amount of any such collateral loan will not exceed 80 percent of the value of the collateral asset at any time during the duration of the loan; and

"(2) the asset used as collateral would be authorized for direct investment by the insurer under other provisions of this Section 4, except real property in Subsection (l);

"(k) *Real Estate Loans.* Notes, evidences of indebtedness, or participations therein secured by a valid first lien upon real property or leasehold estate therein located in the United States of America; provided:

"(1) the amount of any such obligation secured by a first lien upon real property or leasehold estate therein shall not exceed 90 percent of the value of such real property or leasehold estate therein, but the amount of such obligation:

"(A) may exceed 90 percent but shall not exceed 100 percent of the value of such real property or leasehold estate therein if the insurer or one or more wholly owned subsidiaries of the insurer owns in the aggregate a 10 percent or greater equity interest in such real property or leasehold estate therein;

"(B) may be 95 percent of the value of such real property or leasehold estate therein if it contains only a dwelling designed exclusively for occupancy by not more than four families for residential purposes, and the portion of the unpaid balance of such obligation which is in excess of an amount equal to 90 percent of such value is guaranteed or insured by a mortgage insurance company qualified to do business in the State of Texas; or

"(C) may be greater than 90 percent of the value of such real property or leasehold estate therein to the extent the obligation is insured or guaranteed by the United States of America, the Federal Housing Administration pursuant to the National Housing Act of 1934, as amended (12 U.S.C. Section 1701 et seq.), or the State of Texas; and

"(2) the term of an obligation secured by a first lien upon a leasehold estate in real property shall not exceed a period equal to four-fifths of the then unexpired term of such leasehold estate; provided the unexpired term of the leasehold estate must extend at least 10 years beyond the term of the obligation, and each obligation shall be payable in an installment or installments of sufficient amount or amounts so that at any time after the expiration of two-thirds of the original loan term, the principal balance will be no greater than the principal balance would have been if the loan had been amortized over the original loan term in equal monthly, quarterly, semiannual, or annual payments of principal and interest, it being required that under any method of

repayment such obligation will fully amortize during a period of time not exceeding four-fifths of the then unexpired term of the security leasehold estate; and

“(3) if any part of the value of buildings is to be included in the value of such real property or leasehold estate therein to secure the obligations provided for in this subsection, such buildings shall be covered by adequate property insurance, including but not limited to fire and extended coverage insurance issued by a company authorized to transact business in the State of Texas or by a company recognized as acceptable for such purpose by the insurance regulatory official of the state in which such real estate is located, and the amount of insurance granted in the policy or policies shall be not less than the unpaid balance of the obligation or the insurable value of such buildings, whichever is the lesser; the loss clause shall be payable to the insurer as its interest may appear; and

“(4) to the extent any note, evidence of indebtedness, or participation therein under this subsection represents an equity interest in the underlying real property, the value of such equity interest shall be determined at the time of execution of such note, evidence of indebtedness, or participation therein and that portion shall be designated as an investment subject to the provisions of Subsection (1)(2) of this section; and

“(5) the amount of any one such obligation may not exceed 25 percent of the insurer’s capital and surplus;

“(1) Real Estate. Real property fee simple or leasehold estates located within the United States of America, as follows:

“(1) home and branch office real property or participations therein, which must be materially enhanced in value by the construction of durable, permanent-type buildings and other improvements costing an amount at least equal to the cost of such real property, exclusive of buildings and improvements at the time of acquisition, or by the construction of such buildings and improvements which must be commenced within two years of the date of the acquisition of such real property; provided:

“(A) at least 30 percent of the available space in such building shall be occupied for the business purposes of the insurer and its affiliates; and

“(B) the aggregate investment in such home and branch offices shall not exceed 20 percent of the insurer’s assets; and

