
SENATE BILL 6022

State of Washington

64th Legislature

2015 Regular Session

By Senator Chase

Read first time 02/18/15. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to the investments of insurers; amending RCW
2 48.13.005, 48.13.009, 48.13.031, 48.13.061, 48.13.071, and 48.13.101;
3 and repealing RCW 48.13.021.

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

5 **Sec. 1.** RCW 48.13.005 and 2011 c 188 s 1 are each amended to
6 read as follows:

7 (1) ~~The ((purpose of chapter 188, Laws of 2011 is to protect and~~
8 ~~to further the interests of insureds, creditors, and the general~~
9 ~~public by providing, with minimum interference with management~~
10 ~~initiative and judgment,)) Washington state insurance code governs
11 the investments of insurers. The purpose of the regulation of
12 insurers' investments is to protect and to further the interests of
13 consumers, taxpayers, health care providers, insureds, creditors, and
14 the general public by promoting insurer solvency, liquidity, and
15 financial strength. This will be accomplished through the application
16 of investment standards that facilitate a reasonable balance of the
17 following objectives: (a) To preserve principal; (b) to assure safe
18 and reasonable diversification of investments as to type, issuer, and
19 credit quality; (c) to avoid a concentration of risky assets; and (d)
20 to promote an adequate rate of return for insurers so that its
21 obligations are met and financial strength is sufficient to cover~~

1 reasonably foreseeable contingencies with prudent standards for the
2 development and administration of insurer investment programs.

3 (2) This chapter (~~(188, Laws of 2011)~~) and the rules adopted to
4 interpret and implement it apply to domestic insurers, United States
5 branches of alien insurers entered through this state, alien insurers
6 admitted and using this state as their port of entry, domestic
7 fraternal benefit societies formed pursuant to chapter 48.36A RCW,
8 domestic health care service contractors formed pursuant to chapter
9 48.44 RCW, domestic health maintenance organizations formed pursuant
10 to chapter 48.46 RCW, and domestic self-funded multiple employer
11 welfare arrangements formed pursuant to chapter 48.125 RCW.

12 (3) Separate accounts established in accordance with RCW
13 48.18A.020 shall be evaluated separately pursuant to that section.

14 **Sec. 2.** RCW 48.13.009 and 2011 c 188 s 2 are each amended to
15 read as follows:

16 The definitions in this section apply throughout this chapter
17 unless the context clearly requires otherwise.

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

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

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

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

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

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

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

3 (8) ~~"Minimum financial security benchmark" is the amount an~~
4 ~~insurer is required to have under RCW 48.13.021.~~

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

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

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

20 ((12)) (10) "Securities valuation office listed mutual fund"
21 means a money market mutual fund or short-term bond fund that is
22 registered with the United States securities and exchange commission
23 under the investment company act of 1940, and that has been
24 determined by the national association of insurance commissioners
25 securities valuation office to be eligible for special reserve and
26 reporting treatment, other than as common stock.

27 ((13)) (11) "Surplus" means the excess of admitted assets over
28 all liabilities.

29 ((14)) (12) "United States government securities" means any
30 security defined in the purposes and procedures manual of the
31 national association of insurance commissioners securities valuation
32 office as a United States government security.

33 **Sec. 3.** RCW 48.13.031 and 2011 c 188 s 4 are each amended to
34 read as follows:

35 (1) (~~Subject to the provisions of this chapter,~~) An insurer may
36 loan or invest its funds, and may buy, sell, hold title to, possess,
37 occupy, pledge, convey, manage, protect, insure, and deal with its
38 investments, property, and other assets (~~to the same extent as any~~

1 ~~other person or corporation under the laws of this state and of the~~
2 ~~United States))~~ only as prescribed by this chapter.

3 (2) With respect to all of the insurer's investments, the board
4 of directors of an insurer shall exercise the judgment and care,
5 under the circumstances then prevailing, that persons of reasonable
6 prudence, discretion, and intelligence exercise in the management of
7 a like enterprise, not in regard to speculating but in regard to the
8 permanent disposition of their funds, considering the probable income
9 as well as the probable safety of their capital. Investments shall be
10 of sufficient value, liquidity, and diversity to assure the insurer's
11 ability to meet its outstanding obligations based on reasonable
12 assumptions as to new business production for current lines of
13 business. As part of its exercise of judgment and care, the board of
14 directors shall take into account the prudence evaluation criteria of
15 RCW 48.13.041.

