



OFFICE OF
INSURANCE COMMISSIONER

June 2, 2010

Investment Modernization Interested Parties:

Thank you for participating in our drafting dialogue on May 24, 2010. The comments we received were helpful and have been seriously considered.

OIC's focus has to be on protecting those persons/entities who would be hurt in case of an insurer insolvency. Safety and liquidity of investments are two of the issues we consider most often and which guided our proposed draft legislation.

Based on your comments, we have made some changes to the draft that was originally proposed. We think that the draft as modified must be considered in its entirety and cannot be broken up; a change in one area may require a change in another area.

The following comments summarize the changes, based on your comments, to the original draft:

- Sec. 2 – add definition of surplus as subsection 9, and re-number as necessary;
- Sec. 7 – introductory paragraph reverts to model language, with clarification;
- Sec. 8(1)(c)(ii) – deleted "policyholder" as requested;
- Sec. 8(1)(f) – reverts to model language.

During our drafting dialogue on May 24, you indicated a desire to provide specific suggestions for modifications to our draft. Attached is our revised draft, and we request that your suggestions relate specifically to this revised draft. Your suggestions are an important part of our work toward a consensus bill.

During our May 24 dialogue, because we were able to work through the entire draft, we agreed to cancel the dialogue originally scheduled for June 9. If you can provide your specific suggestions by June 21, we will be able to consider and post them in time for our in-person dialogue scheduled for June 28.

We look forward to your specific drafting suggestions.

Sincerely,

A handwritten signature in blue ink, appearing to read "James T. Odiorne".

JAMES T. ODIORNE, CPA, JD
Deputy Insurance Commissioner
Company Supervision Division

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2 Blue font indicates a deviation from NAIC Investments of Insurers Model Act #283.
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12 AN ACT Relating to adopting the investments of insurers model act; reenacting and
13 amending RCW 42.56.400; adding new sections to chapter 48.13 RCW; repealing RCW 48.13.010,
14 48.13.020, 48.13.030, 48.13.040, 48.13.050, 48.13.060, 48.13.070, 48.13.080, 48.13.090, 48.13.100,
15 48.13.110, 48.13.120, 48.13.125, 48.13.1300, 48.13.140, 48.13.150, 48.13.160, 48.13.170, 48.13.180,
16 48.13.190, 48.13.200, 48.13.210, 48.13.218, 48.13.220, 48.13.230, 48.13.240, 48.13.250, 48.13.260,
17 48.13.265, 48.13.270, 48.13.273, 48.13.275, 48.13.280, 48.13.285, and 48.13.290; and prescribing
18 penalties.
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21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:
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25 NEW SECTION. Sec. 1. PURPOSE AND SCOPE. (1)The purpose of this Act is to protect and to
26 further the interests of insureds, creditors and the general public by providing, with minimum
27 interference with management initiative and judgment, prudent standards for the development and
28 administration of insurer investment programs.

29 (2)This Act and the(~~regulations~~) rules adopted to interpret and implement it apply to
30 domestic insurers, (~~and~~)U. S. branches of alien insurers entered through this state(~~, except for~~
31 ~~insurers organized pursuant to [cite statutes applicable to exempted insurers])alien insurers
32 admitted and using this state as their port-of-entry, domestic fraternal benefit societies formed
33 pursuant to chapter 48.36A RCW, domestic health care service contractors formed pursuant to
34 chapter 48.44 RCW, domestic health maintenance organizations formed pursuant to chapter 48.46
35 RCW, and domestic self-funded multiple employer welfare arrangements formed pursuant to chapter
36 48.125 RCW.~~

37 (3)Separate accounts established in accordance with (~~[cite statutes allowing the creation~~
38 ~~and maintenance of separate accounts]-~~) RCW 48.18A.020 shall be evaluated separately pursuant to
39 that section.

1
2 **NEW SECTION. Sec. 2. DEFINITIONS.** The definitions in this section apply throughout Title 48
3 RCW unless the context clearly requires otherwise.

4 (1)“Derivative instrument” means an item appropriately reported in schedule DB (derivative
5 instruments) or schedule DC (insurance futures and insurance futures options) of an insurer’s
6 statutory financial statement (or successor schedules), pursuant to applicable annual statement
7 instructions or statutory accounting guidelines.

