THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

CHAPTER 9
INVESTMENTS

500.900 Repealed. 1969, Act 318, Eff. Mar. 20, 1970.

Compiler's note: The repealed section pertained to investments by domestic insurer.

Popular name: Act 218

500.901 Asset requirements for insurers.

Sec. 901. (1) Each domestic insurer shall maintain assets in cash or as defined in this chapter in a total amount at least equal to the sum of its liabilities including its reserves as required by this act, plus an amount equal to the lesser of the following:

(a) The minimum capital and surplus required to be maintained by sections 408 and 410.

(b) One of the following:

(*i*) For a fraternal benefit society regulated under chapter 81a, $1,000,000.00.

(*ii*) $7,000,000.00.

(2) For purposes of meeting the assets required by subsection (1), the following apply:

(a) The value of all computers shall not exceed 2% of the assets required by subsection (1) and the value of each computer shall not exceed the original cost of the computer amortized over a period not to exceed 3 years. For purposes of this section, "computer" means an electronic data processing system, composed of 1 or more components, that utilizes storage and processing mechanization and has a direct automatic means of input and output, including, but not limited to, central processing units, data input/output channels, main storage or memory, and peripheral devices for systems control, data input, output, or temporary or permanent storage of information, and associated reusable media required by these devices and operating systems software.

(b) Title insurers may include their net investment in their title plant.

(c) Assets described in sections 946 and 947 that are encumbered with prior liens that affect the salability of the asset to a material extent shall not be used to satisfy the requirements of subsection (1). For purposes of this subdivision, liens that do not affect the salability of the asset to a material extent are real estate taxes or assessments that are not delinquent, liens against an asset for which an insurer is insured against loss by title insurance, and any other liens that in the aggregate are not in excess of 5% of the fair market value of the asset. Assets described in sections 946 and 947 shall not be used to satisfy more than 20% of the requirements of subsection (1). This subdivision does not apply to assets described in section 942.

(d) Amounts receivable from broker/dealers registered under the securities exchange act of 1934, chapter 404, 48 Stat. 881, or from the issuer of a security or asset in connection with the disposition of assets qualified to satisfy subsection (1) may be included, provided the amount is not more than 5 business days past the date of disposition.

(e) Assets not otherwise defined in this chapter may be used as qualified assets for purposes of subsection (1) if the assets are rated investment grade by a securities rating organization approved by the commissioner.

(f) No more than 20% of the assets required by subsection (1) shall be high-yield, high-risk obligations. As used in this subdivision, "high-yield, high-risk obligations" means obligations that are not in 1 of the top 2 numbered classifications of bonds reported in the insurer's annual financial statement on a form approved by the commissioner.

(3) The sum of the liabilities and reserves computed for purposes of this section may be reduced by 1 or more of the following:

(a) A reinsurance balance recoverable or other credit due from a reinsurer that complies with existing or other applicable rules or orders promulgated or issued by the commissioner, to the extent that the balance recoverable or other credit due may be used to offset a liability as authorized in an insurer's annual statement concerning its affairs filed pursuant to section 438.

(b) Policy loans secured by policies included in the liabilities and reserves but not in excess of the cash surrender value of the policies.

(c) Premium notes secured by letters of credit, security trust funds, or unearned premium reserves.

(d) The net amount of insurance premiums and annuity considerations booked but deferred and not yet due. Reduction under this subdivision shall not be allowed for credit life and credit accident and health premiums deferred and uncollected, whether individual or group, except as allowed pursuant to subdivision (e).

(e) Amounts receivable from an agent, agency, policyholder, or other person that does not have control of more than 10% of all the insurer's agents' balances, and that is not affiliated with the insurer on policies with an effective date not more than 1 month old to the extent that the amounts are offset by unearned premium reserves on the same policies.

(f) Amounts receivable from a person to the extent the amounts offset liabilities or amounts payable to that person. Receivables and payables with respect to reinsurance may be allowed so long as the reinsurance contract has a right of offset provision. A reduction under this subdivision shall not be allowed for agents' balances or uncollected premiums as defined by subdivision (e).

(4) Assets, liabilities, and reserves under subsection (1) shall exclude assets, liabilities, and reserves included in separate accounts established in accordance with section 925. The value of income due and accrued in respect to assets required by subsection (1) may be included in the total amount. The assets shall not be valued at more than the actual value as ascertained in a manner approved by the commissioner, except those assets described in sections 912, 914, 918, 934, 938, and 942 that have a fixed term and rate, if amply secured and not in default as to principal and interest which may be valued as follows: if purchased at par, the par value; if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made. The purchase price shall not be taken at a higher figure than the actual market value at the time of purchase.

(5) The commissioner may permit other assets not specifically described in this section to be used as qualified assets for purposes of subsection (1), as long as the assets are financially equivalent to those assets described in sections 910 to 947, are approved by the commissioner as adequate as to quality and liquidity to secure the liabilities they support, and are valued in a manner approved by the commissioner.

(6) No more than 5% of the assets required by subsection (1) shall be invested in, loaned to, receivable from, secured by, leased or rented to, or deposited with 1 person or 1 group of affiliated persons or invested in 1 parcel of real estate. In calculating this restriction, the following apply:

(a) For purposes of this section, each issue of mortgage-backed securities secured by residential mortgage pools and rated investment grade by a securities rating organization approved by the commissioner, and each issue of asset-backed security rated investment grade by a securities rating organization approved by the commissioner, shall be considered a separate person regardless of other obligations issued by the same or affiliated issuer.

(b) This restriction does not apply to mortgage-related securities issued by the federal home loan mortgage corporation or the federal national mortgage association.

(c) This restriction does not apply to the extent that the principal and interest are fully guaranteed by the United States or any state.

(d) This restriction does not apply to assets invested in, loaned to, receivable from, secured by, leased or rented to, or deposited with an affiliate of the insurer that is authorized to transact insurance in any state or Canada.

(e) For an alien insurer that is an insurer authorized to transact the business of life insurance, for purposes of this subsection the 5% restriction applies to the total assets of the insurer, excluding assets included in separate accounts, as reported in the total business annual statement filed by the insurer with its domiciliary authority.