“(2) other investment property or participations therein, which must be materially enhanced in value by the construction of durable, permanent-type buildings and other improvements costing an amount at least equal to the cost of such real property, exclusive of buildings and improvements at the time of acquisition, or by the construction of such buildings and improvements which must be commenced within two years of the date of acquisition of such real property; provided that such investment in any one piece of property or interest therein, including the improvements, fixtures, and equipment pertaining thereto may not exceed five percent of the insurer’s assets; provided, however, nothing in this article shall allow ownership of, development of, or equity interest in any residential property or subdivision, single or multiunit family dwelling property, or undeveloped real estate for the purpose of subdivision for or development of residential, single, or multiunit family dwellings, except acquisitions as provided in Subdivision (4) below, and such ownership, development, or equity interests shall be specifically prohibited;

“(3) the admissible asset value of each such investment in the properties acquired under Subdivisions (1) and (2) of this subsection shall be subject to review and approval by the Commissioner of Insurance. The commissioner shall have discretion at the time such investment is made or any time when an examination of the company is being made to cause any such investment to be appraised by an appraiser, appointed by the commissioner, and the reasonable expense of such appraisal shall be paid by such insurance company and shall be deemed to be a part of the expense of examination of such company; if the appraisal is made upon application of the company, the expense of such appraisal shall not be considered a part of the expense of examination of such company; no insurance company may hereafter make any write-up in the valuation of any of the properties described in Subdivision (1) or (2) of this subsection unless and until it makes application therefor and such increase in valuation shall be approved by the commissioner; and

“(4) other real property acquired:

“(A) in good faith by way of security for loans previously contracted or money due; or

“(B) in satisfaction of debts previously contracted for in the course of its dealings; or

“(C) by purchase at sales under judgment or decrees of court, or mortgage or other lien held by such insurer; and

“(5) regardless of the mode of acquisition specified herein, upon sale of any such real property, the fee title to the mineral estate or any portion thereof may be retained by the insurance company indefinitely;

*“(m) Oil, Gas, and Minerals. In addition to and without limitation on the purposes for which real property may be acquired, secured, held, or retained pursuant to other provisions of this section, every such insurance company may secure, hold, retain, and convey production payments, producing royalties and producing overriding royalties, or participations therein as an investment for the production of income; provided:*

*“(1) in no event may such company carry such assets in an amount in excess of 90 percent of the appraised value thereof; and*

*“(2) no one investment under this subsection may exceed 10 percent of the insurer’s capital and surplus in excess of statutory minimum capital and surplus applicable to that insurer, and the aggregate of all such investments may not exceed 10 percent of the insurer’s assets as of December 31st next preceding the date of such investment; and*

*“(3) for the purposes of this subsection, the following definitions apply:*

*“(A) a production payment is defined to mean a right to oil, gas, or other minerals in place or as produced that entitles its owner to a specified fraction of production until a specified sum of money, or a specified number of units of oil, gas, or other minerals, has been received;*

*“(B) a royalty and an overriding royalty are each defined to mean a right to oil, gas, and other minerals in place or as produced that entitles the owner to a specified fraction of production without limitation to a specified sum of money or a specified number of units of oil, gas, or other minerals;*

*“(C) ‘producing’ is defined to mean producing oil, gas, or other minerals in paying quantities, provided that it shall be deemed that oil, gas, or other minerals are being produced in paying quantities if a well has been ‘shut in’ and ‘shut-in royalties’ are being paid;*

*“(n) Foreign Countries and United States Territories. Investments in foreign countries or in commonwealths, territories, or possessions of the United States where the insurer conducts an insurance business; provided:*

*“(1) such investments are similar to those authorized for investment within the United States of America by other provisions of this section; and*

*“(2) such investments when added to the amount of similar investments made within the United States do not result in the combined total of such investments exceeding the limitations specified in Subsections (a) through (p) of this section; and*

*“(3) such investments may not exceed the amount of reserves attributable to the business in force in said countries; provided, however, such investments may exceed such reserves to the extent required by any country as a condition to doing business therein, but to the extent such investments exceed such reserves said investments shall not be considered as admitted assets of the insurer;*

*“(o) Investments Not Otherwise Specified. Investments which are not otherwise authorized by this article and which are not specifically prohibited by statute, including that portion of any investments which may exceed the limits specified in Subsections (a) through (n) of this section; provided:*

*“(1) if any aggregate or individual specified investment limitation in Subsections (a) through (n) of this section is exceeded, then the excess portion of such investment shall be an investment under this subsection; and*

