

FIRST REGULAR SESSION

HOUSE BILL NO. 69

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE RUPP.

Pre-filed December 8, 2004 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

0524L.011

AN ACT

To repeal sections 375.532 and 376.300, RSMo, and to enact in lieu thereof two new sections relating to investments of insurers.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 375.532 and 376.300, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 375.532 and 376.300, to read as follows:

375.532. 1. [Notwithstanding any provision of subdivision (5) of subsection 1 of section
2 376.300, RSMo, to the contrary,] The capital, reserve and surplus of a domestic insurer may be
3 invested in bonds, notes or other evidences of indebtedness, **or preferred or guaranteed stocks**
4 **or shares** issued, assumed or guaranteed by an institution organized under the laws of the United
5 States, any state, territory or possession of the United States, or the District of Columbia, if such
6 bonds, notes or other evidences of indebtedness, **or preferred or guaranteed stocks or shares**
7 shall carry at least the second highest designation or quality rating conferred by the Securities
8 Valuation Office of the National Association of Insurance Commissioners, or some similar or
9 equivalent rating by a nationally recognized rating agency which has been approved by the
10 director.

11 2. As used in this section, the term "institution" means a corporation, a joint stock
12 company, an association, a trust, a business partnership, a business joint venture or similar entity.

376.300. 1. All other laws to the contrary notwithstanding, the capital, reserve and
2 surplus of all life insurance companies of whatever kind and character organized pursuant to the
3 laws of this state shall be invested only in the following:

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

4 (1) Bonds, notes or other evidences of indebtedness, issued, assumed or guaranteed as
5 to principal and interest, by the United States, any state, territory or possession of the United
6 States, the District of Columbia, or of an administration, agency, authority or instrumentality of
7 any of the political units enumerated, and of the Dominion of Canada;

8 (2) Bonds, notes or other evidences of indebtedness issued, assumed or guaranteed as
9 to principal and interest by any foreign country or state not mentioned in subdivision (1) insofar
10 as such bonds, notes or other evidences of indebtedness may be necessary or required in order
11 to do business in such foreign state or country;

12 (3) Bonds, notes or other evidences of indebtedness issued, guaranteed or insured as to
13 principal and interest, by a city, county, drainage district, levee district, road district, school
14 district, tax district, town, township, village or other civil administration, agency, authority,
15 instrumentality or subdivision of a city, county, state, territory or possession of the United States
16 or of the District of Columbia, provided such obligations are authorized by law;

17 (4) Loans evidenced by bonds, notes or other evidences of indebtedness guaranteed or
18 insured, but only to the extent guaranteed or insured by the United States, any state, territory or
19 possession of the United States, the District of Columbia, or by any agency, administration,
20 authority or instrumentality of any of the political units enumerated;

21 (5) Bonds, notes or other evidences of indebtedness issued, assumed or guaranteed by
22 a corporation organized under the laws of the United States, any state, territory or possession of
23 the United States, or the District of Columbia, provided such bonds, notes or other evidences of
24 indebtedness shall meet with the requirements of [either paragraph (a) or (b) of this subdivision:

25 (a) The issuing, assuming or guaranteeing corporation shall have had bonds, notes or
26 other evidences of indebtedness outstanding for five years prior to the time of acquisition of such
27 bonds or other evidences of indebtedness and shall not have defaulted in the payment of either
28 principal or interest upon any of its outstanding indebtedness during such five-year period;

29 (b) Such bonds, notes or other evidences of indebtedness are not in default as to principal
30 or interest; and

31 a. The net earnings of the issuing, assuming or guaranteeing corporation or corporations,
32 for a period of five fiscal years next preceding the date of acquisition, shall have averaged per
33 year not less than one and one-half times its or their annual fixed charges as of the date of
34 acquisition; or

35 b. Such corporation or corporations, over the period of the five fiscal years immediately
36 preceding purchase, shall have earned an average amount per annum at least equal to two times
37 the amount of the yearly interest charges upon all its or their bonds, notes and other evidences
38 of indebtedness of equal or prior lien outstanding at date of purchase] **section 375.532, RSMo,**
39 **and sections 375.1070 to 375.1075, RSMo;**