(f) This restriction does not apply to the value of a noninsurance affiliate that is owned solely by the insurer as described in subsection (7)(c).

(g) This restriction does not apply to the value of a noninsurance affiliate that is not owned solely by the insurer if the value of the noninsurance affiliate is determined in accordance with procedures approved by the commissioner and if the investment in the noninsurance affiliate is approved by the commissioner as adequate in quality and liquidity to secure the liabilities of the insurer.

(7) The assets referred to in subsection (1) shall not include assets invested in, loaned to, receivable from, secured by, leased or rented to, or deposited with a person that is, directly or indirectly, owned or controlled by the insurer or that, directly or indirectly, owns, controls, or is affiliated with the insurer as control is defined in section 115, except as follows:

(a) Amounts receivable from, secured by, leased or rented to, or deposited with an insurer affiliated with the insurer may be included if the amount receivable is not more than 90 days past due and its affiliated insurer complies with this section.

(b) Amounts invested in an affiliated publicly traded investment company that is registered and regulated under the investment company act of 1940, title I of chapter 686, 54 Stat. 789, 15 U.S.C. 80a-1 to 80a-3 and 80a-4 to 80a-64, may be included.

(c) The value of a noninsurance affiliate that is owned solely by the insurer may be included. The value of

the noninsurance affiliate shall be the value of all assets qualifying under this section in excess of the assets required by this section, but shall not exceed the value determined by the securities valuation office of the national association of insurance commissioners. In support of the noninsurance affiliate's value, the insurer shall submit to the commissioner an audited financial statement for the noninsurance affiliate supplemented with a list of qualifying assets and associated values.

(d) Amounts invested in a noninsurance affiliate that is not owned solely by the insurer may be included if the investment in the noninsurance affiliate is approved by the commissioner as adequate in quality and liquidity to secure the liabilities of the insurer. The value of the noninsurance affiliate shall be the value determined in accordance with procedures adopted by the commissioner.

(e) The assets required by subsection (1) may include the value of amounts invested in or loaned to an affiliate authorized to transact insurance in any state or in Canada in an amount equal to the assets that would qualify for compliance with this section that are held by the affiliate and are in excess of the amount of assets that would be required for the affiliate by this section, prorated to reflect the extent of the insurer's investment in or loans to the affiliate. Qualified assets for purposes of subsection (1) include loans, other than surplus notes, to an affiliate authorized to transact insurance in any state or in Canada provided that the affiliate has assets in excess of the amount of assets that are required for the affiliate under subsection (1). With the commissioner's approval, surplus notes may be treated as an investment for purposes of this section.

(f) Amounts loaned to a noninsurance affiliate may be included if the loans are rated investment grade by a securities rating organization approved by the commissioner. The insurer shall submit documentation satisfactory to the commissioner in support of the investment grade rating.

(8) An insurer may comply with this section if the insurer elects to provide alternative security to Michigan policyholders and claimants satisfactory to the commissioner or elects to deposit funds or securities of the kind described in section 912, or other securities acceptable to the commissioner, registered in the name of the state treasurer of Michigan, designated as exclusively held and deposited for the sole benefit of Michigan policyholders, claimants, and creditors pursuant to section 8141a, in an amount, at market value, considered adequate by the commissioner to secure Michigan policyholders, but not less than the greater of the aggregate sum of 100% of Michigan direct unpaid losses and unpaid loss adjustment expense plus 100% of Michigan direct unearned premiums and policy and contract reserves or the direct premiums written in Michigan during the most recent 12 months available in filed statements. Direct unpaid losses and unpaid loss adjustment expenses shall include a provision for incurred but not reported losses and associated loss adjustment expense. The deposit shall be a special deposit and shall be subject to special deposit claims for the benefit of Michigan policyholders and claimants pursuant to section 8141a. The deposit of funds required by this subsection shall be increased by adjustment each quarter. A decrease to the deposited fund may be made annually only upon a satisfactory showing by the insurer to the commissioner that a decrease in the deposit is justified. The commissioner may require the special deposits set forth in this subsection as a condition for any insurer to transact insurance in this state if the commissioner finds that a special deposit is necessary for the protection of Michigan policyholders and claimants.

(9) Compliance with subsection (1) is the obligation of each insurer, fund, or fraternal benefit society authorized to transact the business of insurance in this state. Failure to comply shall limit the insurer, fund, or fraternal benefit society under the remainder of this act. If, at any time following compliance with the requirements of this section, an insurer, fund, or fraternal benefit society fails to maintain compliance, the commissioner shall notify the insurer, fund, or fraternal benefit society that it has failed to maintain compliance with this section. Within 30 business days after notification by the commissioner of noncompliance with the provisions of this section, an insurer shall file a plan to restore compliance with this section. Failure of the insurer to file a plan shall create a presumption that the insurer is not safe, reliable, and entitled to public confidence. The commissioner, upon written request by the insurer, may grant a period of time within which to restore compliance. The period of time may be granted only if the commissioner is satisfied the insurer is safe, reliable, and entitled to public confidence; is satisfied the insurer would suffer a material financial loss from an immediate forced conversion of its assets; and approves the plan filed by the insurer for restoring compliance within the time granted. If the plan is not approved by the commissioner, or if the plan is approved, and, at the end of 1 year the insurer still does not comply with the requirements of this section, the commissioner may grant additional time to comply, or the commissioner may suspend, revoke, or limit the certificate of authority of the insurer pursuant to section 436.

(10) The requirements of this section constitute a discrete determination of financial solidity and liquidity and are not intended to apply to other provisions of this act with respect to financial condition or to the accounting practices and procedures governing the preparation of financial statements pursuant to section 438.

History: Add. 1969, Act 318, Eff. Mar. 20, 1970;—Am. 1970, Act 125, Imd. Eff. July 23, 1970;—Am. 1980, Act 370, Imd. Eff. Dec. 30, 1980;—Am. 1982, Act 338, Imd. Eff. Dec. 17, 1982;—Am. 1984, Act 90, Imd. Eff. Apr. 19, 1984;—Am. 1986, Act 321, Imd. Eff. Dec. 26, 1986;—Am. 1988, Act 340, Imd. Eff. Oct. 18, 1988;—Am. 1989, Act 302, Imd. Eff. Jan. 3, 1990;—Am. 1992, Act 2, Imd. Eff. Jan. 31, 1992;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992;—Am. 1994, Act 226, Eff. Dec. 31, 1993;—Am. 2002, Act 462, Imd. Eff. June 21, 2002.