8 (2)“Derivative transaction” means a transaction involving the use of one or more derivative
9 instruments.

10 (3)“Income generation” means a derivative transaction involving the writing of covered
11 options, caps or floors that is intended to generate income or enhance return.

12 (4)“Lower grade investment” means a rated credit instrument or debt-like preferred stock
13 rated 4, 5 or 6 by the Securities Valuation Office of the National Association of Insurance
14 Commissioners (NAIC) or any successor office.

15 (5)“Medium grade investment” means a rated credit instrument or debt-like preferred stock
16 rated 3 by the Securities Valuation Office of the NAIC or any successor office.

17 (6)“Minimum asset requirement” is the sum of an insurer’s liabilities and its minimum
18 financial security benchmark.

19 (7)“Minimum financial security benchmark” is the amount an insurer is required to have
20 under Section 3.

21 (8)“Replication” means a derivative transaction involving one or more derivative instruments
22 being used to modify the cash flow characteristics of one or more investments held by an insurer in a
23 manner so that the aggregate cash flows of the derivative instruments and investments reproduce
24 the cash flows of another investment having a higher risk-based capital charge than the risk-based
25 capital charge of the original ~~((investments))~~ instruments or investments.

26 (9) “Surplus”, as used in this chapter, means the excess of admitted assets over all liabilities.

27 (109)“SVO listed mutual fund” means a money market mutual fund or short-term bond fund
28 that is registered with the United States Securities and Exchange Commission under the Investment
29 Company Act of 1940, and that has been determined by the NAIC’s Securities Valuation Office to be
30 eligible for special reserve and reporting treatment (other than as common stock).

31
32 **NEW SECTION. Sec. 3. MINIMUM FINANCIAL SECURITY BENCHMARK.** (1)Minimum
33 Financial Security Benchmark.

34 (a)Unless otherwise established in accordance with ~~((Paragraphs (2) and (3) of this~~
35 subsection)) subsections 1(b) and 1(c) of this section, the amount of the minimum financial security
36 benchmark for an insurer shall be the greater of:

37 (i)The authorized control level risk-based capital applicable to the insurer as set forth by
38 ~~((insert reference to the risk-based capital law))~~ RCW 48.05.450 ~~((less the asset valuation reserve~~

1 ~~and voluntary investment reserves as defined under [insert reference to the risk-based capital law]~~
2 ~~); or~~

3 (ii)The minimum capital or minimum surplus required by statute or rule for maintenance of
4 an insurer's certificate of authority, certificate of registration, or other form of authorization to
5 transact business pursuant to Title 48 RCW.

6 (b)The commissioner may, in accordance with the factors in Subsection 2(b) of this section,
7 establish by order a minimum financial security benchmark to apply to a specific insurer provided it
8 is not less than the amount determined by ~~((Paragraph (1) of this))~~ subsection 1(a).

9 ~~((Except as provided in [cite applicable state laws consistent with drafting note following~~
10 Section 1B],)) The commissioner may establish by ~~((regulation))~~ rule a minimum financial security
11 benchmark that is a multiple of authorized control level risk-based capital to apply to any class of
12 insurers provided the amount established by the ~~((regulation))~~ rule is not less than the amount
13 determined in ~~((Paragraph (1) of this))~~ subsection 1(a).

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

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

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

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

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

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

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

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

27 and

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

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

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

34 (ii)The extent to which the risks in ~~((Paragraph (1) of this))~~ subsection 2(a) are independent
35 of each other or are related, and whether any dependency is direct or inverse;

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

37 (iv)The extent to which the insurer has provided protection against the contingencies in other
38 ways than the establishment of surplus; including redundancy of premiums, adjustability of

1 contracts under their terms, investment valuation reserves whether voluntary or mandatory,
2 appropriate reinsurance, the use of conservative actuarial assumptions to provide a margin of
3 security, reserve adjustments in recognition of previous rate inadequacies, contingency or
4 catastrophe reserves, diversification of assets and underwriting risks;

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

7 (vi)Any other relevant factors.
8

9 **NEW SECTION. Sec. 4. AUTHORIZED INVESTMENTS.** (1)Subject to the provisions of this Act,
10 an insurer may loan or invest its funds, and may buy, sell, hold title to, possess, occupy, pledge,
11 convey, manage, protect, insure and deal with its investments, property and other assets to the same
12 extent as any other person or corporation under the laws of this state and of the United States.