40 (6) (a) Notes, equipment trust certificates or obligations which are adequately secured,
41 or other adequately secured instruments evidencing an interest in any equipment leased or sold
42 to a corporation, other than the life insurance company making the investment or its parent or
43 affiliates, which qualifies under subdivision (5) of this subsection for investment in its bonds,
44 notes, or other evidences of indebtedness, or to a common carrier, domiciled within the United
45 States or the Dominion of Canada, with gross revenues exceeding one million dollars in the
46 fiscal year immediately preceding purchase, which provide a right to receive determined rental,
47 purchase, or other fixed obligatory payments for the use or purchase of such equipment and
48 which obligatory payments are adequate to retire the obligations within twenty years from date
49 of issue; or

50 (b) Notes, trust certificates, or other instruments which are adequately secured. Such
51 notes, trust certificates, or other instruments shall be considered adequately secured for the
52 purposes of this paragraph if a corporation or corporations which qualify under subdivision (5)
53 of this subsection for investment in their bonds, notes, or other evidences of indebtedness, are
54 jointly or severally obliged under a binding lease or agreement to make rental, purchase, use, or
55 other payments for the benefit of the life insurance company making the investment which are
56 adequate to retire the instruments according to their terms within twenty years from date of issue;

57 (7) Preferred or guaranteed stocks or shares of any solvent corporation created or
58 existing under the laws of the United States, any state, territory or possession of the United
59 States, or the District of Columbia, if all of the prior obligations and prior preferred stocks, if
60 any, of such corporation, at the date of acquisition, are eligible as investments under any
61 provisions of this section; and if qualified under [paragraph (a) or paragraph (b) following:

62 (a) Preferred stocks or shares shall be deemed qualified if both of the following
63 requirements are fulfilled:

64 a. The net earnings of such corporation available for its fixed charges for a period of five
65 fiscal years next preceding the date of acquisition shall have averaged per year no less than one
66 and one-half times the sum of its average annual fixed charges, if any, its average annual
67 maximum contingent interest, if any, and its average annual preferred dividend requirements
68 applicable to such period; and

69 b. During each of the last two years of such period, such net earnings shall have been no
70 less than one and one-half times the sum of its fixed charges, contingent interest and preferred
71 dividend requirements for each year. The term "preferred dividend requirements" shall be
72 deemed to mean cumulative or noncumulative dividends, whether paid or not;

73 (b) Guaranteed stocks or shares shall be deemed qualified if the assuming or
74 guaranteeing corporation meets the requirements of subparagraph a. of paragraph (b) of
75 subdivision (5) of this subsection construed so as to include as a fixed charge the amount of

76 guaranteed dividends of such issue or the rental covering the guarantee of such dividends]
77 **section 375.532, RSMo, and sections 375.1070 to 375.1075, RSMo;**

78 (8) Stocks or shares of insured state-chartered building and loan associations, federal
79 savings and loan associations, if such shares are insured by the Federal Savings and Loan
80 Insurance Corporation pursuant to the terms of Title IV of the act of the Congress of the United
81 States, entitled "The National Housing Act" (12 U.S.C.A. Sections 1724 to 1730), as the same
82 presently exists or may subsequently be amended, and federal home loan banks;