Compiler's note: Enacting section 2(1) of Act No. 226 of the Public Acts of 1994 provides: "Section 901 as amended by this amendatory act is retroactively effective and applies on and after December 31, 1993."

Popular name: Act 218

Administrative rules: R 500.402 et seq. of the Michigan Administrative Code.

500.902 Investments by domestic insurer; amount in qualified asset required; definition.

Sec. 902. (1) Except as otherwise provided in sections 942(7), (10), and (11), 943(2), and 946(4), this chapter does not prohibit the investment of a domestic insurer's capital and surplus in any asset otherwise permitted to be held by any other person or corporation under the laws of this state, provided the domestic insurer maintains qualified assets as described in this chapter in the amounts specified in section 901.

(2) As used in this section, "qualified assets" means cash and those assets described in sections 910 to 947.

History: Add. 2002, Act 462, Imd. Eff. June 21, 2002.

Compiler's note: Former MCL 500.902, which pertained to authorized investments by domestic insurers, was repealed by Act 318 of 1969, Eff. Mar. 20, 1970.

Popular name: Act 218

500.904 Repealed. 1957, Act 91, Eff. Sept. 27, 1957.

Compiler's note: The repealed section pertained to investment limitations of domestic mutual insurer.

Popular name: Act 218

500.906, 500.908 Repealed. 1969, Act 318, Eff. Mar. 20, 1970.

Compiler's note: The repealed sections pertained to assets and limitations on investments.

Popular name: Act 218

500.910 Certificates of deposit or depository receipts; construction as deposits of cash.

Sec. 910. Certificates of deposit or depository receipts issued by a bank, trust company or savings and loan association insured by the federal deposit insurance corporation or federal savings and loan insurance corporation to an insurer and not otherwise negotiable, transferable, encumbered or pledged, maturing not more than 1 year from date of issue, shall be construed as deposits of cash by the insurer.

History: Add. 1969, Act 318, Eff. Mar. 20, 1970.

Popular name: Act 218

500.912 Qualified assets; description; limitation on governmental securities.

Sec. 912. (1) Qualified assets for purposes of section 901 include all of the following:

(a) In the bonds or other evidences of indebtedness of the United States or Canada, or any state, province, territory, or public instrumentality of the United States or Canada, or in the valid public debt, bonds, or other evidence of indebtedness of any city, county, township, village, school district, or any other political subdivision having the power to levy taxes or of any state or territory of the United States or province of Canada, if the state, province, municipality, or other political subdivision has not, in the 3 years preceding the time of the investment, failed to pay its debt or any part of its debt, the interest due on the debt, or any part of the interest due on the debt. Delay, not exceeding 6 months, in the payment of any installment of principal or interest is not considered failure to pay.

(b) In the bonds or other evidences of indebtedness of any political subdivision of the United States, any state or county in the United States, any agency, public instrumentality, or authority created by the United States, or any state or county in the United States or any political subdivision of the state or county, if, by statutory or other legal requirements, those obligations are payable, as to both principal and interest, from adequate special revenues pledged or otherwise appropriated or by law required to be provided for the purpose of payment.

(c) In governmental bonds or governmental securities of this or any foreign government, or governmental subdivisions or authorities or instrumentalities, not otherwise provided for in this section subject to the limitations in subdivisions (a) and (b) prescribed for other governmental securities.

(2) A domestic insurer's investment in governmental securities is subject to the limitations in section 901(2)(f).

History: 1956, Act 218, Eff. Jan. 1, 1957;—Am. 1969, Act 318, Eff. Mar. 20, 1970;—Am. 2002, Act 462, Imd. Eff. June 21, 2002;—

Am. 2014, Act 141, Eff. Mar. 31, 2015.

Popular name: Act 218

500.914 Qualified assets as guaranteed interest bonds.

Sec. 914. Qualified assets for purposes of section 901 include bonds or other securities, the interest of which is guaranteed by the United States government pursuant to any act of congress enacted before, on, or after January 1, 1957.

History: 1956, Act 218, Eff. Jan. 1, 1957;—Am. 2002, Act 462, Imd. Eff. June 21, 2002.

Popular name: Act 218

500.916 Qualified assets as federal financing agency stock.

Sec. 916. If any agency or corporation is established by the federal government with authority to purchase, discount, or loan money upon the security of real estate mortgages but requiring membership or ownership of capital stock in that federal agency or corporation for any insurer organized under the laws of this state to avail itself of the full privileges of selling, rediscounting, or borrowing money upon those mortgages, then qualified assets for purposes of section 901 include the amount of capital stock that is required by the federal law or the rules of the governing body of the federal agency or corporation.

History: 1956, Act 218, Eff. Jan. 1, 1957;—Am. 1957, Act 91, Eff. Sept. 27, 1957;—Am. 1969, Act 318, Eff. Mar. 20, 1970;—Am. 2002, Act 462, Imd. Eff. June 21, 2002.

Popular name: Act 218

500.917 Mortgage-backed securities; certain securities described in secondary mortgage market enhancement act of 1984 subject to limitations; definition.

Sec. 917. (1) Qualified assets for purposes of section 901 include mortgage-backed securities backed by pools of residential mortgages and rated investment grade by a securities rating organization approved by the commissioner. Any securities described in section 106 of title I of the secondary mortgage market enhancement act of 1984, Public Law 98-440, 15 U.S.C. 77r-1, shall be subject to all the limitations prescribed by this chapter for investments not guaranteed by the full faith and credit of the United States.

(2) As used in this section, "mortgage-backed securities" means securities representing an ownership interest in, or as to which payments are secured directly or indirectly by, a pool of mortgages or by the cash flows generated by a pool of mortgages and shall include, but are not limited to, mortgage pass-through securities and collateralized mortgage obligations.

