

Chapter 48.13 RCW
INVESTMENTS

Sections

- 48.13.005 Purpose—Application.
- 48.13.009 Definitions.
- 48.13.021 Minimum financial security benchmark—Determination of amount.
- 48.13.031 Investment of funds—Board of directors—Judgment and care—Internal controls and procedures.
- 48.13.041 Determining whether an investment portfolio or investment policy is prudent.
- 48.13.051 Written investment policy required—Annual review—Contents.
- 48.13.061 Classes of investments—Description—Rules.
- 48.13.071 Limitations on investments—Special rules for certain investments.
- 48.13.081 Investments in securities of different currencies.
- 48.13.091 Prohibited investments.
- 48.13.101 Satisfaction of the minimum asset requirement—When assets may be counted.
- 48.13.111 Commissioner's powers—Requirements of persons subject to regulation.
- 48.13.121 Commissioner may retain experts—Insurer's expense.
- 48.13.131 When investment practices are not in compliance—Commissioner's authority.
- 48.13.141 Aggrieved insurer—Request for hearing.
- 48.13.151 Confidentiality of investment policy information.
- 48.13.161 Chapter prevails over other statutes—Valuation of assets.
- 48.13.171 Rule making—Special investment restrictions.
- 48.13.350 Written record of investments—Contents.
- 48.13.360 Investments of foreign and alien insurers.
- 48.13.450 Safeguarding securities—Definitions.
- 48.13.455 Safeguarding securities—Deposit in a clearing corporation—Certificates—Records.
- 48.13.460 Safeguarding securities—Authorized methods of holding securities.
- 48.13.465 Safeguarding securities—Requirement to receive a confirmation.
- 48.13.470 Safeguarding securities—Broker executing a trade—Time limits.
- 48.13.475 Safeguarding securities—Maintenance with a custodian—Commissioner may order transfer—Challenge to order—Standing at hearing or for judicial review.
- 48.13.480 Safeguarding securities—Insurance company's securities—Written agreement with custodian—Required terms.
- 48.13.490 Safeguarding securities—Rules.
- 48.13.900 Effective date—2011 c 188.

Valuation of investments: RCW 48.12.170 through 48.12.200.

RCW 48.13.005 Purpose—Application. (1) The purpose of chapter 188, Laws of 2011 is to protect and to further the interests of

insureds, creditors, and the general public by providing, with minimum interference with management initiative and judgment, prudent standards for the development and administration of insurer investment programs.

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

(3) Separate accounts established in accordance with RCW 48.18A.020 shall be evaluated separately pursuant to that section. [2011 c 188 s 1.]

RCW 48.13.009 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

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

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

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

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

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

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

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

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

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

(11) "Replication" means a derivative transaction involving one or more derivative instruments being used to modify the cash flow

characteristics of one or more investments held by an insurer in a manner so that the aggregate cash flows of the derivative instruments and investments reproduce the cash flows of another investment having a higher risk-based capital charge than the risk-based capital charge of the original instruments or investments.

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

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

(14) "United States government securities" means any security defined in the purposes and procedures manual of the national association of insurance commissioners securities valuation office as a United States government security. [2011 c 188 s 2.]

RCW 48.13.021 Minimum financial security benchmark—

Determination of amount. (1) Minimum financial security benchmark.

(a) Unless otherwise established in accordance with (b) and (c) of this subsection, the amount of the minimum financial security benchmark for an insurer shall be the greater of:

(i) The authorized control level risk-based capital applicable to the insurer as set forth by RCW 48.05.450 or 48.43.320; or

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

(b) The commissioner may, in accordance with the factors in subsection (2)(b) of this section, establish by order a minimum financial security benchmark to apply to a specific insurer provided it is not less than the amount determined by (a) of this subsection, in the event the insurer falls below three and one-half times the authorized control level risk-based capital applicable to the insurer as set forth by RCW 48.05.450 or 48.43.320.

(c) The commissioner may establish by rule a minimum financial security benchmark that is a multiple of authorized control level risk-based capital to apply to any class of insurers provided the amount established by the rule is not less than the amount determined in (a) of this subsection.

