

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1257**

62nd Legislature  
2011 Regular Session

Passed by the House April 14, 2011  
Yeas 97 Nays 0

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**Speaker of the House of Representatives**

Passed by the Senate April 11, 2011  
Yeas 47 Nays 0

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1257** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 1257**

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AS AMENDED BY THE SENATE

Passed Legislature - 2011 Regular Session

**State of Washington                      62nd Legislature                      2011 Regular Session**

**By** House Business & Financial Services (originally sponsored by Representatives Stanford, Kirby, and Kelley; by request of Insurance Commissioner)

READ FIRST TIME 01/27/11.

1            AN ACT Relating to adopting the investments of insurers model act;  
2 amending RCW 48.13.350; reenacting and amending RCW 42.56.400; adding  
3 new sections to chapter 48.13 RCW; creating a new section; repealing  
4 RCW 48.13.010, 48.13.020, 48.13.030, 48.13.040, 48.13.050, 48.13.060,  
5 48.13.070, 48.13.080, 48.13.090, 48.13.100, 48.13.110, 48.13.120,  
6 48.13.125, 48.13.130, 48.13.140, 48.13.150, 48.13.160, 48.13.170,  
7 48.13.180, 48.13.190, 48.13.200, 48.13.210, 48.13.218, 48.13.220,  
8 48.13.230, 48.13.240, 48.13.250, 48.13.260, 48.13.265, 48.13.270,  
9 48.13.273, 48.13.275, 48.13.280, 48.13.285, 48.13.290, and 48.13.340;  
10 and providing an effective date.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

12            NEW SECTION.    **Sec. 1.**    (1) The purpose of this act is to protect  
13 and to further the interests of insureds, creditors, and the general  
14 public by providing, with minimum interference with management  
15 initiative and judgment, prudent standards for the development and  
16 administration of insurer investment programs.

17            (2) This act and the rules adopted to interpret and implement it  
18 apply to domestic insurers, United States branches of alien insurers  
19 entered through this state, alien insurers admitted and using this

1 state as their port of entry, domestic fraternal benefit societies  
2 formed pursuant to chapter 48.36A RCW, domestic health care service  
3 contractors formed pursuant to chapter 48.44 RCW, domestic health  
4 maintenance organizations formed pursuant to chapter 48.46 RCW, and  
5 domestic self-funded multiple employer welfare arrangements formed  
6 pursuant to chapter 48.125 RCW.

7 (3) Separate accounts established in accordance with RCW 48.18A.020  
8 shall be evaluated separately pursuant to that section.

9 NEW SECTION. **Sec. 2.** The definitions in this section apply  
10 throughout this chapter unless the context clearly requires otherwise.

11 (1) "Derivative instrument" means an item appropriately reported in  
12 schedule DB (derivative instruments) or schedule DC (insurance futures  
13 and insurance futures options) of an insurer's statutory financial  
14 statement or successor schedules, pursuant to applicable annual  
15 statement instructions or statutory accounting guidelines.

16 (2) "Derivative transaction" means a transaction involving the use  
17 of one or more derivative instruments.

18 (3) "Income generation" means a derivative transaction involving  
19 the writing of covered options, caps, or floors that is intended to  
20 generate income or enhance return.

21 (4) "Leverage" means the relationship of insurance and investment  
22 risks to capital and surplus as defined by the national association of  
23 insurance commissioners insurance regulatory information system and its  
24 other financial analysis solvency tools and reports.

25 (5) "Lower grade investment" means a rated credit instrument or  
26 debt-like preferred stock rated 4, 5, or 6 by the securities valuation  
27 office of the national association of insurance commissioners or any  
28 successor office.

29 (6) "Medium grade investment" means a rated credit instrument or  
30 debt-like preferred stock rated 3 by the securities valuation office of  
31 the national association of insurance commissioners or any successor  
32 office.

33 (7) "Minimum asset requirement" is the sum of an insurer's  
34 liabilities and its minimum financial security benchmark.

35 (8) "Minimum financial security benchmark" is the amount an insurer  
36 is required to have under section 3 of this act.

1 (9) "Mutual fund" means a mutual fund or exchange traded fund  
2 registered with the securities and exchange commission of the United  
3 States under the investment company act of 1940.

4 (10) "Rated by the securities valuation office" means any security  
5 that is directly rated by the securities valuation office or that is  
6 given an equivalent filing exempt rating as prescribed in the purposes  
7 and procedures manual of the national association of insurance  
8 commissioners securities valuation office.

9 (11) "Replication" means a derivative transaction involving one or  
10 more derivative instruments being used to modify the cash flow  
11 characteristics of one or more investments held by an insurer in a  
12 manner so that the aggregate cash flows of the derivative instruments  
13 and investments reproduce the cash flows of another investment having  
14 a higher risk-based capital charge than the risk-based capital charge  
15 of the original instruments or investments.

16 (12) "Securities valuation office listed mutual fund" means a money  
17 market mutual fund or short-term bond fund that is registered with the  
18 United States securities and exchange commission under the investment  
19 company act of 1940, and that has been determined by the national  
20 association of insurance commissioners securities valuation office to  
21 be eligible for special reserve and reporting treatment, other than as  
22 common stock.

23 (13) "Surplus" means the excess of admitted assets over all  
24 liabilities.

25 (14) "United States government securities" means any security  
26 defined in the purposes and procedures manual of the national  
27 association of insurance commissioners securities valuation office as  
28 a United States government security.

29 NEW SECTION. **Sec. 3.** (1) Minimum financial security benchmark.

30 (a) Unless otherwise established in accordance with (b) and (c) of  
31 this subsection, the amount of the minimum financial security benchmark  
32 for an insurer shall be the greater of:

33 (i) The authorized control level risk-based capital applicable to  
34 the insurer as set forth by RCW 48.05.450 or 48.43.320; or

35 (ii) The minimum capital or minimum surplus required by statute or  
36 rule for maintenance of an insurer's certificate of authority,

1 certificate of registration, or other form of authorization to transact  
2 business pursuant to Title 48 RCW.