History: Add. 1991, Act 106, Imd. Eff. Oct. 3, 1991;—Am. 1994, Act 226, Imd. Eff. June 27, 1994;—Am. 2002, Act 462, Imd. Eff. June 21, 2002.

Popular name: Act 218

500.917a Definitions; asset-backed securities.

Sec. 917a. (1) As used in this section:

(a) "Asset-backed securities" means securities, other than those governed by section 917, representing loans to, participations in loans to, or equity interests in a person that has as its primary activity the acquisition and holding of assets, directly or through a trustee, for the benefit of its debt or equity holders and includes, but is not limited to, structured securities, pass-through certificates, and other securitized obligations.

(b) "Assets" means pools of assets consisting of either interest bearing obligations or contractual obligations representing the right to receive payment from the assets.

(c) "Structured securities" means asset-backed securities that have been divided into 2 or more classes where the payment of interest on or principal of any class of the securities has been allocated in a manner that may not be directly proportional to interest or principal received by the issuer of the securities on the underlying assets.

(d) "Pass-through certificate" means an asset-backed security, whether or not mortgage-related, where the payment of interest or principal on the security is directly proportional to interest or principal received by the issuer of the security on the underlying assets.

(2) Qualified assets for purposes of section 901 include asset-backed securities that are rated investment grade by a securities rating organization approved by the commissioner. Asset-backed securities that are secured by or represent an undivided interest in a single asset or pool of assets or in the cash flows generated by those assets, including without limitation, structured securities and pass-through certificates, are subject to all the limitations prescribed by this chapter for investments not guaranteed by the full faith and credit of the United States.

History: Add. 1994, Act 226, Imd. Eff. June 27, 1994;—Am. 2002, Act 462, Imd. Eff. June 21, 2002.

Popular name: Act 218

500.918 Qualified assets by solvent institution; authorization; mortgage loans; equipment trust certificates; fixed interest bearing obligations.

Sec. 918. Qualified assets for purposes of section 901 include lawfully authorized obligations issued, assumed, or guaranteed by any solvent institution created or existing under the laws of the United States or of any state, district, or territory of the United States, or of Canada or any province of Canada, that are not in default as to principal or interest and that are qualified under any of the following clauses:

(a) Obligations secured by the mortgage of property or the pledge of adequate collateral if, during any 3, including the last 2, of the 5 fiscal years next preceding the time of investment, the net earnings of the issuing, assuming, or guaranteeing institution available for fixed charges, as determined in accordance with standard accounting practice, have been not less than the total of its fixed charges for such year on an overall basis nor less than 1-1/2 times its fixed charges for such year on a priority basis after excluding interest requirements on obligations junior to such issue as to security.

(b) In equipment trust certificates of railroad companies organized under the laws of any state of the United States or of Canada or of any province of Canada, payable within 20 years from their date of issue, in annual or semiannual installments, beginning not later than the fifth year after such date, and which certificates are a first lien on the specific equipment pledged as security for the payment which are either the direct obligations of the railroad companies or guaranteed by them, or are executed by trustees holding title to the equipment.

(c) Fixed interest bearing obligations other than those described in subdivisions (a) and (b), if the net earnings of the issuing, assuming, or guaranteeing institution available for fixed charges during each of any 3, including the last 2, of the 5 fiscal years next preceding the time of investment, shall have been not less than 1-1/2 times the total of its fixed charges for such year.

History: 1956, Act 218, Eff. Jan. 1, 1957;—Am. 2002, Act 462, Imd. Eff. June 21, 2002.

Popular name: Act 218

500.920 Net earnings available for fixed charges; definition.

Sec. 920. For the purposes of this chapter, the term "net earnings available for fixed charges" means net income after deducting operating and maintenance expenses, taxes other than federal and state income taxes, depreciation and depletion, but excluding extraordinary nonrecurring items of income and expenses appearing in the regular financial statements of the issuing company.

History: 1956, Act 218, Eff. Jan. 1, 1957.

Popular name: Act 218

500.922 Qualified assets in stocks, bonds, or evidences of corporate indebtedness; authorization.

Sec. 922. Qualified assets for purposes of section 901 include stocks, bonds, and other evidence of indebtedness of solvent corporations as approved by its board of directors or a committee of the board entrusted with the investment of the company's funds. The insurer may hold the stocks, bonds, and other evidences of indebtedness as an investment.

History: 1956, Act 218, Eff. Jan. 1, 1957;—Am. 1957, Act 91, Eff. Sept. 27, 1957;—Am. 1969, Act 318, Eff. Mar. 20, 1970;—Am. 1991, Act 79, Imd. Eff. July 18, 1991;—Am. 2002, Act 462, Imd. Eff. June 21, 2002.

Popular name: Act 218

500.924 Qualified assets in preferred stock; conditions.

Sec. 924. Qualified assets for purposes of section 901 include preferred stocks of any company organized under the laws of the United States, a state of the United States, the District of Columbia, Canada, or a province or territory of Canada, if the company has continuously and regularly paid the dividends provided for by the preferred stock during the 5 years preceding the investment; except that with respect to preferred stocks issued within the 5-year period, the dividend payments requirement applies only from the date of issuance, and in those cases the net earnings of the company and its subsidiaries available for fixed charges of the company and its subsidiaries and the net earnings of any predecessor organizations and their subsidiaries, if any, available for fixed charges of the predecessor organizations and their subsidiaries, must have averaged an amount per annum for the 5 fiscal years preceding the making of the investment at least equal to 2 times the total of the annual interest charges, including amortization of debt discount and expense, and dividends guaranteed, if any, and the preferred dividend requirement on a pro forma basis.

History: 1956, Act 218, Eff. Jan. 1, 1957;—Am. 1969, Act 318, Eff. Mar. 20, 1970;—Am. 2002, Act 462, Imd. Eff. June 21, 2002;—

Am. 2014, Act 141, Eff. Mar. 31, 2015.

Popular name: Act 218

500.925 Application of amounts paid life insurer to purchase of retirement benefits; income, gains, or losses on accounts; limitations on charges and deductions; investment or amounts allocated; standards; “contract on a variable basis” defined; compliance with investment company act of 1940; identification of investments and liabilities; “investment company act of 1940” defined; rules.

