

ACT 233

H.B. NO. 1899

A Bill for an Act Relating to the Insurance Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding two new sections to article 6 to be appropriately designated and to read as follows:

“§431:6- Insurer investment pools. (a) For purposes of this section:

“Business entity” means a corporation, limited liability company, association, partnership, joint stock company, joint venture, mutual fund trust, or other similar form of business organization, whether organized for-profit or not-for-profit.

“Class one money market mutual funds” means a mutual fund that at all times qualifies for investment using the bond class one reserve factor under the Purposes and Procedures of the SVO or any successor publication.

“Government money market mutual fund” means a money market mutual fund that at all times:

- (1) Invests only in obligations issued, guaranteed, or insured by the government of the United States or collateralized repurchase agreements composed of these obligations; and
- (2) Qualifies for investment without a reserve under the Purposes and Procedures of the SVO or any successor publication.

“Money market mutual funds” means a mutual fund that meets the conditions of 17 Code of Federal Regulations Par. 270.2a-7, under the Investment Company Act of 1940 (15 U.S.C. §80a-1 et seq.), as amended, or renumbered.

“Obligation” means a bond, note debenture, trust certificate, including equipment certificate, production payment, negotiable bank certificate of deposit, bankers’ acceptance, credit tenant loan, loan secured by financing net leases and other evidence of indebtedness for the payment of money (or participation, certificates, or other evidence of an interest in any of the foregoing), whether constituting a general obligation of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment.

“Qualified bank” means a national bank, state bank, or trust company that at all times is no less than adequately capitalized as determined by the standards adopted by the United States banking regulators and that is either regulated by state banking laws or is a member of the Federal Reserve System.

“Repurchase transaction” means a transaction in which an insurer purchases securities from a business entity that is obligated to repurchase the purchased securities or equivalent securities from the insurer at a specified price, either within a specified period of time or upon demand.

“Reverse repurchase transaction” means a transaction in which an insurer sells securities to a business entity and is obligated to repurchase the sold securities or equivalent securities from the business entity at a specified price, either within a specified period of time or upon demand.

“Securities lending transaction” means a transaction in which securities are loaned by an insurer to a business entity that is obligated to return the loans, securities, or equivalent securities to the insurer, either within a specified period of time or upon demand.

“SVO” means the Securities Valuation Office of the National Association of Insurance Commissioners.

(b) An insurer may acquire investments in investment pools that:

(1) Invest only in:

(A) Obligations that are rated 1 or 2 by the SVO or have an equivalent of an SVO 1 or 2 rating (or, in the absence of a 1 or 2 rating or equivalent rating, the issuer has outstanding obligations with an SVO 1 or 2 or equivalent rating) by a nationally-recognized statistical rating organization recognized by the SVO and have:

(i) A remaining maturity of three hundred ninety-seven days or less or a put that entitles the holder to receive the principal amount of the obligation which put may be exercised through maturity at specified intervals not exceeding three hundred ninety-seven days; or

(ii) A remaining maturity of three years or less and a floating interest rate that resets no less frequently than quarterly on the basis of a current short-term index (federal funds, prime rate, treasury bills, London InterBank Offered Rate (“LIBOR”) or commercial paper) and is subject to no maximum limit, if the obligations do not have an interest rate that varies inversely to market interest rate changes;

(B) Government money market mutual funds or class one money market mutual funds; or

(C) Securities lending, repurchase, and reverse repurchase transactions that meet all the requirements of section 431:6-322;

or

(2) Invest only in investments which an insurer may acquire under this article, if the insurer's proportionate interest in the amount invested in these investments does not exceed the applicable limits of this article.

(c) For an investment in an investment pool to be qualified under this article, the investment pool shall not:

(1) Acquire securities issued, assumed, guaranteed, or insured by the insurer or an affiliate of the insurer;

(2) Borrow or incur an indebtedness for borrowed money, except for securities lending and reverse repurchase transactions that meet the requirements of this article; or

(3) Permit the aggregate value of securities then loaned or sold to, purchased from or invested in any one business entity under this section to exceed ten per cent of the total assets of the investment pool.

(d) The limitations of sections 431:6-105 and 431:6-402 shall not apply to an insurer's investment in an investment pool; however, an insurer shall not acquire an investment in an investment pool under this section if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this section:

(1) In any one investment pool would exceed ten per cent of its admitted assets;

(2) In all investment pools investing in investments permitted under subsection (b)(2) would exceed twenty-five per cent of its admitted assets; or

(3) In all investment pools would exceed thirty-five per cent of its admitted assets.