83 (9) Loans evidenced by notes or other evidences of indebtedness and secured by first
84 mortgage liens on unencumbered real estate or unencumbered leaseholds having at least
85 twenty-five years of unexpired term, such real estate or leaseholds to be located in the United
86 States, any territory or possession of the United States. Such loans shall not exceed eighty
87 percent of the fair market value of the security of the loan for insurance companies. However,
88 insurance companies may make loans in excess of eighty percent of the fair market value of the
89 security for the loan, but not to exceed ninety-five percent of the fair market value of the security
90 for the loan, if that portion of the total indebtedness in excess of seventy-five percent of the value
91 of the security for the loan is guaranteed or insured by a mortgage insurance company authorized
92 by the director of insurance to do business in this state, and provided the mortgage insurance
93 company is not affiliated with the entity making the loan. In addition, an insurance company
94 may not place more than two percent of its admitted assets in loans in which the amount of the
95 loan exceeds ninety percent of the fair market value of the security for the loan. An entity which
96 is restricted by section 104.440, RSMo, in making investments to those authorized life insurance
97 companies may make loans in excess of eighty percent of the fair market value of the security
98 of the loan if that portion of the total indebtedness in excess of eighty percent of the fair market
99 value is insured by a mortgage insurance company authorized by the director of insurance to do
100 business in this state. Any life insurance company may sell any real estate acquired by it and
101 take back a purchase money mortgage or deed of trust for the whole or any part of the sale price;
102 and such percentage may be exceeded if and to the extent such excess is guaranteed or insured
103 by the United States, any state, territory or possession of the United States, any city within the
104 United States having a population of one hundred thousand or more or by an administration,
105 agency, authority or instrumentality of any such governmental units; and such percentage shall
106 not exceed one hundred percent if such a loan is made to a corporation which qualifies pursuant
107 to subdivision (5) for investment in its bonds, notes or other evidences of indebtedness, or if the
108 borrower assigns to the lender a lease or leases on the real estate providing rentals payable to the
109 borrower in amounts sufficient to repay such loan with interest in the manner specified by the
110 note or notes evidencing such loan and executed as lessee or lessees by a corporation or
111 corporations, which qualify pursuant to subdivision (5) for investment in its or their bonds, notes

112 or other evidences of indebtedness. No mortgage loan upon a leasehold shall be made or
113 acquired pursuant to this subdivision unless the terms of the mortgage loan shall provide for
114 amortization payments to be made by the borrower on the principal thereof at least once in each
115 year in amounts sufficient to completely amortize the loan within four-fifths of the term of the
116 leasehold which is unexpired at the time the loan is made, but in no event exceeding thirty years.
117 Real estate or a leasehold shall not be deemed to be encumbered by reason of the existence in
118 relation thereto of:

119 (a) Liens inferior to the lien securing the loan made by the life insurance company;

120 (b) Taxes or assessment liens not delinquent;

121 (c) Instruments creating or reserving mineral, oil or timber rights, rights-of-way,
122 common or joint driveways, easements for sewers, walls or utilities;

123 (d) Building restrictions and other restrictive covenants; or

124 (e) An unassigned lease reserving rents or profits to the owner;

125 (10) Shares of stock, bonds, notes or other evidences of indebtedness issued, assumed
126 or guaranteed by an urban redevelopment corporation organized pursuant to the provisions of
127 chapter 353, RSMo, known as the "Urban Redevelopment Corporations Law", or any
128 amendments thereto, or any law enacted in lieu thereof; provided, that one or more such life
129 insurance companies may, with the approval of the director of the department of insurance,
130 subscribe to and own all of the shares of stock of any such urban redevelopment corporation; and
131 provided further, that the aggregate investment by any such company pursuant to the terms of
132 this subdivision shall not be in excess of five percent of the admitted assets of such company;

133 (11) Land situated in this state and located within an area subject to redevelopment
134 within the meaning of the urban redevelopment corporations law, or any amendments thereto,
135 or any law enacted in lieu thereof, which land is acquired for the purposes specified in such
136 urban redevelopment corporations law, and any such life insurance company may erect
137 apartments, tenements or other dwelling houses, not including hotels, but including
138 accommodations for retail stores, shops, offices and other community services reasonably
139 incident to such projects, and such company may thereafter own, hold, rent, lease, collect or
140 receive income, maintain and manage such land so acquired and the improvements thereon, as
141 real estate necessary and proper for the carrying on of its legitimate business; provided, that any
142 such life insurance company shall have power to own, hold, maintain and manage such land, and
143 all improvements thereon, in accordance with the urban redevelopment corporations law,
144 amendments thereto or any law enacted in lieu thereof, and shall have all the powers, duties,
145 obligations, privileges and immunities, including any tax exemption, credits or relief, granted
146 an urban redevelopment corporation, pursuant to the urban redevelopment corporations law,
147 amendments thereto or any law enacted in lieu thereof, the same as if such insurance company