Sec. 925. (1) A life insurer, after adoption of a resolution by its board of directors and certification thereof to the commissioner, may allocate to 1 or more separate accounts, in accordance with the terms of a written agreement or a contract on a variable basis, amounts which are paid to the insurer, in connection with a pension, retirement or profit-sharing plan, or in connection with a contract on a variable basis, whether on an individual or group basis, and which amounts are to be applied to purchase retirement benefits in fixed or in variable dollar amounts, or both, or to provide benefits in accordance with a contract on a variable basis.

The income, if any, and gains or losses realized or unrealized on each such account may be credited to or charged against the amount allocated to such account in accordance with such agreement, without regard to the other income, gains or losses of the insurer. The commissioner may prescribe reasonable limitations on charges against and permissible deductions from the investment experience credited to life insurance contracts on a variable basis. Notwithstanding any other provision in the insurer's articles of incorporation or in this act, the amounts allocated to such accounts and accumulations thereon may be invested and reinvested in any class of loans and investments specified in such agreement, or, with respect to life insurance contracts on a variable basis, as prescribed by the commissioner, and such loans and investments shall not be considered in applying any limitation in this chapter. The commissioner may, with respect to separate accounts for life insurance on a variable basis, establish reasonable standards for procedures to be used in changing investment policy and provisions to safeguard the rights of insured persons and beneficiaries.

(2) "Contract on a variable basis" means a contract issued by an insurer providing for the dollar amount of benefits or other contractual payments or values thereunder to vary so as to reflect investment results of a segregated portfolio of investments or of a designated account in which amounts received in connection with such a contract have been placed and such other contracts as may be approved by the commissioner.

(3) Notwithstanding any other provision of law, a life insurer, if necessary to comply with the investment company act of 1940, with respect to any such account or any portion thereof may:

(a) Exercise the voting rights of the stock or shares or interest in accordance with instructions from the persons having the beneficial interests in such account ratably according to their respective interests in the account.

(b) Establish a committee for the account, the members of which may be directors or officers or other employees of the insurer, or persons having no such relationship to the insurer, or any combination thereof, who may be elected to membership by the vote of the persons having the beneficial interests in the account ratably according to their respective interests in the account. The committee may alone, in conjunction with others, or by delegation to the insurer or any other person, as investment manager or investment adviser, authorize purchases and sales of investments for the account if, as long as the life insurer or any subsidiary or affiliate of the life insurer is the investment manager or investment adviser of the account, the investments of the account are eligible under this section. If compliance with the investment company act of 1940 involves only a portion of the account, the insurer may establish a committee for only that portion, and its members may be elected by the vote of the persons having the beneficial interests in the portion. A committee for only a portion of the account may be given the further power to require the subdivision of the account into 2 accounts so that the portion of the account with respect to which the committee is acting shall constitute a separate account. If the committee so requires, the insurer shall segregate from the account being so subdivided a portion of each asset held with respect to the reserve liabilities of the account. That portion shall be in the same proportion to the total of the asset as the reserve liability for the portion of the account with respect to which the committee is acting bears to the total reserve liability of the account; and notwithstanding any other provision of law, the assets so segregated shall be transferred to a separate account with respect to which the committee shall act.

(4) The investments and liabilities of the account shall at all times be clearly identifiable and distinguishable from the other investments and liabilities of the insurer. A sale, transfer, or exchange of investments shall not be made between any of the separate accounts or between any other investment account of the company and 1 or more of the separate accounts, except for the purpose of (i) conducting the business of the account in accordance with provisions of a "contract on a variable basis", or (ii) making adjustments necessitated by the contract for mortality experience adjustment, and then only if the transfers are made by a

transfer of cash or by a transfer of securities having a valuation which can readily be determined in the market place. The commissioner may require for domestic life insurers that a transfer of cash or investments from a separate account or accounts to the company be approved in advance of the transfer. The commissioner may prescribe reasonable limitations on charges against and permissible deductions from separate accounts for life insurance contracts on a variable basis.

(5) As used in this section, "investment company act of 1940" means the act of congress approved August 22, 1940 entitled "investment company act of 1940" as amended from time to time, or any similar statute enacted in substitution therefor.

(6) The commissioner may promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, as may be necessary to carry out this section.

History: Add. 1963, Act 48, Eff. Sept. 6, 1963;—Am. 1966, Act 344, Imd. Eff. Oct. 26, 1966;—Am. 1969, Act 318, Eff. Mar. 20, 1970;—Am. 1974, Act 225, Eff. Nov. 1, 1974.

Popular name: Act 218

Administrative rules: R 500.402 et seq. and R 500.841 et seq. of the Michigan Administrative Code.

500.926-500.931 Repealed. 1969, Act 318, Eff. Mar. 20, 1970.

Compiler's note: The repealed sections pertained to investments by insurers.

Popular name: Act 218

500.932 Qualified assets in shares of savings and loan associations.

Sec. 932. Qualified assets for purposes of section 901 include shares of any building and loan association or savings and loan association, either state chartered or federally chartered.

History: 1956, Act 218, Eff. Jan. 1, 1957;—Am. 1969, Act 318, Eff. Mar. 20, 1970;—Am. 2002, Act 462, Imd. Eff. June 21, 2002.

Popular name: Act 218

500.933 Repealed. 1969, Act 318, Eff. Mar. 20, 1970.

Compiler's note: The repealed section pertained to investments by insurers.

Popular name: Act 218

500.934 Qualified assets in farm loan bonds, intermediate credit bank loans, central bank for cooperatives, home loan banks, federal savings and loan insurance corporation obligations; authorization.

Sec. 934. Qualified assets for purposes of section 901 include farm loan bonds, consolidated or otherwise, issued by the federal land banks pursuant to the federal farm loan act, as amended; in collateral trust debentures or other similar obligations, consolidated or otherwise, issued by federal intermediate credit banks pursuant to the federal farm loan act, as amended; in debentures, consolidated or otherwise, issued by the central bank for cooperatives or banks for cooperatives pursuant to the farm credit act of 1933, as amended; in obligations issued pursuant to the provisions of the federal home loan bank act, approved July 22, 1932, as amended; and in interest-bearing obligations of the federal savings and loan insurance corporation issued pursuant to title 4 of the national housing act, approved June 27, 1934, as amended.