(e) For an investment in an investment pool to be qualified under this section, the manager of the investment pool shall:

(1) Be organized under the laws of the United States or a state and designated as the pool manager in a pooling agreement;

(2) Be the insurer, an affiliated insurer, or a business entity affiliated with the insurer, a qualified bank, a business entity registered under the Investment Advisors Act of 1940 (15 U.S.C. §80A-1 et seq.), as amended, or, in the case of a reciprocal insurer or interinsurance exchange, its attorney-in-fact, or in the case of a United States branch of an alien insurer, its United States manager or affiliates or subsidiaries of its United States manager;

(3) Compile and maintain detailed accounting records setting forth:

(A) The cash receipts and disbursements reflecting each participant's proportionate investment in the investment pool;

(B) A complete description of all underlying assets of the investment pool (including amount, interest rate, maturity date (if any), and other appropriate designations); and

(C) Other records which, on a daily basis, allow third parties to verify each participant's investment in the investment pool;

and

(4) Maintain the assets of the investment pool in one or more accounts, in the name of or on behalf of the investment pool, under a custody agreement with a qualified bank. The custody agreement shall:

(A) State and recognize the claims and rights of each participant;

(B) Acknowledge that the underlying assets of the investment pool are held solely for the benefit of each participant in proportion to

the aggregate amount of its investments in the investment pool; and

- (C) Contain an agreement that the underlying assets of the investment pool shall not be commingled with the general assets of the custodian qualified bank or any other person.

(f) The pooling agreement for each investment pool shall be in writing and shall provide that:

- (1) An insurer and its affiliated insurers or, in the case of an investment pool investing solely in investments permitted under subsection (b)(1), the insurer and its subsidiaries, affiliates, or any pension or profit sharing plan of the insurer, its subsidiaries and affiliates or, in the case of a United States branch of an alien insurer, affiliates or subsidiaries of its United States manager, at all times, shall hold one hundred per cent of the interests in the investment pool;
- (2) The underlying assets of the investment pool shall not be commingled with the general assets of the pool manager or any other person;
- (3) In proportion to the aggregate amount of each pool participant's interest in the investment pool:
 - (A) Each participant owns an undivided interest in the underlying assets of the investment pool; and
 - (B) The underlying assets of the investment pool are held solely for the benefit of each participant;
- (4) A participant, or in the event of the participant's insolvency, bankruptcy, or receivership, its trustee, receiver, or other successor-in-interest, may withdraw all or any portion of its investment from the pool under the terms of the pooling agreement;
- (5) Withdrawals may be made on demand without penalty or other assessment on any business day, but settlement of funds shall occur within a reasonable and customary period thereafter not to exceed five business days. Distributions under this paragraph shall be calculated in each case net of all then applicable fees and expenses of the investment pool. The pooling agreement shall provide that the pool manager shall distribute to a participant, at the discretion of the pool manager:
 - (A) In cash, the then fair market value of the participant's pro rata share of each underlying asset of the investment pool;
 - (B) In kind, a pro rata share of each underlying asset; or
 - (C) In a combination of cash and in kind distributions, a pro rata share in each underlying asset;

and

- (6) The pool manager shall make the records of the investment pool available for inspection by the commissioner.

(g) The investment pool authorized under these provisions shall be a business entity.

(h) Transactions between the pool and its participants shall not be subject to section 431:11-106. Investment activities of pools and transactions between pools and participants shall be reported annually in the registration statement required by section 431:11-105.

§431:6- Securities lending, repurchase, reverse repurchase, and dollar roll; investment pools. (a) For purposes of this section, "business entity" includes a sole proprietorship, corporation, limited liability company, association, partnership, joint stock company, joint venture, mutual fund, trust, joint tenancy, or other similar form of business organization, whether organized for-profit or not-for-profit.

(b) This section is applicable to investment pools under section 431:6-

(c) An insurer may enter into securities lending, repurchase, reverse repurchase, and dollar roll transactions with business entities, subject to the requirements of this section.

(d) The board of directors shall adopt a written plan which shall include at least the following:

(1) A description of how cash received will be invested or used for general corporate purposes of the insurer;

(2) Operational procedures to manage interest rate risk, counterparty default risk, the conditions under which proceeds from reverse repurchase transactions may be used in the ordinary course of business and the use of acceptable collateral in a manner that reflects the liquidity needs of the transaction; and

(3) The extent to which the insurer may engage in these transactions.

