
SENATE BILL 5121

State of Washington

62nd Legislature

2011 Regular Session

By Senator Hobbs; by request of Insurance Commissioner

Read first time 01/14/11. Referred to Committee on Financial Institutions, Housing & Insurance.

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; repealing RCW 48.13.010, 48.13.020,
4 48.13.030, 48.13.040, 48.13.050, 48.13.060, 48.13.070, 48.13.080,
5 48.13.090, 48.13.100, 48.13.110, 48.13.120, 48.13.125, 48.13.130,
6 48.13.140, 48.13.150, 48.13.160, 48.13.170, 48.13.180, 48.13.190,
7 48.13.200, 48.13.210, 48.13.218, 48.13.220, 48.13.230, 48.13.240,
8 48.13.250, 48.13.260, 48.13.265, 48.13.270, 48.13.273, 48.13.275,
9 48.13.280, 48.13.285, 48.13.290, and 48.13.340; and providing an
10 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 authorized
33 by section 7(4) of this act, shall not exceed three percent of admitted
34 assets in the case of life insurers, and five percent in the case of
35 non-life insurers. Investments in the voting securities of a
36 depository institution, or any company that controls a depository
37 institution, shall not exceed five percent of the insurer's admitted
38 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 January 1, 2012, and
2 prevails over any statute enacted after January 1, 2012, unless the
3 latter 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 **Sec. 19.** RCW 48.13.350 and 2009 c 549 s 7055 are each amended to
2 read as follows:

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

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

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

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

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

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

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

26 ~~((ii))~~ (b) The name of any officer or director of the insurer
27 having any direct, indirect, or contingent interest in the securities
28 or loan representing the investment, or in the assets of the person in
29 whose behalf the investment or loan is made, and the nature of such
30 interest.

31 **Sec. 20.** RCW 42.56.400 and 2010 c 172 s 2 and 2010 c 97 s 3 are
32 each reenacted and amended to read as follows:

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

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

1 (2) Information obtained and exempted or withheld from public
2 inspection by the health care authority under RCW 41.05.026, whether
3 retained by the authority, transferred to another state purchased
4 health care program by the authority, or transferred by the authority
5 to a technical review committee created to facilitate the development,
6 acquisition, or implementation of state purchased health care under
7 chapter 41.05 RCW;

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

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

12 (5) Information provided under RCW 48.05.510 through 48.05.535,
13 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600
14 through 48.46.625;

15 (6) Examination reports and information obtained by the department
16 of financial institutions from banks under RCW 30.04.075, from savings
17 banks under RCW 32.04.220, from savings and loan associations under RCW
18 33.04.110, from credit unions under RCW 31.12.565, from check cashers
19 and sellers under RCW 31.45.030(3), and from securities brokers and
20 investment advisers under RCW 21.20.100, all of which is confidential
21 and privileged information;

22 (7) Information provided to the insurance commissioner under RCW
23 48.110.040(3);

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

27 (9) Confidential proprietary and trade secret information provided
28 to the commissioner under RCW 48.31C.020 through 48.31C.050 and
29 48.31C.070;

30 (10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and
31 7.70.140 that, alone or in combination with any other data, may reveal
32 the identity of a claimant, health care provider, health care facility,
33 insuring entity, or self-insurer involved in a particular claim or a
34 collection of claims. For the purposes of this subsection:

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

36 (b) "Health care facility" has the same meaning as in RCW
37 48.140.010(6).

1 (c) "Health care provider" has the same meaning as in RCW
2 48.140.010(7).

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

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

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

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

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

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

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

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

17 (17) Documents, materials, or information obtained by the insurance
18 commissioner in the commissioner's capacity as receiver under RCW
19 48.31.025 and 48.99.017, which are records under the jurisdiction and
20 control of the receivership court. The commissioner is not required to
21 search for, log, produce, or otherwise comply with the public records
22 act for any records that the commissioner obtains under chapters 48.31
23 and 48.99 RCW in the commissioner's capacity as a receiver, except as
24 directed by the receivership court; ((and))