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

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

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

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

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

- (iv) Changes in economic conditions that would make liquidity more important than contemplated and would force untimely sale of assets or prevent timely investments;
 - (v) Currency devaluation to which the insurer may be subject;
 - (vi) Diminished prospects for performance of reinsurers' or other counter parties' obligations; and
 - (vii) Any other contingencies the commissioner can identify that may affect the insurer's operations.
- (b) Controlling factors. In making the determination under this subsection, the commissioner shall take into account the following factors:
- (i) The most reliable information available as to the magnitude of the various risks under (a) of this subsection;
 - (ii) The extent to which the risks in (a) of this subsection are independent of each other or are related, and whether any dependency is direct or inverse;
 - (iii) The insurer's recent history of profits or losses;
 - (iv) The extent to which the insurer has provided protection against the contingencies in other ways than the establishment of surplus; including redundancy of premiums, adjustability of contracts under their terms, investment valuation reserves whether voluntary or mandatory, appropriate reinsurance, the use of conservative actuarial assumptions to provide a margin of security, reserve adjustments in recognition of previous rate inadequacies, contingency or catastrophe reserves, diversification of assets, and underwriting risks;
 - (v) Independent judgments of the soundness of the insurer's operations, as evidenced by the ratings of reliable professional financial reporting services; and
 - (vi) Any other relevant factors. [2011 c 188 s 3.]

RCW 48.13.031 Investment of funds—Board of directors—Judgment and care—Internal controls and procedures.

(1) Subject to the provisions of this chapter, an insurer may loan or invest its funds, and may buy, sell, hold title to, possess, occupy, pledge, convey, manage, protect, insure, and deal with its investments, property, and other assets to the same extent as any other person or corporation under the laws of this state and of the United States.

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

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

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

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

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

(d) Appropriate analyses are undertaken of the degree to which asset cash flows are adequate to meet liability cash flows under different economic environments. These analyses shall be conducted at least annually and make specific reference to economic conditions. [2011 c 188 s 4.]

RCW 48.13.041 Determining whether an investment portfolio or investment policy is prudent. The following factors shall be evaluated by the insurer and considered along with its business in determining whether an investment portfolio or investment policy is prudent; the commissioner shall consider the following factors prior to making a determination that an insurer's investment portfolio or investment policy is not prudent:

(1) General economic conditions;

(2) The possible effect of inflation or deflation;

(3) The expected tax consequences of investment decisions or strategies;

(4) The fairness and reasonableness of the terms of an investment considering its probable risk and reward characteristics and relationship to the investment portfolio as a whole;

(5) The extent of the diversification of the insurer's investments among:

(a) Individual investments;

(b) Classes of investments;

(c) Industry concentrations;

(d) Dates of maturity; and

(e) Geographic areas;

(6) The quality and liquidity of investments in affiliates;

(7) The investment exposure to the following risks, quantified in a manner consistent with the insurer's acceptable risk level identified in RCW 48.13.051(8):

(a) Liquidity;

(b) Credit and default;

(c) Systemic (market);

(d) Interest rate;

(e) Call, prepayment, and extension;

(f) Currency;

(g) Foreign sovereign; and

(h) Leverage;

(8) The amount of the insurer's assets, capital, and surplus, premium writings, insurance in force, and other appropriate characteristics;

(9) The amount and adequacy of the insurer's reported liabilities;

(10) The relationship of the expected cash flows of the insurer's assets and liabilities, and the risk of adverse changes in the insurer's assets and liabilities;

(11) The adequacy of the insurer's capital and surplus to secure the risks and liabilities of the insurer; and

(12) Any other factors relevant to whether an investment is prudent. [2011 c 188 s 5.]

RCW 48.13.051 Written investment policy required—Annual review—

Contents. In acquiring, investing, exchanging, holding, selling, and managing investments, an insurer shall establish and follow a written investment policy that shall be reviewed and approved by the insurer's board of directors at least annually. The content and format of an insurer's investment policy are at the insurer's discretion, but shall include written guidelines appropriate to the insurer's business as to the following:

- (1) The delegation and monitoring of policies, procedures, and controls covering all aspects of the investing function;
- (2) Quantified goals and objectives regarding the composition of classes of investments, including maximum internal limits;
- (3) Periodic evaluation of the investment portfolio as to its risk and reward characteristics. This subsection shall not preclude an insurer from the use of modern portfolio theory to manage its investments;
- (4) Professional standards for the individuals making day-to-day investment decisions to assure that investments are managed in an ethical and capable manner;
- (5) The types of investments to be made and those to be avoided, based on their risk and reward characteristics and the insurer's level of experience with the investments;
- (6) The relationship of classes of investments to the insurer's insurance products and liabilities;
- (7) The manner in which the insurer intends to implement RCW 48.13.041; and
- (8) The level of risk, based on quantitative measures, appropriate for the insurer given the level of capitalization and expertise available to the insurer. [2011 c 188 s 6.]