3 (b) The commissioner may, in accordance with the factors in  
4 subsection (2)(b) of this section, establish by order a minimum  
5 financial security benchmark to apply to a specific insurer provided it  
6 is not less than the amount determined by (a) of this subsection, in  
7 the event the insurer falls below three and one-half times the  
8 authorized control level risk-based capital applicable to the insurer  
9 as set forth by RCW 48.05.450 or 48.43.320.

10 (c) The commissioner may establish by rule a minimum financial  
11 security benchmark that is a multiple of authorized control level risk-  
12 based capital to apply to any class of insurers provided the amount  
13 established by the rule is not less than the amount determined in (a)  
14 of this subsection.

15 (2) The commissioner shall determine the amount of surplus that  
16 shall constitute an insurer's minimum financial security benchmark, as  
17 an amount that will provide reasonable security against contingencies  
18 affecting the insurer's financial position that are not fully covered  
19 by reserves or by reinsurance.

20 (a) Types of contingencies. The commissioner shall consider the  
21 risks of:

22 (i) Increases in the frequency or severity of losses beyond the  
23 levels contemplated by the rates charged;

24 (ii) Increases in expenses beyond those contemplated by the rates  
25 charged;

26 (iii) Decreases in the value of or the return on invested assets  
27 below those planned on;

28 (iv) Changes in economic conditions that would make liquidity more  
29 important than contemplated and would force untimely sale of assets or  
30 prevent timely investments;

31 (v) Currency devaluation to which the insurer may be subject;

32 (vi) Diminished prospects for performance of reinsurers' or other  
33 counter parties' obligations; and

34 (vii) Any other contingencies the commissioner can identify that  
35 may affect the insurer's operations.

36 (b) Controlling factors. In making the determination under this  
37 subsection, the commissioner shall take into account the following  
38 factors:

1 (i) The most reliable information available as to the magnitude of  
2 the various risks under (a) of this subsection;

3 (ii) The extent to which the risks in (a) of this subsection are  
4 independent of each other or are related, and whether any dependency is  
5 direct or inverse;

6 (iii) The insurer's recent history of profits or losses;

7 (iv) The extent to which the insurer has provided protection  
8 against the contingencies in other ways than the establishment of  
9 surplus; including redundancy of premiums, adjustability of contracts  
10 under their terms, investment valuation reserves whether voluntary or  
11 mandatory, appropriate reinsurance, the use of conservative actuarial  
12 assumptions to provide a margin of security, reserve adjustments in  
13 recognition of previous rate inadequacies, contingency or catastrophe  
14 reserves, diversification of assets, and underwriting risks;

15 (v) Independent judgments of the soundness of the insurer's  
16 operations, as evidenced by the ratings of reliable professional  
17 financial reporting services; and

18 (vi) Any other relevant factors.

19 NEW SECTION. **Sec. 4.** (1) Subject to the provisions of this  
20 chapter, an insurer may loan or invest its funds, and may buy, sell,  
21 hold title to, possess, occupy, pledge, convey, manage, protect,  
22 insure, and deal with its investments, property, and other assets to  
23 the same extent as any other person or corporation under the laws of  
24 this state and of the United States.

25 (2) With respect to all of the insurer's investments, the board of  
26 directors of an insurer shall exercise the judgment and care, under the  
27 circumstances then prevailing, that persons of reasonable prudence,  
28 discretion, and intelligence exercise in the management of a like  
29 enterprise, not in regard to speculating but in regard to the permanent  
30 disposition of their funds, considering the probable income as well as  
31 the probable safety of their capital. Investments shall be of  
32 sufficient value, liquidity, and diversity to assure the insurer's  
33 ability to meet its outstanding obligations based on reasonable  
34 assumptions as to new business production for current lines of  
35 business. As part of its exercise of judgment and care, the board of  
36 directors shall take into account the prudence evaluation criteria of  
37 section 5 of this act.

1 (3) The insurer shall establish and implement internal controls and  
2 procedures to assure compliance with investment policies and procedures  
3 to assure that:

4 (a) The insurer's investment staff and any consultants used are  
5 reputable and capable;

6 (b) A periodic evaluation and monitoring process occurs for  
7 assessing the effectiveness of investment policy and strategies;

8 (c) Management's performance is assessed in meeting the stated  
9 objectives within the investment policy; and

10 (d) Appropriate analyses are undertaken of the degree to which  
11 asset cash flows are adequate to meet liability cash flows under  
12 different economic environments. These analyses shall be conducted at  
13 least annually and make specific reference to economic conditions.

14 NEW SECTION. **Sec. 5.** The following factors shall be evaluated by  
15 the insurer and considered along with its business in determining  
16 whether an investment portfolio or investment policy is prudent; the  
17 commissioner shall consider the following factors prior to making a  
18 determination that an insurer's investment portfolio or investment  
19 policy is not prudent:

20 (1) General economic conditions;

21 (2) The possible effect of inflation or deflation;

22 (3) The expected tax consequences of investment decisions or  
23 strategies;

24 (4) The fairness and reasonableness of the terms of an investment  
25 considering its probable risk and reward characteristics and  
26 relationship to the investment portfolio as a whole;

27 (5) The extent of the diversification of the insurer's investments  
28 among:

29 (a) Individual investments;

30 (b) Classes of investments;

31 (c) Industry concentrations;

32 (d) Dates of maturity; and

33 (e) Geographic areas;

34 (6) The quality and liquidity of investments in affiliates;

35 (7) The investment exposure to the following risks, quantified in  
36 a manner consistent with the insurer's acceptable risk level identified  
37 in section 6(8) of this act:

- 1 (a) Liquidity;
- 2 (b) Credit and default;
- 3 (c) Systemic (market);
- 4 (d) Interest rate;
- 5 (e) Call, prepayment, and extension;
- 6 (f) Currency;
- 7 (g) Foreign sovereign; and
- 8 (h) Leverage;
- 9 (8) The amount of the insurer's assets, capital, and surplus,
- 10 premium writings, insurance in force, and other appropriate
- 11 characteristics;
- 12 (9) The amount and adequacy of the insurer's reported liabilities;
- 13 (10) The relationship of the expected cash flows of the insurer's
- 14 assets and liabilities, and the risk of adverse changes in the
- 15 insurer's assets and liabilities;
- 16 (11) The adequacy of the insurer's capital and surplus to secure
- 17 the risks and liabilities of the insurer; and
- 18 (12) Any other factors relevant to whether an investment is
- 19 prudent.

20 NEW SECTION. **Sec. 6.** In acquiring, investing, exchanging,

21 holding, selling, and managing investments, an insurer shall establish

22 and follow a written investment policy that shall be reviewed and

23 approved by the insurer's board of directors at least annually. The

24 content and format of an insurer's investment policy are at the

25 insurer's discretion, but shall include written guidelines appropriate

26 to the insurer's business as to the following:

27 (1) The delegation and monitoring of policies, procedures, and

28 controls covering all aspects of the investing function;

29 (2) Quantified goals and objectives regarding the composition of

30 classes of investments, including maximum internal limits;

31 (3) Periodic evaluation of the investment portfolio as to its risk

32 and reward characteristics. This subsection shall not preclude an

33 insurer from the use of modern portfolio theory to manage its

34 investments;

35 (4) Professional standards for the individuals making day to day

36 investment decisions to assure that investments are managed in an

37 ethical and capable manner;



1 (5) The types of investments to be made and those to be avoided,  
2 based on their risk and reward characteristics and the insurer's level  
3 of experience with the investments;

4 (6) The relationship of classes of investments to the insurer's  
5 insurance products and liabilities;

6 (7) The manner in which the insurer intends to implement section 5  
7 of this act; and

8 (8) The level of risk, based on quantitative measures, appropriate  
9 for the insurer given the level of capitalization and expertise  
10 available to the insurer.

11 NEW SECTION. **Sec. 7.** The following classes of investments may be  
12 counted for the purposes specified in section 11 of this act, whether  
13 they are made directly or as a participant in a partnership, joint  
14 venture, or limited liability company. Investments in partnerships,  
15 joint ventures, and limited liability companies are authorized  
16 investments only pursuant to subsection (12) of this section:

17 (1) Cash in the direct possession of the insurer or on deposit with  
18 a financial institution regulated by any federal or state agency of the  
19 United States;

20 (2) Bonds, debt-like preferred stock, and other evidences of  
21 indebtedness of governmental units in the United States or Canada, or  
22 the instrumentalities of the governmental units, or private business  
23 entities domiciled in the United States or Canada, including asset-  
24 backed securities and securities valuation office listed mutual funds;

25 (3) Loans secured by first mortgages, first trust deeds, or other  
26 first security interests in real property located in the United States  
27 or Canada or secured by insurance against default issued by a  
28 government insurance corporation of the United States or Canada or by  
29 an insurer authorized to do business in this state;

30 (4) Common stock or equity-like preferred stock or equity interests  
31 in any United States or Canadian business entity, or shares of mutual  
32 funds registered with the securities and exchange commission of the  
33 United States under the investment company act of 1940, other than  
34 securities valuation office listed mutual funds, and, subsidiaries, as  
35 defined in RCW 48.31B.005 or 48.31C.010, engaged exclusively in the  
36 following businesses:

1 (a) Acting as an insurance producer, surplus line broker, or title  
2 insurance agent for its parent or for any of its parent's insurer  
3 subsidiaries or affiliates;

4 (b) Investing, reinvesting, or trading in securities or acting as  
5 a securities broker or dealer for its own account, that of its parent,  
6 any subsidiary of its parent, or any affiliate or subsidiary;

7 (c) Rendering management, sales, or other related services to any  
8 investment company subject to the federal investment company act of  
9 1940, as amended;

10 (d) Rendering investment advice;

11 (e) Rendering services related to the functions involved in the  
12 operation of an insurance business including, but not limited to,  
13 actuarial, loss prevention, safety engineering, data processing,  
14 accounting, claims appraisal, and collection services;

15 (f) Acting as administrator of employee welfare benefit and pension  
16 plans for governments, government agencies, corporations, or other  
17 organizations or groups;

18 (g) Ownership and management of assets which the parent could  
19 itself own and manage: PROVIDED, that the aggregate investment by the  
20 insurer and its subsidiaries acquired pursuant to this subsection  
21 (4)(g) shall not exceed the limitations otherwise applicable to such  
22 investments by the parent;

23 (h) Acting as administrative agent for a government instrumentality  
24 which is performing an insurance function or is responsible for a  
25 health or welfare program;

26 (i) Financing of insurance premiums;

27 (j) Any other business activity reasonably ancillary to an  
28 insurance business;

29 (k) Owning one or more subsidiary;

30 (i) Insurers, health care service contractors, or health  
31 maintenance organizations to the extent permitted by this chapter;

32 (ii) Businesses specified in (a) through (k) of this subsection  
33 inclusive; or

34 (iii) Any combination of such insurers and businesses.