History: 1956, Act 218, Eff. Jan. 1, 1957;—Am. 1958, Act 118, Eff. Sept. 13, 1958;—Am. 2002, Act 462, Imd. Eff. June 21, 2002.

Popular name: Act 218

500.938 Qualified assets.

Sec. 938. Qualified assets for purposes of section 901 include all of the following:

(a) Any negotiable paper or other evidence of indebtedness secured by any of the classes of securities in which insurance companies may lawfully invest funds pursuant to sections 912 and 918.

(b) Negotiable notes secured by pledge of stock of national or state banks, which have a surplus equal in amount to 25% of the paid in capital stock provided those loans do not exceed 85% of the market value of the stock and the total amount of the loan on bank secured collateral does not exceed 15% of the capital and surplus of the insurance company.

(c) For other than a life insurer, loans secured as collateral by corporate stocks and securities eligible for investment under section 922 but no loan shall be made of more than 50% of the fair market value of those stocks and securities.

History: 1956, Act 218, Eff. Jan. 1, 1957;—Am. 1957, Act 91, Eff. Sept. 27, 1957;—Am. 2002, Act 462, Imd. Eff. June 21, 2002.

Popular name: Act 218

500.942 Qualified assets in real estate loans; purchase of loan or certificate of participation.

Sec. 942. (1) Qualified assets for purposes of section 901 include real estate loans secured by first liens upon improved or income bearing real estate, including also improved farmland and improved business and residential properties, or that are secured by first mortgages or deeds of trust on leasehold estates having an unexpired term equivalent to the term of the mortgage, inclusive of the term or terms that may be provided by enforceable options of renewal. Vacant property, at least 60% of which is under contract of sale and the contract or contracts in connection therewith trusteed or pledged as additional collateral, is income bearing real estate within the meaning of this section.

(2) Real estate is not encumbered within the meaning of this section because it is subject to lease in whole or in part and rents or profits are reserved to the owner or because it is subject to an easement for a right of way.

(3) A loan secured by real estate shall be in the form of obligations secured by mortgage, trust deed, or other such instrument upon real estate, and an insurer may purchase an obligation so secured when the entire amount of the obligation is sold to the insurer, except that an insurer may purchase a part of an obligation if the investment of each participant is not less than $50,000.00 at the time of the insurer's investment, if all other participants are insurers, banks, savings and loan associations, or any other financial institution as that term is defined in the Gramm-Leach-Bliley act, public law 106-102, 113 Stat. 1338, 12 U.S.C. 1811, and if the entire indebtedness of which participation is a part would qualify under the provisions of this section, and either the insurer holds a senior participation, giving it substantially the rights of a first mortgagee, or each participation is of equal rank.

(4) Except as otherwise provided in this subsection, any portion of a loan that exceeds 66-2/3% of the appraised value, at the time of the loan, of the real estate constituting or offered as security and any loan the term of which exceeds 5 years is not a qualified asset for purposes of section 901. However, the following loans are qualified assets for the purposes of section 901:

(a) A loan on land improved with permanent buildings used for agriculture or pasture in an amount not to exceed 75% of the appraised value, at the time of the loan, of the real estate constituting or offered as security if the loan is secured by an amortized mortgage, deed of trust, or other instrument under the terms of which the installment payments are sufficient to amortize on not to exceed an annual basis of 40% or more of the principal of the loan within a period of not more than 10 years.

(b) A loan on single family residential property in an amount not to exceed 80% of the appraised value, at the time of the loan, of the real estate offered as security, if the loan is secured by a mortgage, deed of trust, or other instrument for a term of not more than 35 years.

(c) Subject to subsection (6), a loan on multifamily residential property in an amount not to exceed 85% of the appraised value, at the time of the loan, of the real estate offered as security, if the loan is secured by a mortgage, deed of trust, or other instrument for a term of not more than 35 years.

(d) A loan in an amount not to exceed 75% of the appraised value of the real estate offered as security and for a term not longer than 35 years, if the real estate is improved if it is not used for agriculture or pasture, and if the loan is secured by a mortgage, deed of trust, or other instrument for a term of not more than 35 years.

(5) The limitations and restrictions in subsection (4) do not apply to real estate loans that are insured under the provisions of title II of the national housing act, chapter 847, 48 Stat. 1247, 12 U.S.C. 1707 to 1709, 1710 to 1715g, 1715k to 1715r, and 1715t to 1715z-1, by the federal housing administration, to loans insured under the Canadian national housing act of 1954 by the central mortgage and housing corporation, or to real estate loans that are guaranteed as to principal by the United States government or Canadian government or an agency or instrumentality of the United States or Canadian government.

(6) If the total amount of multifamily residential loans that exceed 75% of the appraised value of the real estate offered as security for those loans is greater than 20% of an insurer's mortgage portfolio, the portion of those loans that exceed 75% of the appraised value shall not be treated as a qualified asset for purposes of section 901.

(7) An insurer shall not make any such loan unless an appraisal has been made in writing by a competent appraiser appointed or employed by the insurer and filed with the investment committee authorized to approve the loan.

(8) Qualified assets for the purposes of section 901 include a loan or certificate of participation secured by a loan made on a single-family residential property in an amount not to exceed 95% of the appraised value, at the time of the loan, of the real estate offered as security, if the loan is secured by a mortgage, deed of trust, or other instrument for a term of not more than 35 years, and the loan is insured by a private mortgage insurer approved by the federal home loan mortgage corporation and the federal national mortgage association and is licensed to do business in the state of Michigan.

(9) Qualified assets for the purposes of section 901 include real estate loans that do not qualify as first mortgages as described in subsections (1) and (3). Total investments that may be treated as qualified assets under this subsection shall not exceed 25% of the insurer's total investments in real estate loans as described in subsections (1) and (3).