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

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

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

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

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

29 (d)Appropriate analyses are undertaken of the degree to which asset cash flows are adequate
30 to meet liability cash flows under different economic environments. These analyses shall be
31 conducted at least annually and make specific reference to economic conditions.
32

33 **NEW SECTION. Sec. 5. PRUDENCE EVALUATION CRITERIA.** The following factors shall be
34 evaluated by the insurer and considered along with its business in determining whether an
35 investment portfolio or investment policy is prudent; the commissioner shall consider the following
36 factors prior to making a determination that an insurer's investment portfolio or investment policy is
37 not prudent:

38 (1)General economic conditions;

- 1 (2)The possible effect of inflation or deflation;
- 2 (3)The expected tax consequences of investment decisions or strategies;
- 3 (4)The fairness and reasonableness of the terms of an investment considering its probable
- 4 risk and reward characteristics and relationship to the investment portfolio as a whole;
- 5 (5)The extent of the diversification of the insurer's investments among:
- 6 (a)Individual investments;
- 7 (b)Classes of investments;
- 8 (c)Industry concentrations;
- 9 (d)Dates of maturity; and
- 10 (e)Geographic areas;
- 11 (6)The quality and liquidity of investments in affiliates;
- 12 (7)The investment exposure to the following risks, quantified in a manner consistent with the
- 13 insurer's acceptable risk level identified in Section 6(8):
- 14 (a)Liquidity;
- 15 (b)Credit and default;
- 16 (c)Systemic (market);
- 17 (d)Interest rate;
- 18 (e)Call, prepayment and extension;
- 19 (f)Currency; ~~((and))~~
- 20 (g)Foreign sovereign; and
- 21 (h) Leverage.
- 22 (8)The amount of the insurer's assets, capital and surplus, premium writings, insurance in
- 23 force, and other appropriate characteristics;
- 24 (9)The amount and adequacy of the insurer's reported liabilities;
- 25 (10)The relationship of the expected cash flows of the insurer's assets and liabilities, and the
- 26 risk of adverse changes in the insurer's assets and liabilities;
- 27 (11)The adequacy of the insurer's capital and surplus to secure the risks and liabilities of the
- 28 insurer; and
- 29 (12)Any other factors relevant to whether an investment is prudent.
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31 **NEW SECTION. Sec. 6. INSURER INVESTMENT POLICY.** In acquiring, investing, exchanging,

32 holding, selling and managing investments, an insurer shall establish and follow a written

33 investment policy that shall be reviewed and approved by the insurer's board of directors at least

34 annually. The content and format of an insurer's investment policy are at the insurer's discretion,

35 but shall include written guidelines appropriate to the insurer's business as to the following:

- 36 (1)The general investment policy of the insurer containing policies, procedures and controls
- 37 covering all aspects of the investing function;

1 (2)Quantified goals and objectives regarding the composition of classes of investments,
2 including maximum internal limits;

3 (3)Periodic evaluation of the investment portfolio as to its risk and reward characteristics.
4 This subsection shall not preclude an insurer from the use of “modern portfolio theory” to manage its
5 investments;

6 (4)Professional standards for the individuals making day-to-day investment decisions to
7 assure that investments are managed in an ethical and capable manner;

8 (5)The types of investments to be made and those to be avoided, based on their risk and
9 reward characteristics and the insurer’s level of experience with the investments;

10 (6)The relationship of classes of investments to the insurer’s insurance products and
11 liabilities;

12 (7)The manner in which the insurer intends to implement Section 5; and

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

15
16 **NEW SECTION. Sec. 7. AUTHORIZED CLASSES OF INVESTMENTS.** The following classes of
17 investments may be counted for the purposes specified in Section 11 , whether they are made directly
18 or as a participant in a partnership, joint venture or limited liability company (partnerships, joint
19 ventures, and limited liability companies are authorized investments only pursuant to sec. 7(12) of
20 this act, and must have prior approval of the commissioner):

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

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

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

31 (4)Common stock or equity-like preferred stock or equity interests in any United States (~~or~~
32 Canadian) business entity, or shares of mutual funds registered with the Securities and Exchange
33 Commission of the United States under the Investment Company Act of 1940, other than SVO listed
34 mutual funds, and, subsidiaries (as defined in RCW 48.31B.005 or 48.31C.010) engaged exclusively
35 in the following businesses:

36 (a) Acting as an insurance producer, surplus line broker, or title insurance agent for its
37 parent or for any of its parent’s insurer subsidiaries or affiliates;

- 1 (b) Investing, reinvesting, or trading in securities or acting as a securities broker or dealer for
2 its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary;
- 3 (c) Rendering management, sales, or other related services to any investment company
4 subject to the Federal Investment Company Act of 1940, as amended;
- 5 (d) Rendering investment advice;
- 6 (e) Rendering services related to the functions involved in the operation of an insurance
7 business including, but not limited to, actuarial, loss prevention, safety engineering, data processing,
8 accounting, claims appraisal, and collection services;
- 9 (f) Acting as administrator of employee welfare benefit and pension plans for governments,
10 government agencies, corporations, or other organizations or groups;
- 11 (g) Ownership and management of assets which the parent could itself own and manage;
12 PROVIDED, that the aggregate investment by the insurer and its subsidiaries acquired pursuant to
13 this paragraph shall not exceed the limitations otherwise applicable to such investments by the
14 parent;
- 15 (h) Acting as administrative agent for a government instrumentality which is performing an
16 insurance function or is responsible for a health or welfare program;
- 17 (i) Financing of insurance premiums;
- 18 (j) Any other business activity reasonably ancillary to an insurance business;
- 19 (k) Owning one or more subsidiary
- 20 (i) insurers, health care service contractors, or health maintenance organizations to the
21 extent permitted by this chapter, or
- 22 (ii) businesses specified in paragraphs (a) through (k) of this subsection inclusive, or
23 (iii) any combination of such insurers and businesses.
- 24 (5)Real property necessary for the convenient transaction of the insurer's business;
- 25 (6)Real property, together with the fixtures, furniture, furnishings and equipment pertaining
26 thereto in the United States (~~or Canada~~), which produces or after suitable improvement can
27 reasonably be expected to produce substantial income;
- 28 (7)Loans, securities, or other investments of the types described in subsections 1 to 6 of this
29 section in NAIC SVO 1 debt rated countries other than the United States (~~and Canada~~);
- 30 (8)Bonds or other evidences of indebtedness of international development organizations of
31 which the United States is a member;
- 32 (9)Loans upon the security of the insurer's own policies in amounts that are adequately
33 secured by the policies and that in no case exceed the surrender values of the policies;
- 34 (10)Tangible personal property under contract of sale or lease under which contractual
35 payments may reasonably be expected to return the principal of and provide earnings on the
36 investment within its anticipated useful life;
- 37 (11)Other investments the commissioner authorizes by (~~regulation~~) rule; and

1 (12) Investments not otherwise permitted by this section, and not specifically prohibited by
2 statute, to the extent of not more than five percent (5%) of the first \$500,000,000 of the insurer's
3 admitted assets plus ten percent (10%) of the insurer's admitted assets exceeding \$500,000,000.
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6 **NEW SECTION. Sec. 8. LIMITATIONS GENERALLY APPLICABLE.** (1) Class Limitations. For
7 the purposes of Section 11, the following limitations on classes of investments apply:

8 (a) Investments authorized by Section 7(2), and investments authorized by Section 7(7) that
9 are of the types described in Section 7(2);

10 (i) The aggregate amount of medium and lower grade investments, twenty percent (20%) of its
11 admitted assets;

12 (ii) The aggregate amount of lower grade investments, ten percent (10%) of its admitted
13 assets;

14 (iii) The aggregate amount of investments rated 5 or 6 by the SVO, five percent (5%) of its
15 admitted assets;

16 (iv) The aggregate amount of investments rated 6 by the SVO, one percent (1%) of its
17 admitted assets; or

18 (v) The aggregate amount of medium and lower grade investments that receive as cash
19 income less than the equivalent yield for Treasury issues with a comparative average life, one
20 percent (1%) of its admitted assets.