35 (5) Real property necessary for the convenient transaction of the  
36 insurer's business;

37 (6) Real property, together with the fixtures, furniture,

1 furnishings, and equipment pertaining thereto in the United States or  
2 Canada, which produces or after suitable improvement can reasonably be  
3 expected to produce income;

4 (7) Loans, securities, or other investments of the types described  
5 in subsections (1) through (6) of this section in national association  
6 of insurance commissioners securities valuation office 1 debt rated  
7 countries other than the United States and Canada;

8 (8) Bonds or other evidences of indebtedness of international  
9 development organizations of which the United States is a member;

10 (9) Loans upon the security of the insurer's own policies in  
11 amounts that are adequately secured by the policies and that in no case  
12 exceed the surrender values of the policies;

13 (10) Tangible personal property under contract of sale or lease  
14 under which contractual payments may reasonably be expected to return  
15 the principal of and provide earnings on the investment within its  
16 anticipated useful life;

17 (11) Other investments the commissioner authorizes by rule; and

18 (12) Investments not otherwise permitted by this section, and not  
19 specifically prohibited by statute, to the extent of not more than five  
20 percent of the first five hundred million dollars of the insurer's  
21 admitted assets plus ten percent of the insurer's admitted assets  
22 exceeding five hundred million dollars.

23 NEW SECTION. **Sec. 8.** (1) Class limitations. For the purposes of  
24 section 11 of this act, the following limitations on classes of  
25 investments apply:

26 (a) Investments authorized by section 7(2) of this act, and  
27 investments authorized by section 7(7) of this act that are of the  
28 types described in section 7(2) of this act;

29 (i) The aggregate amount of medium and lower grade investments,  
30 twenty percent of its admitted assets;

31 (ii) The aggregate amount of lower grade investments, ten percent  
32 of its admitted assets;

33 (iii) The aggregate amount of investments rated 5 or 6 by the  
34 securities valuation office, five percent of its admitted assets;

35 (iv) The aggregate amount of investments rated 6 by the securities  
36 valuation office, one percent of its admitted assets; or

1 (v) The aggregate amount of medium and lower grade investments that  
2 receive as cash income less than the equivalent yield for treasury  
3 issues with a comparative average life, one percent of its admitted  
4 assets;

5 (b) Investments authorized by section 7(3) of this act, forty-five  
6 percent of admitted assets in the case of life insurers and twenty-five  
7 percent of admitted assets in the case of nonlife insurers;

8 (c) Investments authorized by section 7(4) of this act, other than  
9 subsidiaries of the types authorized under section 7(4) (a) through (k)  
10 of this act, twenty percent of admitted assets in the case of life  
11 insurers and twenty-five percent of admitted assets in the case of  
12 nonlife insurers;

13 (i) Individual investments authorized by section 7(4) of this act,  
14 except for subsidiaries, shall be limited to ten percent of the voting  
15 interest in any one entity;

16 (ii) Investments authorized in section 7(4) of this act in one or  
17 more subsidiaries shall be limited to the lesser of ten percent of  
18 admitted assets or fifty percent of surplus;

19 (d) Investments authorized by section 7(5) of this act, ten percent  
20 of admitted assets;

21 (e) Investments authorized by section 7(6) of this act, twenty  
22 percent of admitted assets in the case of life insurers, and ten  
23 percent of admitted assets in the case of nonlife insurers;

24 (f) Investments authorized by section 7(7) of this act, twenty  
25 percent of admitted assets;

26 (g) Investments authorized by section 7(8) of this act, two percent  
27 of admitted assets; and

28 (h) Investments authorized by section 7(10) of this act, two  
29 percent of admitted assets.

30 (2) Individual limitations. For purposes of determining compliance  
31 with section 11 of this act, securities of a single issuer and its  
32 affiliates, other than United States government securities and  
33 subsidiaries authorized by section 7(4) of this act, shall not exceed  
34 three percent of admitted assets in the case of life insurers, and five  
35 percent in the case of non-life insurers. Investments in the voting  
36 securities of a depository institution, or any company that controls a  
37 depository institution, shall not exceed five percent of the insurer's  
38 admitted assets.

1 (3) Investment subsidiaries. For purposes of determining  
2 compliance with the limitations of this section, the admitted portion  
3 of assets of subsidiaries authorized by section 7(4) of this act shall  
4 be deemed to be owned directly by the insurer and any other investors  
5 in proportion to the market value or if there is no market, the  
6 reasonable value, of their interest in the subsidiaries.

7 (4) Effect of quantity limitations. To the extent that investments  
8 exceed the limitations specified in subsections (1) and (2) of this  
9 section, the excess may be assigned to the investment class authorized  
10 in section 7(12) of this act, until that limit is exhausted.

11 (5) Special rule for mutual funds, pooled investment vehicles, and  
12 other investment companies, excluding mutual funds listed on the  
13 securities valuation office's United States direct obligations/full  
14 faith and credit exempt list, class 1 list, and/or bond fund list  
15 (securities valuation office listed mutual funds). At the discretion  
16 of the commissioner, as may be deemed necessary in order to determine  
17 compliance with this chapter in relation to limitations of particular  
18 classes of investments, the commissioner may require that investments  
19 in mutual funds, pooled investment vehicles, or other investment  
20 companies be treated for purposes of this chapter as if the investor  
21 owned directly its proportional share of the assets owned by the mutual  
22 fund, pooled investment vehicle, or investment company to the extent  
23 such individual non-securities valuation office listed mutual funds,  
24 pooled investment vehicles, and other investment companies exceed two  
25 percent of admitted assets or, in aggregate, ten percent of admitted  
26 assets.

27 (6) Unless otherwise specified, an investment limitation computed  
28 on the basis of an insurer's admitted assets or capital and surplus  
29 shall relate to the amount required to be shown on the statutory  
30 balance sheet of the insurer most recently required to be filed with  
31 the commissioner.

32 (7) Investments authorized by section 7(3) of this act shall not  
33 exceed eighty percent of the fair value of the particular property at  
34 the time of the investment, unless guaranteed or insured.