(10) A domestic insurer shall not invest more than 10% of its surplus in real estate loans that exceed the appraised value limitations under subsection (4), (6), or (8) unless the real estate loan is the result of a restructuring of an existing real estate loan and the insurer provides written notice to the commissioner on or before the date of the restructuring. The commissioner may increase the 10% investment limit of this section to 20% for an insurer who demonstrates to the commissioner's satisfaction the soundness of a particular investment or investment strategy that would cause the insurer to exceed the lower limit. If the loans under this subsection exceed 5% of an insurer's assets within any 12-month period, no other loans may be made pursuant to this subsection except with the commissioner's prior approval.

(11) A domestic insurer shall not invest more than 20% of its mortgage portfolio in multifamily residential mortgages that exceed 75% of the appraised value, at the time of the loan, of the real estate offered as security.

History: 1956, Act 218, Eff. Jan. 1, 1957;—Am. 1957, Act 91, Eff. Sept. 27, 1957;—Am. 1961, Act 128, Eff. Sept. 8, 1961;—Am. 1969, Act 318, Eff. Mar. 20, 1970;—Am. 1974, Act 330, Imd. Eff. Dec. 17, 1974;—Am. 1982, Act 338, Imd. Eff. Dec. 17, 1982;—Am. 1984, Act 90, Imd. Eff. Apr. 19, 1984;—Am. 2002, Act 462, Imd. Eff. June 21, 2002.

Popular name: Act 218

500.943 Qualified assets; derivative instruments and transactions.

Sec. 943. (1) Qualified assets for purposes of section 901 include derivative instruments only if the insurer is able to demonstrate to the commissioner through cash flow testing or other appropriate analyses both the intended hedging characteristics and the ongoing effectiveness of the derivative transaction or combination of transactions.

(2) Before engaging in a derivative transaction and with board of director approval, a domestic insurer shall do all of the following:

(a) Establish written guidelines to be used for effecting or maintaining derivative transactions. The guidelines shall be available to the commissioner on request and shall meet all of the following:

(*i*) Address investment or, if applicable, underwriting objectives and risk constraints, such as credit risk limits.

(*ii*) Address permissible derivative transactions and the relationship of those transactions to its operations.

(*iii*) Require compliance with internal control procedures.

(b) Have a system for determining whether a derivative instrument used in a hedging or replication transaction is effective.

(c) Have a credit risk management system for over-the-counter derivative transactions that measures credit risk exposure using counter party exposure amount.

(d) Determine whether the insurer has adequate professional personnel, technical expertise, and systems to implement investment practices involving derivatives.

(e) Determine that the derivative program is prudent and that the level of risk is appropriate for the insurer given the level of capitalization and expertise available to the insurer.

(3) Except as provided in section 222(7), written guidelines prepared pursuant to subsection (2), if furnished to the commissioner, are confidential and privileged, are not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action.

(4) The commissioner may promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement this section, including, but not limited to, the establishment of all of the following:

(a) Financial solvency standards.

(b) Valuation standards.

(c) Reporting requirements.

(5) An insurer shall include all counter party exposure amounts in determining compliance with the limitations in section 901(6).

(6) In measuring the net amount of credit risk exposure using counter party exposure amount, all of the following apply:

(a) The net amount of credit risk equals the market value of the over-the-counter derivative instrument if the liquidation of the derivative instrument would result in a final cash payment to the insurer or zero if the liquidation of the derivative instrument would not result in a final cash payment to the insurer.

(b) If over-the-counter derivative instruments are entered into pursuant to a written master agreement that provides for netting of payments owed by the respective parties, and the domiciliary jurisdiction of the counter party is either within the United States or, if not within the United States, within a foreign jurisdiction approved as eligible for netting, the net amount of credit risk is the greater of zero or the net sum of the market value of the over-the-counter derivative instruments entered into pursuant to the agreement, the liquidation of which would result in a final cash payment to the insurer and the market value of the over-the-counter derivative instruments entered into pursuant to the agreement, the liquidation of which would result in a final cash payment by the insurer to the business entity.

(7) As used in subsection (6), market value shall be determined for open transactions at the end of the most recent quarter of the insurer's fiscal year and shall be reduced by the market value of acceptable collateral held by the insurer or placed in escrow by 1 or both parties.

(8) As used in this section:

(a) "Cap" means an agreement obligating the seller to make payments to the buyer with each payment based on the amount by which a reference price or level or the performance or value of 1 or more underlying interests exceeds a predetermined number, sometimes called the strike rate or strike price.

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

(c) "Collateralized mortgage obligation" means an asset-backed security that has cash flows originating directly or indirectly from underlying mortgage assets.

(d) "Counter party exposure amount" means the net amount of credit risk attributable to a derivative instrument entered into with a business entity other than through a qualified exchange or qualified foreign exchange or cleared through a qualified clearinghouse such as an over-the-counter derivative instrument.

(e) "Derivative instrument" means any agreement, option, or instrument, or any series or combinations of an agreement, option, or instrument to make or take delivery of, or assume or relinquish, a specified amount of 1 or more underlying interests, or to make a cash settlement in lieu of 1 or more underlying interests, or that has a price, performance, value, or cash flow based primarily upon the actual or expected price, yield, level, performance, value, or cash flow of 1 or more underlying interests. Derivative instruments include options, warrants, caps, floors, collars, swaps, swaptions, forwards, futures, and any other substantially similar agreements, options, or instruments, or any series or combinations and any further agreements, options, or instruments included under rules promulgated by the commissioner. Derivative instruments do not include collateralized mortgage obligations, other asset-backed securities, principal-protected structured securities, or instruments that an insurer is otherwise permitted to invest in or receive under this chapter other than under this section. The sale or purchase of a derivative instrument by an insurer in connection with a written investment policy that insulates the purchaser from the risk of default of an underlying financial instrument shall be treated as a derivative and not as insurance for purposes of this act.

(f) "Derivative transaction" means a transaction involving the use of 1 or more derivative instruments. For purposes of this section, dollar roll transactions, repurchase transactions, reverse repurchase transactions, and securities lending transactions are not derivative transactions.

(g) "Floor" means an agreement obligating the seller to make payments to the buyer in which each payment is based on the amount by which a predetermined number, sometimes called the floor rate or price, exceeds a reference price, level, performance, or value of 1 or more underlying interests.

