

A Bill for an Act Relating to Insurance.

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

SECTION 1. Section 431:6-101, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) For purposes of this article:

- (1) ~~Obligation includes bonds, debentures, notes, or other evidences of indebtedness.~~
- (2) ~~Institution includes corporations, joint-stock associations, and business trusts.~~
- (3) ~~Net earnings available for fixed charges means net income after deducting operating and maintenance expenses, taxes other than federal and state income taxes, depreciation, and depletion, but excluding extraordinary nonrecurring items of income or expense appearing in the regular financial statements of such institution.~~
- (4) ~~Fixed charges includes interest on funded and unfunded debt, amortization of debt discount, and rentals for leased properties.]~~

“Cash” includes cash equivalents.

“Cash equivalents” means highly-rated and highly-liquid investments or securities with a remaining term of ninety days or less and rated in the highest short-term category by a nationally recognized statistical rating organization recognized by the SVO. Cash equivalents include government money market mutual funds and class one money market mutual funds defined by the Purposes and Procedures Manual of the SVO, or its successor publication.

“Fixed charges” means interest on funded and unfunded debt, amortization of debt discount, and rentals for leased properties.

“Institution” means corporations, joint-stock associations, and business trusts.

“Net earnings available for fixed charges” means net income after deducting operating and maintenance expenses, taxes other than federal and state income taxes, depreciation, and depletion, but excluding extraordinary nonrecurring items of income or expense appearing in the regular financial statements of such institution.

“Obligation” means bonds, debentures, notes, or other evidence of indebtedness.

“Surplus as regards to policyholders” means the excess of the insurer’s admitted assets over its liabilities.

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

[~~(5) Value~~] “Value” means fair value. Market value is the best evidence of fair value.”

SECTION 2. Section 431:6-103, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any limitation based upon the amount of the insurer’s assets or surplus shall relate to assets or surplus as shown by the insurer’s annual statement as of December 31 preceding date of investment.”

SECTION 3. Section 431:6-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding the provisions of section 431:6-321, no security or other investment shall be eligible for purchase or acquisition under this article unless it

is interest bearing or interest accruing or [~~dividend or~~] income paying, is not then in default in any respect, and the insurer is entitled to receive for its exclusive account and benefit, the interest or income accruing thereon; except, that it may acquire real property and non-dividend paying securities as provided in this article. An insurer's aggregate investment in non-dividend paying securities shall not exceed the greater of twenty-five per cent of its admitted assets or fifty per cent of its surplus as regards to policyholders as defined in section 431:6-101."

SECTION 4. Section 431:6-201, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In addition to the investments required by subsection (a), an insurer shall [~~invest and keep invested its funds~~] maintain an amount aggregating not less than one hundred per cent of its reserves required by this code, in the following assets: cash [~~or~~], premiums in course of collection, reinsurance recoverable on paid losses, or [~~in~~] investments eligible in accordance with this article[.], including interest and dividends receivable on the investments."

SECTION 5. Section 431:6-302, Hawaii Revised Statutes, is amended to read as follows:

"**§431:6-302 Corporate obligations.** An insurer may invest any of its funds in obligations other than those eligible for investment under section 431:6-306 if they are [~~issued~~];

- (1) Issued, assumed, or guaranteed by any solvent institution created or existing under the laws of the United States or of any state, or district thereof[.]; and [~~are qualified under any of the following:~~
- (1) ~~Obligations which are secured by adequate collateral security and bear fixed interest, if during each of any three, including the last two, of the five fiscal years next preceding the date of acquisition by the insurer, the net earnings of the issuing, assuming, or guaranteeing institution available for its fixed charges, as defined in section 431:6-101, have been not less than one and one-fourth times the total of its fixed charges for such year. In determining the adequacy of collateral security, not more than one-third of the total value of the required collateral shall consist of stock other than stock meeting the requirements of section 431:6-303;~~
- (2) ~~Fixed interest bearing obligations, other than those described in item (1), if the net earnings of the issuing, assuming, or guaranteeing institution available for its fixed charges for a period of five fiscal years next preceding the date of acquisition by the insurer, have averaged per year not less than one and one-half times its average annual fixed charges applicable to the period, and if during the last year of the period, the net earnings have been not less than one and one-half times its fixed charges for the year; or~~
- (3) ~~Adjustment, income or other contingent interest obligations, if the net earnings of the issuing, assuming, or guaranteeing institution available for its fixed charges for a period of five fiscal years next preceding the date of acquisition by the insurer have averaged per year not less than one and one-half times the sum of its annual fixed charges and its average maximum contingent interest applicable to the period, and if during each of [the] last two years of the period, the net earnings have been not less than one and one-half times the sum of its fixed charges and maximum contingent interest for the year.]~~
- (2) Filed with the SVO or are considered "filing exempt" by the Purposes and Procedures Manual of the SVO, or its successor publication."