35 (a) The fair value shall be determined by a competent appraiser at  
36 the time of the investment.

37 (b) Buildings and other improvements shall be kept insured for the  
38 benefit of the mortgagee.

1        NEW SECTION.    **Sec. 9.**    An insurer doing business that requires it  
2 to make payment in different currencies shall have investments in  
3 securities in each of these currencies in an amount that independently  
4 of all other investments meets the requirements of this chapter as  
5 applied separately to the insurer's obligations in each currency. The  
6 commissioner may by order exempt an insurer, or by rule a class of  
7 insurers, from this requirement if the obligations in other currencies  
8 are small enough that no significant problem for financial stability  
9 would be created by substantial fluctuations in relative currency  
10 values.

11        NEW SECTION.    **Sec. 10.**    (1)(a) An insurer shall not invest in  
12 investments that are prohibited for an insurer by statutes or rules of  
13 this state.

14        (b) The use of a derivative instrument for replication,  
15 speculative, or for any purposes other than hedging or income  
16 generation, is prohibited.

17        (c) Investment in real property for speculative, ranching, farming,  
18 mining, gaming, amusement, oil, gas, or mineral exploration, or club  
19 purposes, is prohibited.

20        (d) Investment in issued shares of its own capital stock, held  
21 directly or indirectly, except for the purpose of mutualization in  
22 accordance with RCW 48.08.080, is prohibited.

23        (e) Investment in securities issued by any corporation if a  
24 majority of its stock having voting power is owned directly or  
25 indirectly by or for the benefit of any one or more of the insurer's  
26 officers and directors, is prohibited.

27        (f) Investment in securities issued by any insolvent corporation,  
28 is prohibited.

29        (g) Investment in any instrument or security which is found by the  
30 commissioner to be designed to evade any limitation or prohibition of  
31 this code, is prohibited.

32        (2) A reasonable time, not in excess of five years, shall be  
33 allowed for disposal of a prohibited investment in hardship cases if  
34 the investment is demonstrated by the insurer to have been legal when  
35 made, or the result of a mistake made in good faith, or if the  
36 commissioner deems that the sale of the asset would be contrary to the  
37 interests of insureds, creditors, or the general public.

1        NEW SECTION.    **Sec. 11.**    (1) Invested assets may be counted toward  
2 satisfaction of the minimum asset requirement only so far as they are  
3 invested in compliance with this chapter and applicable rules adopted  
4 and orders issued by the commissioner pursuant to this chapter. Assets  
5 other than invested assets may be counted toward satisfaction of the  
6 minimum asset requirement at admitted annual statement value.

7        (2) An investment held as an admitted asset by an insurer on the  
8 effective date of this act which qualified under this chapter shall  
9 remain qualified as an admitted asset under this chapter.

10       (3) Assets acquired in the bona fide enforcement of creditors'  
11 rights or in bona fide workouts or settlements of disputed claims may  
12 be counted for the purposes of subsection (1) of this section for five  
13 years after acquisition if real property and three years if not real  
14 property, even if they could not otherwise be counted under this  
15 chapter. The commissioner may allow reasonable extensions of these  
16 periods if replacement of the assets within the periods would not be  
17 possible without substantial loss.

18       (4) If an insurer does not own, or is unable to apply toward  
19 compliance with this chapter, an amount of assets equal to its minimum  
20 asset requirement, the commissioner may deem it to be financially  
21 hazardous under chapter 48.31 RCW.

22       NEW SECTION.    **Sec. 12.**    (1) The commissioner may require any of the  
23 following from a person subject to regulation under this chapter:

24       (a) Statements, reports, answers to questionnaires, and other  
25 information, and evidence thereof, in whatever reasonable form the  
26 commissioner designates, and at such reasonable intervals as the  
27 commissioner chooses;

28       (b) Full explanation of the programming of any data storage or  
29 communication system in use;

30       (c) That information from any books, records, electronic data  
31 processing systems, computers, or any other information storage system  
32 be made available to the commissioner at a reasonable time and in a  
33 reasonable manner.

34       (2) The commissioner may prescribe forms for the reports under  
35 subsection (1) of this section and specify who shall execute or certify  
36 the reports. The forms for the reports required under subsection (1)

1 of this section shall be consistent, so far as practicable, with those  
2 prescribed by other jurisdictions.

3 (3) The commissioner may prescribe reasonable minimum standards and  
4 techniques of accounting and data handling to ensure that timely and  
5 reliable information will exist and will be available to the  
6 commissioner.

7 (4) Any officer, manager or general agent of an insurer subject to  
8 this chapter, any person controlling or having a contract under which  
9 the person has a right to control the insurer, whether exclusively or  
10 otherwise, or a person with executive authority over or in charge of  
11 any segment of the insurer's affairs, shall reply promptly in writing  
12 or in other reasonably designated form, to a written inquiry from the  
13 commissioner requesting a reply. A timely response is one that is  
14 received by the commissioner within fifteen business days from receipt  
15 of the inquiry. Failure to make a timely response constitutes a  
16 violation of this section.

17 (5) The commissioner may require that any communication made to the  
18 commissioner under this section be verified.

19 (6) A communication to the commissioner, or to an expert or  
20 consultant retained by the commissioner, required by the provisions of  
21 this chapter shall not subject the person making it to an action for  
22 damages for the communication in the absence of actual malice.

23 (7) Notwithstanding the provisions of subsection (6) of this  
24 section, the commissioner may bring suit against any person providing  
25 information required under this chapter that is not truthful and  
26 accurate.

27 NEW SECTION. **Sec. 13.** The commissioner may retain at the  
28 insurer's expense attorneys, actuaries, accountants, and other experts  
29 not otherwise a part of the commissioner's staff as may be reasonably  
30 necessary to assist in reviewing the insurer's investments. Persons so  
31 retained shall be under the direction and control of the commissioner  
32 and shall act in a purely advisory capacity.