*“(2) the burden of establishing the value of such investments shall be upon the insurer; and*

*“(3) the amount of any one such investment may not exceed 10 percent of the insurer’s capital and surplus in excess of the statutory minimum capital and surplus applicable to that insurer; and*

*“(4) the aggregate of all investments made under this subsection may not exceed the lesser of either five percent of the insurer’s assets or the insurer’s capital and surplus in excess of the statutory minimum capital and surplus applicable to that insurer;*

*“(p) Other Authorized Investments. Those other investments as follows:*

*“(1) any investment held by an insurer on the effective date of this Act, which was legally authorized at the time it was made or acquired or which the insurer was authorized to hold or possess immediately prior to such effective date, but which does not conform to the requirements of the investments authorized in Subsections (a) through (o) of this section, may continue to be held by and considered as an admitted asset of the insurer; provided the investment is disposed of at its maturity date, if any, or within the time prescribed by the law under which it was acquired, if any; and provided further, in no event shall the provisions of this subdivision alter the legal or accounting status of such asset; and*

*“(2) any other investment which may be authorized by other provisions of this code or by other laws of this state for the insurers which are subject to this article.*

*“(q) Special Limitations for Certain Fixed Annuity Insurers. The quantitative limitations imposed above in Subsections (b)(2), (c)(2), (f)(1), (g)(3), (h)(3), (i)(2), and (k)(5) of this section shall not apply to any insurer with assets in excess of \$2,500,000,000 and that receives more than 90 percent of its premium income from fixed rate annuity contracts and that has more than 90*

percent of its assets allocated to its reserves held for fixed rate annuity contracts, excluding, however, any premium income, assets, and reserves received from, held for, or allocated to separate accounts from the computation of the above percentages, and in lieu thereof, the following quantitative limitations shall apply to such insurers:

- "(1) the limitation in Subsection (b)(2) of this section shall be two percent of the insurer's assets;
- "(2) the limitation in Subsection (c)(2) of this section shall be two percent of the insurer's assets;
- "(3) the limitation in Subsection (f)(1) of this section shall be two percent of the insurer's assets;
- "(4) the limitation in Subsection (g)(3) of this section shall be one percent of the insurer's assets;
- "(5) the limitation in Subsection (h)(3) of this section shall be one percent of the insurer's assets;
- "(6) the limitation in Subsection (i)(2) of this section shall be two percent of the insurer's assets;

and

- "(7) the limitation in Subsection (k)(5) of this section shall be two percent of the insurer's assets.

"(r) **Premium Loans.** Loans to finance the payment of premiums for the insurer's own insurance policies or annuity contracts; provided that the amount of any such loan does not exceed the sum of: (i) the available cash value of such insurance policy or annuity contract; and (ii) the amount of any escrowed commissions payable relating to such insurance policy or annuity contract for which the premium loan is made.

"Section 5. **AGGREGATE DIVERSIFICATION REQUIREMENTS.** The following provisions govern and take precedence over each and every provision of Section 4:

"(a) Investment in all or any types of securities, loans, obligations, or evidences of indebtedness of a single issuer or borrower (which shall include such issuer's or borrower's majority-owned subsidiaries or parent or the majority-owned subsidiaries of such parent), other than those authorized investments that are either direct obligations of or guaranteed by the full faith and credit of the United States of America, the State of Texas, or a political subdivision thereof or are insured by an agency of the United States of America or the State of Texas shall not in the aggregate exceed five percent of the insurer's assets except for those investments provided for in Subsections (e) and (f) of Section 4 of this article; and

"(b) The aggregate investment in real property authorized by Subsections (l), (m), (o), and (p) of Section 4 may not exceed 33-1/3 percent of the insurer's assets; provided, in the event an insurer acquires real property under Subdivision (4) of Subsection (l) of Section 4 and such acquisition causes such aggregate real estate to exceed the limitation set forth herein, the insurer shall either dispose of sufficient excess real property to come within such limitations within 10 years of such acquisition or it may not thereafter admit as an asset the value of the real property in excess of such limitation; should an insurer's real property acquisitions exceed such 33-1/3 percent limitation, no additional real property acquisitions under Subdivisions (1) and (2) of Subsection (l), and Subsections (m), (o), and (p) of Section 4 of this article are authorized until such excess is removed.