148 were an urban redevelopment corporation organized pursuant to the provisions of that law;
149 provided, that two or more such life insurance companies may, with the approval of the director
150 of the department of insurance, enter into agreements whereby the ownership and management
151 and control of a redevelopment project is participated in by each such company; and provided
152 further that the aggregate investment by any such company pursuant to the terms of this
153 subdivision shall not be in excess of five percent of the admitted assets of such company;

154 (12) Investments in property and processes for the development and production of solar
155 or geothermal energy, fossil or synthetic fuels, or gasohol, whether made directly or as a
156 participant in a general partnership, limited partnership or joint venture.

157 2. No such life insurance company shall invest in any of the foregoing securities in
158 excess of the following percentages of the admitted assets of such company, as shown by its last
159 annual statement preceding the date of acquisition, as filed with the director of the insurance
160 department of the state of Missouri:

161 (1) Ten percent of its admitted assets in the securities issued by any one corporation or
162 governmental unit falling pursuant to the classification set forth in subdivisions (3), (5), (6), (7)
163 and (8) of subsection 1;

164 (2) One percent of its admitted assets or ten percent of its capital and surplus, whichever
165 is greater, in any single loan on real estate pursuant to subdivision (9) of subsection 1;

166 (3) Ten percent of the admitted assets in the total amount of securities described in
167 subdivision (7) of subsection 1, and no such life insurance company shall own securities
168 described in subdivision (7) of subsection 1 of any one corporation which, in the aggregate,
169 represents more than five percent of the total of all outstanding shares of stock of that
170 corporation;

171 (4) One percent of its admitted assets in the bonds, notes or other evidences of
172 indebtedness of the Dominion of Canada and mentioned in subdivision (1) of subsection 1;
173 provided, however, that in addition thereto any such life insurance company which has
174 outstanding insurance contracts on lives of persons residing in the Dominion of Canada may
175 invest in bonds, notes or other evidences of indebtedness of the Dominion of Canada and
176 mentioned in subdivision (1) of subsection 1, to an amount not in excess of the total amount of
177 its reserves and other accrued liabilities under such contracts;

178 (5) Five percent of its admitted assets in the notes or trust certificates secured by any
179 equipment leased or sold to a corporation falling under the classification set forth in subdivision
180 (5) of subsection 1 or to a common carrier domiciled in the Dominion of Canada and mentioned
181 in subdivision (6) of subsection 1;

182 (6) Three percent of its admitted assets in loans evidenced by notes or other evidences
183 of indebtedness and secured by liens on unencumbered leaseholds having at least twenty-five

184 years of unexpired term and mentioned in subdivision (9) of subsection 1;

185 (7) One percent of its admitted assets, or five percent of that portion of its admitted
186 assets in excess of two hundred fifty million dollars, whichever is greater, in energy-related
187 investments specified in subdivision (12) of subsection 1.

188 3. The term "corporation", as used in subdivisions (5) and (7) of subsection 1, shall
189 include private corporations, joint stock associations or business trusts. In applying the earnings
190 tests, provided herein, to any issuing, assuming or guaranteeing corporation, whether or not in
191 legal existence during the whole of the test period, and if such corporation has during the test
192 period acquired the assets of any other corporation or corporations by purchase, merger,
193 consolidation or otherwise, or has been reorganized pursuant to the bankruptcy law, the earnings
194 available for interest and dividends of such other predecessor or constituent corporation or the
195 corporation so reorganized shall be considered as the earnings of the issuing, assuming or
196 guaranteeing corporation.

197 4. Nothing contained in this section shall be construed as repealing or affecting the
198 provisions of sections 375.330, 375.340, and 375.355, RSMo.