21 (b) Investments authorized by Section 7(3), forty-five percent (45%) of admitted assets in the
22 case of life insurers and twenty-five percent (25%) of admitted assets in the case of non-life insurers;

23 (c) Investments authorized by Section 7(4), (~~other than subsidiaries of the types authorized~~
24 ~~under [cite applicable provisions of holding company law]~~) twenty percent (20%) of admitted assets
25 in the case of life insurers and twenty-five percent (25%) of admitted assets in the case of non-life
26 insurers;

27 (i) Individual investments authorized by Section 7(4) of this Act, except for subsidiaries, shall
28 not exceed 10% of the voting interest in any one entity.

29 (ii) Investments authorized in Section 7(4) of this Act in one or more subsidiaries shall not
30 exceed the lesser of 10% of admitted assets or 50% of surplus.

31 (d) Investments authorized by Section 7(5), ten percent (10%) of admitted assets;

32 (e) Investments authorized by Section 7(6), twenty percent (20%) of admitted assets in the
33 case of life insurers, and ten percent (10%) of admitted assets in the case of non-life insurers;

34 (f) Investments authorized by Section 7(7), twenty percent (20%) of admitted assets;

35 (g) Investments authorized by Section 7(8), two percent (2%) of admitted assets; and

36 (h) Investments authorized by Section 7(10), two percent (2%) of admitted assets.

37 (2) Individual limitations. For purposes of determining compliance with Section 11, securities
38 of a single issuer and its affiliates, other than the government of the United States and subsidiaries

1 authorized (~~(under [cite applicable provisions of holding company law])~~) by Section 7(4) of this Act,
2 shall not exceed three percent (3%) of admitted assets in the case of life insurers, and five percent
3 (5%) in the case of non-life insurers. Investments in the voting securities of a depository institution,
4 or any company that controls a depository institution, shall not exceed five percent (5%) of the
5 insurer's admitted assets.

6 (3)Investment subsidiaries. For purpose of determining compliance with the limitations of
7 this section, the admitted portion of assets of subsidiaries (~~(under [cite applicable provisions of~~
8 holding company law])) authorized by Section 7(4) of this Act shall be deemed to be owned directly
9 by the insurer and any other investors in proportion to the market value or if there is no market, the
10 reasonable value, of their interest in the subsidiaries.

11 (4)Effect of quantity limitations. To the extent that investments exceed the limitations
12 specified in Subsections 1 and 2, the excess may be assigned to the investment class authorized in
13 Section 7(12), until that limit is exhausted.

14 (5)Special rule for mutual funds, pooled investment vehicles and other investment
15 companies. If the commissioner considers it desirable in order to get a proper evaluation of the
16 investment portfolio of an insurer, the commissioner may require that investments in mutual funds,
17 pooled investment vehicles or other investment companies be treated for purposes of this Act as if
18 the investor owned directly its proportional share of the assets owned by the mutual fund, pooled
19 investment vehicle or investment company.

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

23 (7) Investments authorized by Section 7(3) of this Act shall not exceed 80% of the fair value of
24 the particular property at the time of the investment, unless guaranteed or insured.

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

27 (b) Buildings and other improvements shall be kept insured for the benefit of the mortgagee.
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30 **NEW SECTION. Sec. 9. PROTECTION AGAINST CURRENCY FLUCTUATIONS.** An insurer
31 doing business that requires it to make payment in different currencies shall have investments in
32 securities in each of these currencies in an amount that independently of all other investments meets
33 the requirements of this Act as applied separately to the insurer's obligations in each currency. The
34 commissioner may by order exempt an insurer, or by (~~regulation~~) rule a class of insurers, from this
35 requirement if the obligations in other currencies are small enough that no significant problem for
36 financial solidity would be created by substantial fluctuations in relative currency values.
37

1 NEW SECTION. Sec. 10. PROHIBITED INVESTMENTS. (1) (A) An insurer shall not invest in
2 investments that are prohibited for an insurer by statutes or rules of this state.

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

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

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

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

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

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

15 (2) A reasonable time, not in excess of 5 years, shall be allowed for disposal of a prohibited
16 investment in hardship cases if the investment is demonstrated by the insurer to have been legal
17 when made, or the result of a mistake made in good faith, or if the commissioner deems that the sale
18 of the asset would be contrary to the interests of insureds, creditors, or the general public.