"Section 6. **PRIOR APPROVAL EXCEPTION.** The quantitative limitations respecting any investment authorized in Section 4 may be waived by prior written approval of the commissioner; provided:

- "(a) A hearing is held to determine whether approval should be granted;
- "(b) The applicant seeking prior approval establishes that unreasonable or unnecessary loss or harm to the insurer will result if approval is withheld;
- "(c) The excessive investment will not have a material adverse effect upon the insurer;
- "(d) The size of the investment is reasonable in relation to the insurer's assets, capital, surplus, and liabilities; and
- "(e) The commissioner's prior authorization may treat the resulting excess investment as an asset not admitted.

"Section 7. **ACCOUNTING PROVISIONS.** (a) The term 'assets' as used in this article shall mean the statutory accounting admitted assets of the insurer, including lawful money of the United States, whether in the form of cash or demand deposits in solvent banks, savings and loan associations, and credit unions and branches thereof, organized under the laws of the United States of America or its states, when held in accordance with the laws or regulations applicable to such entities, less the insurer's separate accounts that are subject to Part III of Article 3.39, Article 3.72, Article 3.73, and Article 3.75 of this code.

"(b) Each insurer shall maintain reasonable, adequate, and accurate evidence of its ownership of its assets and investments.

"(c) The ownership of governmental or corporate securities shall be evidenced as provided for in Article 21.39-B, Section 4, of this code.

"(d) Other than investments made as a participation in a partnership or joint venture, or as otherwise provided in Article 21.39-B of this code, investments shall be held solely in the name of the insurer.

*“(e) An insurer’s participation in a partnership or joint venture shall be limited to those partnerships or joint ventures whose purposes are for investment in properties authorized under Subsections (k), (l), and (m) of Section 4 of this article, and the whole of the insurer’s participation therein shall be designated under such subsections.*

*“Section 8. INVESTMENTS OF COMPANIES REINSURED. In any case in which a domestic insurance company shall assume and reinsure the business and take over the assets of another insurance company, either domestic or foreign, all assets or investments of such reinsured company that were authorized as proper assets or investments for the funds of such reinsured company, and which are taken over by such domestic company, shall be considered as valid assets or investments of such reinsuring domestic company under the laws of this state; provided such assets or investments are approved by the Commissioner of Insurance of this state, and the same are taken over on terms satisfactory to said commissioner, and upon the condition that the commissioner shall have the power to require the reinsuring domestic company to reasonably dispose of any of such assets or investments as do not otherwise meet the requirements of this article within such time schedule as will minimize any financial loss or other hardship by the disposition of such asset or investment.*

*“Section 9. RULES AND REGULATIONS. The State Board of Insurance may adopt such rules, regulations, minimum standards, or limitations which are fair and reasonable as may be appropriate for the augmentation and implementation of this article.*

*“Section 10. REAL ESTATE BROKERAGE. Domestic companies as defined in Section 5 of Article 3.01 of this code and other insurers specifically made subject to the provisions of this article shall not engage in the business of a real estate broker or a real estate salesman as defined by The Real Estate License Act, as amended (Article 6573a, Vernon’s Texas Civil Statutes), except that such insurers may hold, improve, maintain, manage, rent, lease, sell, exchange, or convey any of the real property interests owned as investments under Section 4 of this article.”*

**SECTION 2.** The effective date of this Act and Article 3.33 of the Insurance Code of Texas as set forth in Section 1 of this Act shall be January 1, 1986.

**SECTION 3.** All laws and parts of laws in conflict herewith shall be and the same are hereby repealed.

**SECTION 4.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on February 12, 1985, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on April 9, 1985, by the following vote: Yeas 28, Nays 0; passed the House, with amendment, on March 28, 1985, by the following vote: Yeas 135, Nays 0, two present not voting.

Approved: April 16, 1985

Effective: January 1, 1986