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

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

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

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

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

29 **Sec. 4.** RCW 48.13.061 and 2011 c 188 s 7 are each amended to
30 read as follows:

31 The following classes of investments may be counted for the
32 purposes specified in RCW 48.13.101, whether they are made directly
33 or as a participant in a partnership, joint venture, or limited
34 liability company. Investments in partnerships, joint ventures, and
35 limited liability companies are authorized investments only pursuant
36 to subsection (12) of this section:

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

1 (2) Bonds, debt-like preferred stock, and other evidences of
2 indebtedness of governmental units in the United States ((~~or~~
3 ~~Canada~~)), or the instrumentalities of the governmental units, or
4 private business entities domiciled in the United States ((~~or~~
5 ~~Canada~~)), including asset-backed securities and securities valuation
6 office listed mutual funds;

7 (3) Loans secured by first mortgages, first trust deeds, or other
8 first security interests in real property located in the United
9 States ((~~or~~ ~~Canada~~)) or secured by insurance against default issued
10 by a government insurance corporation of the United States ((~~or~~
11 ~~Canada~~)) or by an insurer authorized to do business in this state;

12 (4) Common stock or equity-like preferred stock or equity
13 interests in any United States ((~~or~~ ~~Canadian~~)) business entity, or
14 shares of mutual funds registered with the securities and exchange
15 commission of the United States under the investment company act of
16 1940, other than securities valuation office listed mutual funds,
17 and, subsidiaries, as defined in RCW 48.31B.005 or 48.31C.010,
18 engaged exclusively in the following businesses:

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

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

25 (c) Rendering management, sales, or other related services to any
26 investment company subject to the federal investment company act of
27 1940, as amended;

28 (d) Rendering investment advice;

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

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

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

1 (h) Acting as administrative agent for a government
2 instrumentality which is performing an insurance function or is
3 responsible for a health or welfare program;

4 (i) Financing of insurance premiums;

5 (j) Any other business activity reasonably ancillary to an
6 insurance business;

7 (k) Owning one or more subsidiary;

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

10 (ii) Businesses specified in (a) through (k) of this subsection
11 inclusive; or

12 (iii) Any combination of such insurers and businesses;

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

15 (6) Real property, together with the fixtures, furniture,
16 furnishings, and equipment pertaining thereto in the United States
17 (~~or Canada~~), which produces or after suitable improvement can
18 reasonably be expected to produce income;

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

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

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

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

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

33 (12) Investments not otherwise permitted by this section, and not
34 specifically prohibited by statute, to the extent of not more than
35 five percent of the first five hundred million dollars of the
36 insurer's admitted assets plus ten percent of the insurer's admitted
37 assets exceeding five hundred million dollars.

38 **Sec. 5.** RCW 48.13.071 and 2011 c 188 s 8 are each amended to
39 read as follows:

1 (1) Class limitations. For the purposes of RCW 48.13.101, the
2 following limitations on classes of investments apply:

3 (a) Investments authorized by RCW 48.13.061(2), and investments
4 authorized by RCW 48.13.061(7) that are of the types described in RCW
5 48.13.061(2);

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

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

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

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

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

18 (b) Investments authorized by RCW 48.13.061(3), forty-five
19 percent of admitted assets in the case of life insurers and twenty-
20 five percent of admitted assets in the case of nonlife insurers;

21 (c) Investments authorized by RCW 48.13.061(4), other than
22 subsidiaries of the types authorized under RCW 48.13.061(4) (a)
23 through (k), twenty percent of admitted assets in the case of life
24 insurers and twenty-five percent of admitted assets in the case of
25 nonlife insurers;

26 (i) Individual investments authorized by RCW 48.13.061(4), except
27 for subsidiaries, shall be limited to ten percent of the voting
28 interest in any one entity;

29 (ii) Investments authorized in RCW 48.13.061(4) in one or more
30 subsidiaries shall be limited to the lesser of ten percent of
31 admitted assets or fifty percent of surplus;

32 (d) Investments authorized by RCW 48.13.061(5), ten percent of
33 admitted assets;

34 (e) Investments authorized by RCW 48.13.061(6), twenty percent of
35 admitted assets in the case of life insurers, and ten percent of
36 admitted assets in the case of nonlife insurers;

37 (f) Investments authorized by RCW 48.13.061(7), (~~twenty~~) ten
38 percent of admitted assets. However, investments made in any one
39 foreign country pursuant to this subsection may not exceed five
40 percent of admitted assets;

1 (g) Investments authorized by RCW 48.13.061(8), two percent of
2 admitted assets; and

3 (h) Investments authorized by RCW 48.13.061(10), two percent of
4 admitted assets.