33 NEW SECTION. **Sec. 14.** (1) If the commissioner determines that an  
34 insurer's investment practices do not meet the provisions of this  
35 chapter, the commissioner may, after notification to the insurer of the



1 commissioner's findings, order the insurer to make changes necessary to  
2 comply with the provisions of this chapter.

3 (2) If the commissioner determines that by reason of the financial  
4 condition, current investment practice, or current investment plan of  
5 an insurer, the interests of insureds, creditors, or the general public  
6 are or may be endangered, the commissioner may impose reasonable  
7 additional restrictions upon the admissibility or valuation of  
8 investments or may impose restrictions on the investment practices of  
9 an insurer, including prohibition or divestment.

10 (3) The commissioner may count toward satisfaction of the minimum  
11 asset requirement any assets in which an insurer is required to invest  
12 under the laws of a country other than the United States as a condition  
13 for doing business in that country if the commissioner finds that  
14 counting them does not endanger the interests of insureds, creditors,  
15 or the general public.

16 (4) If the commissioner is satisfied by evidence of the financial  
17 stability of an insurer and the competence of management and its  
18 investment advisors, the commissioner, after a hearing, may by order  
19 adjust the class limitations in section 8 of this act, for that  
20 insurer, to the extent that the commissioner is satisfied that the  
21 interests of insureds, creditors, and the public of this state are  
22 sufficiently protected in other ways. Adjustments granted with respect  
23 to section 8 of this act, in aggregate, are limited to an amount equal  
24 to ten percent of the insurer's liabilities.

25 NEW SECTION. **Sec. 15.** An insurer aggrieved by an order or any  
26 other act or failure to act of the commissioner regarding compliance  
27 with this chapter or rules adopted under this chapter may request a  
28 hearing by following the procedures of chapters 48.04 and 34.05 RCW.

29 NEW SECTION. **Sec. 16.** The investment policy, or information  
30 related to the investment policy provided to the commissioner for  
31 review under this chapter shall be considered confidential and shall  
32 not be a public record or subject to subpoena.

33 NEW SECTION. **Sec. 17.** (1) This chapter prevails over any other  
34 statute purporting to authorize an insurer to make a particular

1 investment if the other statute was enacted before July 1, 2012, and  
2 prevails over any statute enacted after July 1, 2012, unless the latter  
3 specifically includes amendments made to this chapter.

4 (2) An insurer shall value its assets in accordance with the  
5 valuation standards of the national association of insurance  
6 commissioners to the extent those standards are consistent with the  
7 statutes of this state or rules or orders of the commissioner.

8 NEW SECTION. **Sec. 18.** (1) The commissioner may, in accordance  
9 with chapter 34.05 RCW, adopt rules interpreting and implementing the  
10 provisions of this chapter.

11 (2) The commissioner may, in accordance with chapter 34.05 RCW,  
12 adopt special investment restrictions as follows:

13 (a) The commissioner may by rule prescribe for defined classes of  
14 insurers special procedural requirements including special reports,  
15 prior approval, or subsequent disapproval of investments.

16 (b) The commissioner may by rule prescribe substantive restrictions  
17 on investments of defined classes of insurers, including:

18 (i) Specification of classes of assets that may not be counted  
19 toward satisfaction of the minimum asset requirement even though they  
20 may be counted for unrestricted insurers;

21 (ii) Specification of maximum amounts of assets that may be  
22 invested in a single investment, or an issue, a class or a group of  
23 classes of investments, expressed as percentages of total assets,  
24 capital, surplus, legal reserves, or other variables;

25 (iii) Prescription of qualitative tests for investments and  
26 conditions under which investments may be made, including requirements  
27 of specified ratings from investment advisory services, listing on  
28 specified stock exchanges, collateral, marketability, currency  
29 matching, and the financial and legal status of the issuer and its  
30 earnings capacity.

31 (3) If the commissioner is satisfied by evidence of the financial  
32 stability of an insurer and the competence of management and its  
33 investment advisors, the commissioner, after a hearing, may by order  
34 grant an exemption to that insurer from any restriction under  
35 subsection (2) of this section to the extent that the commissioner is  
36 satisfied that the interests of insureds, creditors, and the general  
37 public of this state are protected in other ways.

1            NEW SECTION.    **Sec. 19.**    (1) By December 1, 2011, the insurance  
2 commissioner must submit a report to the governor and appropriate  
3 committees of the legislature, providing the following information:

4            (a) The estimated total dollar amount of insurance company assets  
5 affected by this act;

6            (b) An analysis outlining the pertinent investment changes made in  
7 this act and the reasons for such changes;

8            (c) An analysis detailing any projected risks to policyholders and  
9 taxpayers associated with the implementation of this act and any  
10 provisions included in this act to protect such stakeholders against  
11 such risks;

12           (d) A copy of proposed rules to implement this act;

13           (e) A general outline of any managerial and personnel modifications  
14 required in the office of the insurance commissioner to implement this  
15 act;

16           (f) An explanation describing why an insurance company's investment  
17 policy must be exempt from public disclosure and subpoena; and

18           (g) An analysis identifying other states that have: (i) Adopted  
19 this model legislation in both substantial or limited part, and the  
20 reasons for such decision; and (ii) explicitly chosen not to adopt this  
21 model legislation and the reasons for such decision.

22           (2) In preparing the report the commissioner shall consult with the  
23 department of financial institutions and the state investment board.