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21 NEW SECTION. Sec. 11. EFFECT OF INVESTMENT RESTRICTIONS. (1) Invested assets may
22 be counted toward satisfaction of the minimum asset requirement only so far as they are invested in
23 compliance with this Act and applicable ~~((regulations))~~ rules promulgated and orders issued by the
24 commissioner pursuant to this Act. Assets other than invested assets may be counted toward
25 satisfaction of the minimum asset requirement at admitted annual statement value.

26 (2) An investment held as an admitted asset by an insurer on the effective date of this Act
27 which qualified under ~~((insert reference to state's prior code provisions on insurer investments))~~
28 chapter 48.13 RCW shall remain qualified as an admitted asset under this Act.

29 (3) Assets acquired in the bona fide enforcement of creditors' rights or in bona fide workouts
30 or settlements of disputed claims may be counted for the purposes of Subsection 1 for five (5) years
31 after acquisition if real property and three (3) years if not real property, even if they could not
32 otherwise be counted under this Act. The commissioner may allow reasonable extensions of these
33 periods if replacement of the assets within the periods would not be possible without substantial loss.

34 (4) If an insurer does not own, or is unable to apply toward compliance with this Act, an
35 amount of assets equal to its minimum asset requirement, the commissioner may deem it to be
36 financially hazardous under ~~((insert reference to statute providing the lawful grounds for~~
37 liquidation and rehabilitation~~))~~ chapters 48.31.

1 NEW SECTION. Sec. 12. REPORTS AND REPLIES (1)The commissioner may require any of the
2 following from a person subject to regulation under this Act:

3 (a)Statements, reports, answers to questionnaires and other information, and evidence
4 thereof, in whatever reasonable form the commissioner designates, and at such reasonable intervals
5 as the commissioner chooses.

6 (b)Full explanation of the programming of any data storage or communication system in use.

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

10 (2)The commissioner may prescribe forms for the reports under Subsection 1 and specify who
11 shall execute or certify the reports. The forms for the reports required under Subsection 1 shall be
12 consistent, so far as practicable, with those prescribed by other jurisdictions.

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

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

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

25 (6)A communication to the commissioner, or to an expert or consultant retained by the
26 commissioner, required by the provisions of this Act shall not subject the person making it to an
27 action for damages for the communication in the absence of actual malice.

28 (7)Notwithstanding the provisions of Subsection 6, the commissioner may bring suit against
29 any person providing information required under this Act that is not truthful and accurate.

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

36
37 NEW SECTION. Sec. 14. COMMISSIONER'S ORDERS. (1)If the commissioner determines that
38 an insurer's investment practices do not meet the provisions of this Act, the commissioner may, after

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

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

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

12 (4)If the commissioner is satisfied by evidence of the solidity of an insurer and the
13 competence of management and its investment advisors, the commissioner, after a hearing, may by
14 order adjust the class limitations in Section 8, for that insurer, to the extent that the commissioner is
15 satisfied that the interests of insureds, creditors and the public of this state are sufficiently protected
16 in other ways. Adjustments granted with respect to Section 8, in aggregate, are limited to an amount
17 equal to ten percent (10%) of the insurer's liabilities.

18
19 NEW SECTION. Sec. 15. ADMINISTRATIVE HEARINGS. (1)An insurer aggrieved by an order or
20 any other act or failure to act of the commissioner regarding compliance with this Act or rules
21 promulgated under this Act may request a hearing by following the procedures of ~~((insert citation to~~
22 ~~statutes on requesting hearings before the commissioner))~~ chapters 48.04 and 34.05 RCW.

23 ~~((2)The commissioner shall hold hearings under this section privately unless the insurer~~
24 ~~requests a public hearing, in which case the hearing shall be public.))~~

25
26
27 NEW SECTION. Sec. 16. CONFIDENTIALITY OF INFORMATION. The investment
28 policy, or information related to the investment policy provided to the commissioner for review under
29 this Act shall be considered confidential and shall not be a public record or subject to subpoena. ~~((~~
30 ~~except as insert citations to statutes on filing financial statements with the commissioner, statutes~~
31 ~~on examinations, and statutes on rehabilitation and liquidation) may permit disclosure.))~~

32
33
34 NEW SECTION. Sec. 17. CONFLICT OF LAWS AND OTHER STANDARDS. (1)This Act shall
35 prevail over any other statute ~~((except [cite state holding company law]))~~ purporting to authorize an
36 insurer to make a particular investment if the other statute was enacted before ~~((fill in effective~~
37 ~~date))~~ January 1, 2012, and shall prevail over any statute enacted thereafter unless the latter

1 negates the application of this section or of particular provisions in this Act by specifically
2 designating them by number.