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

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

29 NEW SECTION. **Sec. 21.** The following acts or parts of acts are
30 each repealed:

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

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

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

1 (4) RCW 48.13.040 (Public obligations) and 1947 c 79 s .13.04;
2 (5) RCW 48.13.050 (Corporate obligations) and 1993 c 92 s 2 & 1947
3 c 79 s .13.05;
4 (6) RCW 48.13.060 (Terms defined) and 1993 c 92 s 3 & 1947 c 79 s
5 .13.06;
6 (7) RCW 48.13.070 (Securities of merged or reorganized
7 institutions) and 1947 c 79 s .13.07;
8 (8) RCW 48.13.080 (Preferred or guaranteed stocks) and 1947 c 79 s
9 .13.08;
10 (9) RCW 48.13.090 (Trustees' or receivers' obligations) and 1947 c
11 79 s .13.09;
12 (10) RCW 48.13.100 (Equipment trust certificates) and 1947 c 79 s
13 .13.10;
14 (11) RCW 48.13.110 (Mortgages, deeds of trust, mortgage bonds,
15 notes, contracts) and 1975 1st ex.s. c 154 s 1, 1969 ex.s. c 241 s 4,
16 & 1947 c 79 s .13.11;
17 (12) RCW 48.13.120 (Investments limited by property value) and 2007
18 c 80 s 6, 1993 c 92 s 7, 1969 ex.s. c 241 s 5, 1967 c 150 s 11, 1955 c
19 303 s 1, 1949 c 190 s 16, & 1947 c 79 s .13.12;
20 (13) RCW 48.13.125 (Mortgage loans on one family dwellings--
21 Limitation on amortization) and 1969 ex.s. c 241 s 6 & 1967 c 150 s 10;
22 (14) RCW 48.13.130 ("Encumbrance" defined) and 1955 c 303 s 2 &
23 1947 c 79 s .13.13;
24 (15) RCW 48.13.140 (Appraisal of property--Insurance--Limit of
25 loan) and 1967 ex.s. c 95 s 12, 1955 c 303 s 3, & 1947 c 79 s .13.14;
26 (16) RCW 48.13.150 (Auxiliary chattel mortgages) and 1947 c 79 s
27 .13.15;
28 (17) RCW 48.13.160 (Real property owned--Home office building) and
29 1981 c 339 s 6, 1973 c 151 s 3, 1969 ex.s. c 241 s 7, 1967 ex.s. c 95
30 s 13, 1949 c 190 s 17, & 1947 c 79 s .13.16;
31 (18) RCW 48.13.170 (Disposal of real property--Time limit) and 1967
32 ex.s. c 95 s 14 & 1947 c 79 s .13.17;
33 (19) RCW 48.13.180 (Foreign securities) and 2003 c 251 s 1 & 1947
34 c 79 s .13.18;
35 (20) RCW 48.13.190 (Policy loans) and 1947 c 79 s .13.19;
36 (21) RCW 48.13.200 (Savings and share accounts) and 1947 c 79 s
37 .13.20;

1 (22) RCW 48.13.210 (Insurance stocks) and 1979 ex.s. c 199 s 3,
2 1979 ex.s. c 130 s 4, & 1947 c 79 s .13.21;
3 (23) RCW 48.13.218 (Limitation on insurer loans or investments) and
4 2001 c 90 s 1;
5 (24) RCW 48.13.220 (Common stocks--Investment--Acquisition--
6 Engaging in certain businesses) and 2008 c 217 s 5, 1982 c 218 s 3,
7 1973 c 151 s 4, 1949 c 190 s 18, & 1947 c 79 s .13.22;
8 (25) RCW 48.13.230 (Collateral loans) and 1947 c 79 s .13.23;
9 (26) RCW 48.13.240 (Miscellaneous investments) and 2004 c 88 s 1,
10 1982 c 218 s 4, & 1947 c 79 s .13.24;
11 (27) RCW 48.13.250 (Special consent investments) and 1947 c 79 s
12 .13.25;
13 (28) RCW 48.13.260 (Required investments for capital and reserves)
14 and 1971 ex.s. c 13 s 16 & 1947 c 79 s .13.26;
15 (29) RCW 48.13.265 (Investments secured by real estate--Amount
16 restricted) and 2007 c 80 s 7 & 1957 c 193 s 8;
17 (30) RCW 48.13.270 (Prohibited investments) and 1995 c 84 s 1, 1993
18 c 92 s 4, 1982 c 218 s 5, & 1947 c 79 s .13.27;
19 (31) RCW 48.13.273 (Acquisition of medium and lower grade
20 obligations--Definitions--Limitations--Rules) and 1993 c 92 s 5;
21 (32) RCW 48.13.275 (Obligations rated by the securities valuation
22 office) and 2007 c 80 s 8 & 1993 c 92 s 6;
23 (33) RCW 48.13.280 (Securities underwriting, agreements to withhold
24 or repurchase, prohibited) and 1947 c 79 s .13.28;
25 (34) RCW 48.13.285 (Derivative transactions--Restrictions--
26 Definitions--Rules) and 1997 c 317 s 1;
27 (35) RCW 48.13.290 (Disposal of ineligible property or securities)
28 and 1982 c 218 s 6, 1973 c 151 s 5, & 1947 c 79 s .13.29; and
29 (36) RCW 48.13.340 (Authorization of investments) and 1949 c 190 s
30 19 & 1947 c 79 s .13.34.

31 NEW SECTION. **Sec. 22.** Sections 1 through 18 of this act are each
32 added to chapter 48.13 RCW.

33 NEW SECTION. **Sec. 23.** This act takes effect January 1, 2012.

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