SECTION 6. Section 431:6-303, Hawaii Revised Statutes, is amended to read as follows:

“§431:6-303 Preferred or guaranteed stocks or shares. An insurer may invest any of its funds, in an aggregate amount not exceeding fifteen per cent of its assets, in preferred or guaranteed stocks or shares, other than common stocks, of solvent institutions existing under the laws of the United States or of any state, district, or territory thereof, if all of the prior obligations and prior preferred stocks, if any, of ~~[such]~~ the institution at the date of acquisition by the insurer are ~~[eligible]~~:

- (1) Eligible as investments under this article; and ~~[if qualified under either of the following:~~
 - (1) Preferred stocks or shares shall be deemed qualified if:
 - (A) ~~The net earnings of the institution available for its fixed charges for a period of five fiscal years next preceding the date of acquisition by the insurer must have averaged per year not less than one and one-half times the sum of its average annual fixed charges, if any, its average annual maximum contingent interest, if any, and its average annual preferred dividend requirements applicable to the period; and~~
 - (B) ~~During each of the last two years of such period, the net earnings must have been not less than one and one-half times the sum of its fixed charges, contingent interest, and preferred dividend requirements for such year. The term preferred dividend requirements shall be deemed to mean cumulative or noncumulative dividends whether paid or not.~~
 - (2) ~~Guaranteed stocks or shares shall be deemed qualified if the assuming or guaranteeing institution meets the requirements of section 431:6-302(1), construed so as to include as a fixed charge the amount of guaranteed dividends of such issue or the rental covering the guarantee of such dividends.]~~
- (2) Filed with the SVO or are considered “filing exempt” by the Purposes and Procedures Manual of the SVO, or its successor publication.”

SECTION 7. Section 431:6-313, Hawaii Revised Statutes, is amended to read as follows:

“§431:6-313 Foreign securities. (a) An insurer authorized to transact insurance in a foreign country may invest any of its funds, in an aggregate amount not exceeding its deposit and reserve obligations incurred in such country, in securities of or in such country possessing characteristics and of a quality similar to those required pursuant to this article for investments in the United States.

(b) An insurer may invest any of its funds, in an aggregate amount not exceeding fifteen per cent of its assets, in addition to any amount permitted pursuant to subsection (a), in obligations of the governments of the Dominion of Canada, or of Canadian provinces, or municipalities, and in obligations of Canadian corporations, which have not been in default during the five years next preceding date of acquisition, and which are otherwise of equal quality to like United States public or corporate securities as prescribed in this article.

(c) In addition to investments permitted under subsections (a) and (b), an insurer may acquire foreign investments, including American Depository Receipts, or engage in investment practices with persons of or in foreign jurisdictions of substantially the same types as those permitted under this article; provided that:

- (1) The aggregate amount of foreign investments then held by the insurer under this subsection shall not exceed twenty per cent of its admitted assets; and
 - (2) The aggregate amount of foreign investments then held by the insurer under this subsection in a single foreign jurisdiction shall not exceed ten per cent of its admitted assets as to a foreign jurisdiction that has a sovereign debt rating of SVO 1 or three per cent of its admitted assets as to any other foreign jurisdiction.
- (d) Investments acquired under this section shall be aggregated with investments of the same types made under all other sections of this article, and in a similar manner, for the purposes of determining compliance with limitations, if any, contained in the other sections.”

SECTION 8. Section 431:6-317, Hawaii Revised Statutes, is amended to read as follows:

“§431:6-317 Common stocks. [After satisfying the requirements of section 431:6-201, an insurer may invest any of its funds in common shares of stock in solvent United States corporations that qualify as a sound investment.] (a) An insurer may invest any of its funds in common shares of stock that are filed with the SVO or are considered “filing exempt” by the Purposes and Procedures Manual of the SVO, or its successor publication. In aggregate, an insurer’s amount of investment in common stocks, including investments made pursuant to section 431:6-322 and non-dividend paying stocks, shall not exceed the greater of twenty-five per cent of its admitted assets or one hundred per cent of its surplus as regards to policyholders as defined in section 431:6-101.

(b) An insurer may invest any of its funds in common shares of stock in solvent United States corporations after satisfying the requirements under section 431:6-201.

(c) An insurer’s aggregate amount of investment in non-dividend paying stocks is subject to the limitations of section 431:6-104.”

SECTION 9. Section 431:6-322, Hawaii Revised Statutes, is amended to read as follows:

“§431:6-322 Common trust funds[;]; mutual funds[-]; and exchanged traded funds. [An] (a) Subject to the limitations in subsections (b) and (c), an insurer may invest in:

- (1) A bank’s common trust fund as defined in Section 584 of the United States Internal Revenue Code of [1954, Section 584; and] 1986, as amended;
- (2) The securities of any open-end management type investment company or investment trust registered with the federal Securities and Exchange Commission under the Investment Company Act of 1940, as amended, if the investment company or trust, other than one of which as a subsidiary of the insurer is investment adviser or principal underwriter, has a new value of not less than \$25,000,000 as of the date of investment by the insurer[-]; and
- (3) An exchange traded fund that is registered with the federal Securities and Exchange Commission under the Investment Company Act of 1940, as amended, and is traded on a public exchange.

(b) In aggregate, an insurer’s amount of investment in common trust funds, mutual funds, and exchange traded funds, including investments made pursuant to section 431:6-317(a), shall not exceed the greater of twenty-five per cent of its admit-

ted assets or one hundred per cent of its surplus as regards to policyholders as defined in section 431:6-101. This limitation shall not apply to investments approved on the "Mutual Funds List" from the Purposes and Procedures Manual of the SVO, or its successor publication.

(c) An insurer may invest any of its funds in common trust funds, mutual funds, and exchange traded funds after satisfying the requirements of section 431:6-201."

SECTION 10. Section 431:6-601, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(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 fund" means a mutual fund that meets the conditions of 17 Code of Federal Regulations [part] Part 270.2a-7, under the Investment Company Act of 1940 (15 [U.S.C. §] United States Code Section 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;~~ 431:6-318]; 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.”

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 12. This Act shall take effect on January 1, 2009.

(Approved June 5, 2008.)