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

8 **NEW SECTION. Sec. 18. ((REGULATIONS))RULES.** (1)The commissioner may, in
9 accordance with ((~~insert citation to administrative procedures act or other statutes concerning~~
10 ~~promulgation of regulations~~)) chapter 34.05 RCW, promulgate ((regulations)) rules interpreting
11 and implementing the provisions of this Act.

12 (2)The commissioner may, in accordance with ((~~insert citation to administrative procedures,~~
13 ~~act, or other statutes concerning promulgation of regulations~~)) chapter 34.05 RCW, promulgate
14 special investment restrictions as follows:

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

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

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

22 (ii)Specification of maximum amounts of assets that may be invested in a single investment,
23 or an issue, a class or a group of 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 conditions under which investments
26 may be made, including requirements of specified ratings from investment advisory services, listing
27 on specified stock exchanges, collateral, marketability, currency matching and the financial and legal
28 status of the issuer and its earnings capacity.

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

35 **Sec. 19.** RCW 42.56.400 and 2009 c 104 s 23 are each reenacted and amended to read as
36 follows:

37 The following information relating to insurance and financial institutions is exempt from
38 disclosure under this chapter:
39

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

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

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

12
13 (4) Information provided under RCW 48.30A.045 through 48.30A.060;

14
15 (5) Information provided under RCW 48.05.510 through 48.05.535, 48.43.200 through 48.43.225,
16 48.44.530 through 48.44.555, and 48.46.600 through 48.46.625;

17
18 (6) Examination reports and information obtained by the department of financial institutions
19 from banks under RCW 30.04.075, from savings banks under RCW 32.04.220, from savings and loan
20 associations under RCW 33.04.110, from credit unions under RCW 31.12.565, from check cashers and
21 sellers under RCW 31.45.030(3), and from securities brokers and investment advisers under RCW
22 21.20.100, all of which is confidential and privileged information;

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

25
26 (8) Documents, materials, or information obtained by the insurance commissioner under RCW
27 48.02.065, all of which are confidential and privileged;

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

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

36
37 (a) "Claimant" has the same meaning as in RCW 48.140.010(2).

38
39 (b) "Health care facility" has the same meaning as in RCW 48.140.010(6).

40
41 (c) "Health care provider" has the same meaning as in RCW 48.140.010(7).

42
43 (d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).

44
45 (e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

46
47 (11) Documents, materials, or information obtained by the insurance commissioner under RCW
48 48.135.060;

49
50 (12) Documents, materials, or information obtained by the insurance commissioner under RCW
51 48.37.060;

52
53 (13) Confidential and privileged documents obtained or produced by the insurance commissioner
54 and identified in RCW 48.37.080;

55
56 (14) Documents, materials, or information obtained by the insurance commissioner under RCW
57 48.37.140;

1
2 (15) Documents, materials, or information obtained by the insurance commissioner under RCW
3 48.17.595; and

4
5 (16) Documents, materials, or information obtained by the insurance commissioner under RCW
6 48.102.051(1) and 48.102.140 (3) and (7)(a)(ii).

7 (17) Documents, materials, or information obtained by the insurance commissioner under
8 Sec. 16 of [reference to this act].

9
10 NEW SECTION. Sec. 20. Captions used in this act are not any part of the law.

11
12 NEW SECTION. Sec. 21. Sections 1 through 18 of this act are each added to Chapter 48.13 RCW.