5 (2) Individual limitations. For purposes of determining
6 compliance with RCW 48.13.101, securities of a single issuer and its
7 affiliates, other than United States government securities and
8 subsidiaries authorized by RCW 48.13.061(4), shall not exceed three
9 percent of admitted assets in the case of life insurers, and five
10 percent in the case of nonlife insurers. Investments in the voting
11 securities of a depository institution, or any company that controls
12 a depository institution, shall not exceed five percent of the
13 insurer's admitted assets.

14 (3) Investment subsidiaries. For purposes of determining
15 compliance with the limitations of this section, the admitted portion
16 of assets of subsidiaries authorized by RCW 48.13.061(4) shall be
17 deemed to be owned directly by the insurer and any other investors in
18 proportion to the market value or if there is no market, the
19 reasonable value, of their interest in the subsidiaries.

20 ~~(4) ((Effect of quantity limitations. To the extent that~~
21 ~~investments exceed the limitations specified in subsections (1) and~~
22 ~~(2) of this section, the excess may be assigned to the investment~~
23 ~~class authorized in RCW 48.13.061(12), until that limit is exhausted.~~

24 ~~(5))~~ Special rule for mutual funds, pooled investment vehicles,
25 and other investment companies, excluding mutual funds listed on the
26 securities valuation office's United States direct obligations/full
27 faith and credit exempt list, class 1 list, and/or bond fund list
28 (securities valuation office listed mutual funds). At the discretion
29 of the commissioner, as may be deemed necessary in order to determine
30 compliance with this chapter in relation to limitations of particular
31 classes of investments, the commissioner may require that investments
32 in mutual funds, pooled investment vehicles, or other investment
33 companies be treated for purposes of this chapter as if the investor
34 owned directly its proportional share of the assets owned by the
35 mutual fund, pooled investment vehicle, or investment company to the
36 extent such individual nonsecurities valuation office listed mutual
37 funds, pooled investment vehicles, and other investment companies
38 exceed two percent of admitted assets or, in aggregate, ten percent
39 of admitted assets.

1 ~~((+6))~~ (5) Unless otherwise specified, an investment limitation
2 computed on the basis of an insurer's admitted assets or capital and
3 surplus shall relate to the amount required to be shown on the
4 statutory balance sheet of the insurer most recently required to be
5 filed with the commissioner.

6 ~~((+7))~~ (6) Investments authorized by RCW 48.13.061(3) shall not
7 exceed eighty percent of the fair value of the particular property at
8 the time of the investment, unless guaranteed or insured.

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

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

13 **Sec. 6.** RCW 48.13.101 and 2011 c 188 s 11 are each amended to
14 read as follows:

15 (1) Invested assets may be counted ~~((toward satisfaction of the~~
16 ~~minimum))~~ as assets ~~((requirement))~~ only so far as they are invested
17 in compliance with this chapter and applicable rules adopted and
18 orders issued by the commissioner pursuant to this chapter. Assets
19 other than invested assets may be counted ~~((toward satisfaction of~~
20 ~~the minimum asset requirement))~~ as assets at admitted annual
21 statement value.

22 (2) An investment held as an admitted asset by an insurer on
23 ~~((July 1, 2012, which))~~ the effective date of this section and which
24 was qualified under this chapter shall remain qualified as an
25 admitted asset under this chapter.

26 (3) Assets acquired in the bona fide enforcement of creditors'
27 rights or in bona fide workouts or settlements of disputed claims may
28 be counted for the purposes of subsection (1) of this section for
29 five years after acquisition if real property and three years if not
30 real property, even if they could not otherwise be counted under this
31 chapter. The commissioner may allow reasonable extensions of these
32 periods if replacement of the assets within the periods would not be
33 possible without substantial loss.

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

1 NEW SECTION. **Sec. 7.** RCW 48.13.021 (Minimum financial security
2 benchmark—Determination of amount) and 2011 c 188 s 3 are each
3 repealed.

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