24           **Sec. 20.**    RCW 48.13.350 and 2009 c 549 s 7055 are each amended to  
25 read as follows:

26           ~~((1) As to each investment or loan of the funds of a domestic  
27 insurer a written record in permanent form showing the authorization  
28 thereof shall be made and signed by an officer of the insurer or by the  
29 chair of such committee authorizing the investment or loan.~~

30           ~~(2) As to each such investment or loan the insurer's records))~~ A  
31 written record of each investment or loan of the funds of a domestic  
32 insurer shall contain:

33           ~~((a))~~ (1) In the case of loans: The name of the borrower; the  
34 location and legal description of the property; a physical description,  
35 and the appraised value of the security; the amount of the loan, rate  
36 of interest and terms of repayment.

1        ~~((b))~~ (2) In the case of securities: The name of the obligor; a  
2 description of the security and the record of earnings; the amount  
3 invested, the rate of interest or dividend, the maturity and yield  
4 based upon the purchase price.

5        ~~((c))~~ (3) In the case of real estate: The location and legal  
6 description of the property; a physical description and the appraised  
7 value; the purchase price and terms.

8        ~~((d))~~ (4) In the case of all investments:

9        ~~((i))~~ (a) The amount of expenses and commissions if any incurred  
10 on account of any investment or loan and by whom and to whom payable if  
11 not covered by contracts with mortgage loan representatives or  
12 correspondents which are part of the insurer's records.

13        ~~((ii))~~ (b) The name of any officer or director of the insurer  
14 having any direct, indirect, or contingent interest in the securities  
15 or loan representing the investment, or in the assets of the person in  
16 whose behalf the investment or loan is made, and the nature of such  
17 interest.

18        **Sec. 21.** RCW 42.56.400 and 2010 c 172 s 2 and 2010 c 97 s 3 are  
19 each reenacted and amended to read as follows:

20        The following information relating to insurance and financial  
21 institutions is exempt from disclosure under this chapter:

22        (1) Records maintained by the board of industrial insurance appeals  
23 that are related to appeals of crime victims' compensation claims filed  
24 with the board under RCW 7.68.110;

25        (2) Information obtained and exempted or withheld from public  
26 inspection by the health care authority under RCW 41.05.026, whether  
27 retained by the authority, transferred to another state purchased  
28 health care program by the authority, or transferred by the authority  
29 to a technical review committee created to facilitate the development,  
30 acquisition, or implementation of state purchased health care under  
31 chapter 41.05 RCW;

32        (3) The names and individual identification data of either all  
33 owners or all insureds, or both, received by the insurance commissioner  
34 under chapter 48.102 RCW;

35        (4) Information provided under RCW 48.30A.045 through 48.30A.060;

36        (5) Information provided under RCW 48.05.510 through 48.05.535,

1 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600  
2 through 48.46.625;

3 (6) Examination reports and information obtained by the department  
4 of financial institutions from banks under RCW 30.04.075, from savings  
5 banks under RCW 32.04.220, from savings and loan associations under RCW  
6 33.04.110, from credit unions under RCW 31.12.565, from check cashers  
7 and sellers under RCW 31.45.030(3), and from securities brokers and  
8 investment advisers under RCW 21.20.100, all of which is confidential  
9 and privileged information;

10 (7) Information provided to the insurance commissioner under RCW  
11 48.110.040(3);

12 (8) Documents, materials, or information obtained by the insurance  
13 commissioner under RCW 48.02.065, all of which are confidential and  
14 privileged;

15 (9) Confidential proprietary and trade secret information provided  
16 to the commissioner under RCW 48.31C.020 through 48.31C.050 and  
17 48.31C.070;

18 (10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and  
19 7.70.140 that, alone or in combination with any other data, may reveal  
20 the identity of a claimant, health care provider, health care facility,  
21 insuring entity, or self-insurer involved in a particular claim or a  
22 collection of claims. For the purposes of this subsection:

23 (a) "Claimant" has the same meaning as in RCW 48.140.010(2).

24 (b) "Health care facility" has the same meaning as in RCW  
25 48.140.010(6).

26 (c) "Health care provider" has the same meaning as in RCW  
27 48.140.010(7).

28 (d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).

29 (e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

30 (11) Documents, materials, or information obtained by the insurance  
31 commissioner under RCW 48.135.060;

32 (12) Documents, materials, or information obtained by the insurance  
33 commissioner under RCW 48.37.060;

34 (13) Confidential and privileged documents obtained or produced by  
35 the insurance commissioner and identified in RCW 48.37.080;

36 (14) Documents, materials, or information obtained by the insurance  
37 commissioner under RCW 48.37.140;

1 (15) Documents, materials, or information obtained by the insurance  
2 commissioner under RCW 48.17.595;

3 (16) Documents, materials, or information obtained by the insurance  
4 commissioner under RCW 48.102.051(1) and 48.102.140 (3) and (7)(a)(ii);

5 (17) Documents, materials, or information obtained by the insurance  
6 commissioner in the commissioner's capacity as receiver under RCW  
7 48.31.025 and 48.99.017, which are records under the jurisdiction and  
8 control of the receivership court. The commissioner is not required to  
9 search for, log, produce, or otherwise comply with the public records  
10 act for any records that the commissioner obtains under chapters 48.31  
11 and 48.99 RCW in the commissioner's capacity as a receiver, except as  
12 directed by the receivership court; (~~and~~)

13 (18) Documents, materials, or information obtained by the insurance  
14 commissioner under section 16 of this act; and

15 (19) Data, information, and documents provided by a carrier  
16 pursuant to section 1, chapter 172, Laws of 2010.