(e) The insurer shall enter into a written agreement for all transactions authorized in this section other than dollar roll transactions. The written agreement shall require that each transaction terminate no more than one year from its inception or upon the earlier demand of the insurer. The agreement shall be with the business entity counterparty, but for securities lending transactions, the agreement may be with an agent acting on behalf of the insurer, if the agent is a qualified business entity, and if the agreement:

(1) Requires the agent to enter into separate agreements with each counterparty that are consistent with the requirements of this section; and

(2) Prohibits securities lending transactions under the agreement with the agent or its affiliates.

(f) Cash received in a transaction under this section shall be invested in accordance with section 431:6- , and in a manner that recognizes the liquidity needs of the transaction or used by the insurer for its general corporate purposes. For so long as the transaction remains outstanding, the insurer, its agent, or custodian shall maintain acceptable collateral received in a transaction under this section, either physically or through the book entry systems of the Federal Reserve, Depository Trust Company, Participants Trust Company, or other securities depositories approved by the commissioner.

(g) In a securities lending transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date, at least equal to one hundred two per cent of the market value of the securities loaned by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than the market value of the loaned securities, the business entity counterparty shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two per cent of the market value of the loaned securities.

(h) In a reverse repurchase transaction, other than a dollar roll transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to ninety-five per cent of the market value of the securities transferred by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than ninety-five per cent of the market value of the securities so transferred, the business entity counterparty shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals ninety-five per cent of the market value of the transferred securities.

(i) In a dollar roll transaction, the insurer shall receive cash in the amount at least equal to the market value of the securities transferred by the insurer in the transaction as of the transaction date.

(j) In a repurchase transaction, the insurer shall receive as acceptable collateral transferred securities having a market value at least equal to one hundred two per cent of the purchase price paid by the insurer for the securities. If at any time the market value of the acceptable collateral is less than one hundred per cent of the purchase price paid by the insurer, the business entity counterparty shall be obligated to provide additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two per cent of the purchase price. Securities acquired by an insurer in a repurchase transaction shall not be sold in a reverse repurchase transaction, loaned in a securities lending transaction, or otherwise pledged.”

SECTION 2. Section 431:1-213, Hawaii Revised Statutes, is amended to read as follows:

“**§431:1-213 State defined.** State means any state of the United States[,] and the [government] governments of Puerto Rico, American Samoa, Guam, United States Virgin Islands, and the District of Columbia.”

SECTION 3. Section 431:1-214, Hawaii Revised Statutes, is amended to read as follows:

“**§431:1-214 United States defined.** United States, when used to signify a place, means the states of the United States[,] and the [government] governments of Puerto Rico, American Samoa, Guam, United States Virgin Islands, and the District of Columbia.”

SECTION 4. Section 431:9-235, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commissioner may suspend, revoke, or refuse to extend any license issued under this article or any surplus lines broker’s license for any cause specified in any other provision of this article, or for any of the following causes:

- (1) For any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;
- (2) If the licensee wilfully violates or knowingly participates in the violation of any provision of this [article;] code;
- (3) If the licensee has obtained or attempted to obtain any such license through wilful misrepresentation or fraud, or has failed to pass any examination required by section 431:9-206;
- (4) If the licensee has misappropriated, or converted to the licensee’s own use, or has illegally withheld moneys required to be held in a fiduciary capacity;
- (5) If the licensee has, with intent to deceive, materially misrepresented the terms or effect of any insurance contract; or has engaged or is about to engage in any fraudulent transaction;
- (6) If the licensee has been guilty of any unfair practice or fraud as defined in article 13;
- (7) If in the conduct of the licensee’s affairs under the license, the licensee has shown oneself to be a source of injury and loss to the public;

ACT 233

- (8) If the licensee issues or purports to issue any binder as to any insurer named therein as to which the licensee is not then authorized so to bind; or
- (9) If the licensee has dealt with, or attempted to deal with, insurance or to exercise powers relative to insurance outside the scope of the licensee's licenses."

SECTION 5. Section 431:11-104, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

- “(f) The provisions of this [subsection] section shall not apply to:
- (1) Any transaction which is subject to the provisions of article 4, dealing with the merger or consolidation of two or more insurers; or
 - (2) Any offer, request, invitation, agreement, or acquisition which the commissioner by order shall exempt therefrom as:
 - (A) Not having been made or entered into for the purpose of, and not having the effect of, changing or influencing the control of a domestic insurer; or
 - (B) Not otherwise comprehended within the purposes of this section.”

SECTION 6. Section 431:3-211, Hawaii Revised Statutes, is repealed.

SECTION 7. Statutory material to be repealed is bracketed.¹ New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved June 17, 1997.)

Note

- 1. Edited pursuant to HRS §23G-16.5.