13
14 NEW SECTION. Sec. 22. The following acts or parts of acts are each repealed:

- 15 (1) RCW 48.13.010 (Scope of chapter – Eligible investments.) and 1973 c 151 s2.
- 16 (2) RCW 48.13.020 (General qualifications.) and 1983 1st.ex.s. c 32 s 2.
- 17 (3) RCW 48.13.030 (Limitation on securities of one entity or a depository institution.)
18 and 2001 c 21 s 1.
- 19 (4) RCW 48.13.040 (Public obligations.) and 1947 c 79 s .13.04.
- 20 (5) RCW 48.13.050 (Corporate obligations.) and 1993 c 92 s 2.
- 21 (6) RCW 48.13.060 (Terms defined.) and 1993 c 92 s 3.
- 22 (7) RCW 48.13.070 (Securities of merged or reorganized institutions.) and 1947 c 79 s
23 .13.07.
- 24 (8) RCW 48.13.080 (Preferred or guaranteed stocks.) and 1947 c 79 s .13.08.
- 25 (9) RCW 48.13.090 (Trustees' or receivers' obligations.) and 1947 c 79 s .13.09.
- 26 (10) RCW 48.13.100 (Equipment trust certificates.) and 1947 c 79 s .13.10.
- 27 (11) RCW 48.13.110 (Mortgages, deeds of trust, mortgage bonds, notes, contracts.) and
28 1975 1st ex.s. c 154 s 1.
- 29 (12) RCW 48.13.120 (Investments limited by property value.) and 2007 c 80 s 6.
- 30 (13) RCW 48.13.125 (Mortgage loans on one family dwellings – Limitation on
31 amortization.) and 1969 ex.s. c 241 s 6.
- 32 (14) RCW 48.13.130 ("Encumbrance" defined.) and 1955 c 303 s 2.
- 33 (15) RCW 48.13.140 (Appraisal of property – Insurance – Limit of loan.) and 1967 ex.s. c
34 95 s12.
- 35 (16) RCW 48.13.150 (Auxiliary chattel mortgages.) and 1947 c 79 s .13.15.
- 36 (17) RCW 48.13.160 (Real property owned – Home office building.) and 1981 c 339 s 6.
- 37 (18) RCW 48.13.170 (Disposal of real property – Time limit.) and 1967 ex.s. c 95 s 14.
- 38 (19) RCW 48.13.180 (Foreign securities.) and 2003 c 251 s 1.
- 39 (20) RCW 48.13.190 (Policy loans.) and 1947 c 79 s .13.19.
- 40 (21) RCW 48.13.200 (Savings and share accounts.) and 1947 c 79 s .13.20.

- 1 (22)[RCW 48.13.210 \(Insurance stocks.\) and 1979 ex.s. c 199 s 3.](#)
- 2 (23)[RCW 48.13.218 \(Limitation on insurer loans or investments.\) and 2001 c 90 s 1.](#)
- 3 (24)[RCW 48.13.220 \(Common stocks – Investment – Acquisition – Engaging in certain](#)
- 4 [businesses.\) and 2008 c 217 s 5.](#)
- 5 (25)[RCW 48.13.230 \(Collateral loans.\) and 1947 c 79 s .13.23.](#)
- 6 (26)[RCW 48.13.240 \(Miscellaneous investments.\) and 2004 c 88 s 1.](#)
- 7 (27)[RCW 48.13.250 \(Special consent investments.\) and 1947 c 79 s .13.25.](#)
- 8 (28)[RCW 48.13.260 \(Required investments for capital and reserves.\) and 1971 ex.s. c 13](#)
- 9 [s 16.](#)
- 10 (29)[RCW 48.13.265 \(Investments secured by real estate – Amount restricted.\) and 2007](#)
- 11 [c 80 s 7.](#)
- 12 (30) [RCW 48.13.270 9Prohibited Investments\) and 1995 c 84 s1.](#)
- 13 (31)[RCW 48.13.273 \(Acquisition of medium and lower grade obligations – Definitions –](#)
- 14 [Limitations – Rules.\) and 1993 c 92 s 5.](#)
- 15 (32)[RCW 48.13.275 \(Obligations rated by the securities valuation office.\) and 2007 c 80](#)
- 16 [s 8.](#)
- 17 (33)[RCW 48.13.280 \(Securities underwriting, agreements to withhold or repurchase,](#)
- 18 [prohibited.\) and 1947 c 79 s .13.28.](#)
- 19 (34)[RCW 48.13.285 \(Derivative transactions – Restrictions – Definitions – Rules.\) and](#)
- 20 [1997 c 317 s 1.](#)
- 21 (35)[RCW 48.13.290 \(Disposal of ineligible property or securities.\) and 1982 c 218 s 6.](#)

22

23

24 NEW SECTION. **Sec. 23.** EFFECTIVE DATE. This Act shall be effective [January 1, 2012.](#)

25

26