17 NEW SECTION. **Sec. 22.** The following acts or parts of acts are  
18 each repealed:

19 (1) RCW 48.13.010 (Scope of chapter--Eligible investments) and 1973  
20 c 151 s 2 & 1947 c 79 s .13.01;

21 (2) RCW 48.13.020 (General qualifications) and 1983 1st ex.s. c 32  
22 s 2, 1982 c 218 s 2, 1967 ex.s. c 95 s 11, & 1947 c 79 s .13.02;

23 (3) RCW 48.13.030 (Limitation on securities of one entity or a  
24 depository institution) and 2001 c 21 s 1, 1993 c 92 s 1, & 1947 c 79  
25 s .13.03;

26 (4) RCW 48.13.040 (Public obligations) and 1947 c 79 s .13.04;

27 (5) RCW 48.13.050 (Corporate obligations) and 1993 c 92 s 2 & 1947  
28 c 79 s .13.05;

29 (6) RCW 48.13.060 (Terms defined) and 1993 c 92 s 3 & 1947 c 79 s  
30 .13.06;

31 (7) RCW 48.13.070 (Securities of merged or reorganized  
32 institutions) and 1947 c 79 s .13.07;

33 (8) RCW 48.13.080 (Preferred or guaranteed stocks) and 1947 c 79 s  
34 .13.08;

35 (9) RCW 48.13.090 (Trustees' or receivers' obligations) and 1947 c  
36 79 s .13.09;

1 (10) RCW 48.13.100 (Equipment trust certificates) and 1947 c 79 s  
2 .13.10;

3 (11) RCW 48.13.110 (Mortgages, deeds of trust, mortgage bonds,  
4 notes, contracts) and 1975 1st ex.s. c 154 s 1, 1969 ex.s. c 241 s 4,  
5 & 1947 c 79 s .13.11;

6 (12) RCW 48.13.120 (Investments limited by property value) and 2007  
7 c 80 s 6, 1993 c 92 s 7, 1969 ex.s. c 241 s 5, 1967 c 150 s 11, 1955 c  
8 303 s 1, 1949 c 190 s 16, & 1947 c 79 s .13.12;

9 (13) RCW 48.13.125 (Mortgage loans on one family dwellings--  
10 Limitation on amortization) and 1969 ex.s. c 241 s 6 & 1967 c 150 s 10;

11 (14) RCW 48.13.130 ("Encumbrance" defined) and 1955 c 303 s 2 &  
12 1947 c 79 s .13.13;

13 (15) RCW 48.13.140 (Appraisal of property--Insurance--Limit of  
14 loan) and 1967 ex.s. c 95 s 12, 1955 c 303 s 3, & 1947 c 79 s .13.14;

15 (16) RCW 48.13.150 (Auxiliary chattel mortgages) and 1947 c 79 s  
16 .13.15;

17 (17) RCW 48.13.160 (Real property owned--Home office building) and  
18 1981 c 339 s 6, 1973 c 151 s 3, 1969 ex.s. c 241 s 7, 1967 ex.s. c 95  
19 s 13, 1949 c 190 s 17, & 1947 c 79 s .13.16;

20 (18) RCW 48.13.170 (Disposal of real property--Time limit) and 1967  
21 ex.s. c 95 s 14 & 1947 c 79 s .13.17;

22 (19) RCW 48.13.180 (Foreign securities) and 2003 c 251 s 1 & 1947  
23 c 79 s .13.18;

24 (20) RCW 48.13.190 (Policy loans) and 1947 c 79 s .13.19;

25 (21) RCW 48.13.200 (Savings and share accounts) and 1947 c 79 s  
26 .13.20;

27 (22) RCW 48.13.210 (Insurance stocks) and 1979 ex.s. c 199 s 3,  
28 1979 ex.s. c 130 s 4, & 1947 c 79 s .13.21;

29 (23) RCW 48.13.218 (Limitation on insurer loans or investments) and  
30 2001 c 90 s 1;

31 (24) RCW 48.13.220 (Common stocks--Investment--Acquisition--  
32 Engaging in certain businesses) and 2008 c 217 s 5, 1982 c 218 s 3,  
33 1973 c 151 s 4, 1949 c 190 s 18, & 1947 c 79 s .13.22;

34 (25) RCW 48.13.230 (Collateral loans) and 1947 c 79 s .13.23;

35 (26) RCW 48.13.240 (Miscellaneous investments) and 2004 c 88 s 1,  
36 1982 c 218 s 4, & 1947 c 79 s .13.24;

37 (27) RCW 48.13.250 (Special consent investments) and 1947 c 79 s  
38 .13.25;

1 (28) RCW 48.13.260 (Required investments for capital and reserves)  
2 and 1971 ex.s. c 13 s 16 & 1947 c 79 s .13.26;

3 (29) RCW 48.13.265 (Investments secured by real estate--Amount  
4 restricted) and 2007 c 80 s 7 & 1957 c 193 s 8;

5 (30) RCW 48.13.270 (Prohibited investments) and 1995 c 84 s 1, 1993  
6 c 92 s 4, 1982 c 218 s 5, & 1947 c 79 s .13.27;

7 (31) RCW 48.13.273 (Acquisition of medium and lower grade  
8 obligations--Definitions--Limitations--Rules) and 1993 c 92 s 5;

9 (32) RCW 48.13.275 (Obligations rated by the securities valuation  
10 office) and 2007 c 80 s 8 & 1993 c 92 s 6;

11 (33) RCW 48.13.280 (Securities underwriting, agreements to withhold  
12 or repurchase, prohibited) and 1947 c 79 s .13.28;

13 (34) RCW 48.13.285 (Derivative transactions--Restrictions--  
14 Definitions--Rules) and 1997 c 317 s 1;

15 (35) RCW 48.13.290 (Disposal of ineligible property or securities)  
16 and 1982 c 218 s 6, 1973 c 151 s 5, & 1947 c 79 s .13.29; and

17 (36) RCW 48.13.340 (Authorization of investments) and 1949 c 190 s  
18 19 & 1947 c 79 s .13.34.

19 NEW SECTION. **Sec. 23.** Sections 1 through 18 of this act are each  
20 added to chapter 48.13 RCW.

21 NEW SECTION. **Sec. 24.** This act takes effect July 1, 2012.

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