FIRST REGULAR SESSION

[P E R F E C T E D**]**

SENATE BILL NO. 131

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR LOUDON.

Pre-filed December 20, 2004, and ordered printed.

Read 2nd time January 13, 2005, and referred to the Committee on Economic Development, Tourism and Local Government.

Reported from the Committee February 21, 2005, with recommendation that the bill do pass and be placed on the Consent Calendar.

Taken up February 28, 2005. Read 3rd time and placed upon its final passage; bill passed.

TERRY L. SPIELER, Secretary.

0510S.01P

AN ACT

To repeal sections 375.532 and 376.300, RSMo, and to enact in lieu thereof two new sections relating to insurance company investment in preferred stocks.

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Section A. Sections 375.532 and 376.300, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 375.532 and 376.300, to read as follows: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 376.300, RSMo, to the contrary,**]** The capital, reserve and surplus of a domestic insurer may be invested in bonds, notes or other evidences of indebtedness**, or preferred or guaranteed stocks or shares,** issued, assumed or guaranteed by an institution organized under the laws of the United States, any state, territory or possession of the United States, or the District of Columbia, if such bonds, notes or other evidences of indebtedness**, or preferred or guaranteed stocks or shares,** shall carry at least the second highest designation or quality rating conferred by the Securities Valuation Office of the National Association of Insurance Commissioners, or some similar or equivalent rating by a nationally recognized rating agency which has been approved by the director.

2. As used in this section, the term "institution" means a corporation, a joint stock 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 surplus of all life insurance companies of whatever kind and character organized pursuant to the laws of this state shall be invested only in the following:

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

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

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

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

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

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

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

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

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

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

sections 375.532 and 375.1070 to 375.1075, RSMo;

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

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

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

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

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

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

(b) Guaranteed stocks or shares shall be deemed qualified if the assuming or guaranteeing corporation meets the requirements of subparagraph a. of paragraph (b) of

subdivision (5) of this subsection construed so as to include as a fixed charge the amount of guaranteed dividends of such issue or the rental covering the guarantee of such dividends**] sections 375.532 and 375.1070 to 375.1075, RSMo**;

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

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

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

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

(b) Taxes or assessment liens not delinquent;

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

(d) Building restrictions and other restrictive covenants; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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