

40-2a05. Business entity obligations; definitions. Any insurance company other than life heretofore or hereafter organized under any law of this state may invest by loans or otherwise, with the direction or approval of a majority of its board of directors or authorized committee thereof, any of its funds, or any part thereof in bonds or other evidences of indebtedness issued, assumed or guaranteed by a business entity organized under the laws of the United States of America, or of any state, district, insular or territorial possession thereof, or of the Dominion of Canada or any province thereof which are designated "1" or "2" by the SVO or its equivalent rating by a nationally recognized statistical rating organization recognized by the SVO at the time of acquisition; or which meet the following qualifications:

- (a) If fixed-interest bearing obligations, the average fixed charges shall have been covered at least 1 1/2 times by the average net earnings available for fixed charges of the last five years, and the business entity shall have earnings in two of the last three fiscal years immediately preceding the date of acquisition. In the case of obligations of finance companies, the coverage shall be at least 1 1/4 times;
- (b) if income, or other contingent interest obligations, the net earnings available for fixed charges of the business entity for the five fiscal years next preceding the date of acquisition of the obligations shall have averaged per year not less than 1 1/2 times the sum of the fixed charges and the maximum contingent interest to which the business entity is subject as of the date of acquisition, and the company shall have earnings in two of the last three fiscal years immediately preceding the date of acquisition. In the case of obligations of finance companies, the coverage shall be at least 1 1/4 times;
- (c) the business entity or a predecessor thereof must have been in existence for a period of not less than five years;
- (d) investments in any obligations under this act shall not be eligible if the business entity is in default on any fixed obligations as of the date of acquisition. Statements adjusted to show the actual condition at the time of acquisition or at effect of new financing (known commercially as pro forma statements) may be used when determining investments in this act or in compliance with requirements.
- (e) As used in this section:
 - (1) The term "fixed charges" includes actual interest incurred in each year on funded and unfunded debt. In the testing of obligations where interest is partially or entirely contingent upon earnings, fixed charges shall include contingent interest payments;
 - (2) the term "net earnings available for fixed charges" means income, before deducting interest on funded and unfunded debt and after deducting operating and maintenance expenses, taxes other than income taxes, depreciation and depletion. Extraordinary, nonrecurring items of income or expense shall be excluded;
 - (3) the term "business entity" includes a sole proprietorship, corporation, limited liability company, association, partnership, joint stock company, joint venture, mutual fund, trust, joint tenancy or similar form of business organization, whether organized for profit or not-for-profit;
 - (4) the term "NAIC" means the national association of insurance commissioners; and
 - (5) the term "SVO" means the securities valuation office of the NAIC or any successor office established by the NAIC.

History: L. 1972, ch. 173, § 5; L. 1987, ch. 160, § 2; L. 1991, ch. 130, § 1; L. 2015, ch. 7, § 1; July 1.