(h) "Forward" means an agreement, other than a future, to make or take delivery in the future of 1 or more underlying interests, or effect a cash settlement, based on the actual or expected price, level, performance, or value of the underlying interests. Forward includes spot transactions effected within customary settlement periods, when-issued purchases, or other similar cash market transactions.

(i) "Future" means an agreement traded on a futures exchange, to make or take delivery of, or effect a cash settlement based on the actual or expected price, level, performance, or value of 1 or more underlying interests.

(j) "Hedging transaction" means a derivative transaction that is entered into and maintained to manage the risk of a change in the value, yield, price, cash flow, or quantity of assets or liabilities that the insurer has acquired or incurred or anticipates acquiring or incurring or the currency exchange rate risk related to assets or liabilities that an insurer has acquired or incurred or anticipates acquiring or incurring.

(k) "Option" means an agreement giving the buyer the right to buy or receive, known as a call option, sell or deliver, known as a put option, enter into, extend, or terminate or effect a cash settlement based on the actual or expected price, spread, level, performance, or value of 1 or more underlying interests.

(*l*) "Replication transaction" means a derivative transaction or combination of derivative transactions effected either separately or in conjunction with cash market investments included in the insurer's investment portfolio in order to replicate the risks and returns of another authorized transaction, investment, or instrument

or to operate as a substitute for cash market transactions. A derivative transaction entered into by the insurer as a hedging transaction is not a replication transaction.

(m) "Structured security" means an obligation whose principal or interest payments are determined partially or entirely by reference to an index, market, event, or asset unrelated to the issuer's ability to pay.

(n) "Swap" means an agreement to exchange or to net payments at 1 or more times based on the actual or expected price, yield, level, performance, or value of 1 or more underlying interests.

(o) "Swaption" means an option to purchase or sell a swap at a given price and time or at a series of prices and times. A swaption does not mean a swap with an embedded option.

(p) "Underlying interest" means the assets, liabilities, other interests, or a combination of assets, liabilities, or other interests underlying a derivative instrument such as any 1 or more securities, currencies, rates, indices, commodities, or derivative instruments.

(q) "Warrant" means an instrument that gives the holder the right to purchase or sell the underlying interest at a given price and time or at a series of prices and times outlined in the warrant agreement.

(9) The amendatory act that added this subsection does not affect the validity of any derivative transaction entered into or derivative instrument acquired by an insurer before the effective date of the amendatory act that added this subsection.

History: Add. 1987, Act 24, Imd. Eff. Apr. 24, 1987;—Am. 1994, Act 226, Imd. Eff. June 27, 1994;—Am. 2002, Act 462, Imd. Eff. June 21, 2002.

Popular name: Act 218

500.944 Accounts receivable; includable as qualified assets.

Sec. 944. Qualified assets for purposes of section 901 include the value of any amounts receivable from insurers authorized to transact insurance in this state.

History: Add. 1969, Act 318, Eff. Mar. 20, 1970;—Am. 2002, Act 462, Imd. Eff. June 21, 2002.

Popular name: Act 218

500.945 Repealed. 1994, Act 226, Imd. Eff. June 27, 1994.

Compiler's note: The repealed section pertained to investments or loans meeting trusted depository requirements.

Popular name: Act 218

500.946 Home office, lands, and buildings; includable as qualified assets.

Sec. 946. (1) Subject to the limitations in section 901, qualified assets for purposes of section 901 include a home office, lands, and buildings as follows:

(a) A building in which the insurer has its principal home office and the land upon which the building stands.

(b) Real estate requisite for its accommodation in the convenient transaction of its business.

(c) Other real estate requisite or desirable for the protection or enhancement of the value of real estate described under subdivisions (a) and (b).

(2) Any parcel of real estate acquired under this section may include excess space for rental to others or if the excess is reasonably required in order to have a building that would be an economic unit.

(3) Real estate under this section may be subject to a mortgage.

(4) Any real estate investment under this section that would result in a total real estate investment in excess of 10% of a domestic insurer's capital and surplus shall not be made until a certificate of permission for the purchase or construction of the property is granted by the commissioner. The commissioner may require an appraisal of the property considered for investment by 3 qualified appraisers, appointed by the commissioner for the purpose of the appraisal, and their certification to the commissioner of a valuation of the property at least equal to the amount that is proposed to be invested in the property by the insurer.

History: 1956, Act 218, Eff. Jan. 1, 1957;—Am. 1957, Act 91, Eff. Sept. 27, 1957;—Am. 1969, Act 318, Eff. Mar. 20, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992;—Am. 1994, Act 226, Imd. Eff. June 27, 1994;—Am. 2002, Act 462, Imd. Eff. June 21, 2002.

Popular name: Act 218

500.947 Income producing real estate and housing projects; includable as qualified assets.

Sec. 947. (1) Subject to the limitations in section 901, qualified assets for purposes of section 901 include real estate or any interest in real estate, acquired by the insurer for the purpose, under its franchise, of construction, development, maintenance, operation, or lease as an investment for the production of income, or for the purpose, under its franchise, of constructing, maintaining, or operating housing projects including incidental retail and service facilities.

(2) Subject to the limitations in section 901, qualified assets for purposes of section 901 include real estate

conveyed or mortgaged in good faith, by way of security for debts or in satisfaction for debts, or purchased at sales on judgments, decrees, or mortgages in favor of the insurer or acquired in the process of settling claims asserted under its policies.

History: Add. 1969, Act 318, Eff. Mar. 20, 1970;—Am. 2002, Act 462, Imd. Eff. June 21, 2002.

Popular name: Act 218

500.948 Repealed. 1969, Act 318, Eff. Mar. 20, 1970.

Compiler's note: The repealed section pertained to investments by insurers.

Popular name: Act 218

500.950, 500.951 Repealed. 1969, Act 318, Eff. Mar. 20, 1970.

Compiler's note: The repealed sections pertained to investments by insurers.

Popular name: Act 218

500.960 Repealed. 1969, Act 318, Eff. Mar. 20, 1970.

Compiler's note: The repealed section pertained to investments by insurers.

Popular name: Act 218