RCW 48.13.061 Classes of investments—Description—Rules. The following classes of investments may be counted for the purposes specified in RCW 48.13.101, whether they are made directly or as a participant in a partnership, joint venture, or limited liability company. Investments in partnerships, joint ventures, and limited liability companies are authorized investments only pursuant to subsection (12) of this section:

- (1) Cash in the direct possession of the insurer or on deposit with a financial institution regulated by any federal or state agency of the United States;
- (2) Bonds, debt-like preferred stock, and other evidences of indebtedness of governmental units in the United States or Canada, or the instrumentalities of the governmental units, or private business entities domiciled in the United States or Canada, including asset-backed securities and securities valuation office listed mutual funds;
- (3) Loans secured by first mortgages, first trust deeds, or other first security interests in real property located in the United States or Canada or secured by insurance against default issued by a government insurance corporation of the United States or Canada or by an insurer authorized to do business in this state;
- (4) Common stock or equity-like preferred stock or equity interests in any United States or Canadian business entity, or shares of mutual funds registered with the securities and exchange commission of the United States under the investment company act of 1940, other than securities valuation office listed mutual funds, and,

subsidiaries, as defined in RCW 48.31B.005, engaged exclusively in the following businesses:

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

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

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

(d) Rendering investment advice;

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

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

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

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

(i) Financing of insurance premiums;

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

(k) Owning one or more subsidiary;

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

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

(iii) Any combination of such insurers and businesses;

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

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

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

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

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

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

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

(12) Investments not otherwise permitted by this section, and not specifically prohibited by statute, to the extent of not more than five percent of the first five hundred million dollars of the insurer's admitted assets plus ten percent of the insurer's admitted assets exceeding five hundred million dollars. [2015 c 122 s 16; 2011 c 188 s 7.]

Effective dates—2015 c 122: See note following RCW 48.31B.005.

RCW 48.13.071 Limitations on investments—Special rules for certain investments.

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Investments authorized by RCW 48.13.061(7), twenty percent of admitted assets;

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

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

(2) Individual limitations. For purposes of determining compliance with RCW 48.13.101, securities of a single issuer and its affiliates, other than United States government securities and

subsidiaries authorized by RCW 48.13.061(4), shall not exceed three percent of admitted assets in the case of life insurers, and five percent in the case of nonlife insurers. Investments in the voting securities of a depository institution, or any company that controls a depository institution, shall not exceed five percent of the insurer's admitted assets.

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

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

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

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

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

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

(b) Buildings and other improvements shall be kept insured for the benefit of the mortgagee. [2011 c 188 s 8.]

RCW 48.13.081 Investments in securities of different currencies.

An insurer doing business that requires it to make payment in different currencies shall have investments in securities in each of these currencies in an amount that independently of all other investments meets the requirements of this chapter as applied separately to the insurer's obligations in each currency. The commissioner may by order exempt an insurer, or by rule a class of insurers, from this requirement if the obligations in other currencies are small enough that no significant problem for financial stability would be created by substantial fluctuations in relative currency values. [2011 c 188 s 9.]

RCW 48.13.091 Prohibited investments. (1)(a) An insurer shall not invest in investments that are prohibited for an insurer by statutes or rules of this state.

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

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

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

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

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

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

(2) A reasonable time, not in excess of five years, shall be allowed for disposal of a prohibited investment in hardship cases if the investment is demonstrated by the insurer to have been legal when made, or the result of a mistake made in good faith, or if the commissioner deems that the sale of the asset would be contrary to the interests of insureds, creditors, or the general public. [2011 c 188 s 10.]

RCW 48.13.101 Satisfaction of the minimum asset requirement—
When assets may be counted. (1) Invested assets may be counted toward satisfaction of the minimum asset requirement only so far as they are invested in compliance with this chapter and applicable rules adopted and orders issued by the commissioner pursuant to this chapter. Assets other than invested assets may be counted toward satisfaction of the minimum asset requirement at admitted annual statement value.

(2) An investment held as an admitted asset by an insurer on July 1, 2012, which qualified under this chapter shall remain qualified as an admitted asset under this chapter.

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

(4) If an insurer does not own, or is unable to apply toward compliance with this chapter, an amount of assets equal to its minimum asset requirement, the commissioner may deem it to be financially hazardous under chapter 48.31 RCW. [2011 c 188 s 11.]

RCW 48.13.111 Commissioner's powers—Requirements of persons subject to regulation. (1) The commissioner may require any of the following from a person subject to regulation under this chapter:

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

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

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

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

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

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

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

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

(7) Notwithstanding the provisions of subsection (6) of this section, the commissioner may bring suit against any person providing information required under this chapter that is not truthful and accurate. [2011 c 188 s 12.]

RCW 48.13.121 Commissioner may retain experts—Insurer's expense. The commissioner may retain at the insurer's expense attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist in reviewing the insurer's investments. Persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity. [2011 c 188 s 13.]

RCW 48.13.131 When investment practices are not in compliance—Commissioner's authority. (1) If the commissioner determines that an insurer's investment practices do not meet the provisions of this

chapter, the commissioner may, after notification to the insurer of the commissioner's findings, order the insurer to make changes necessary to comply with the provisions of this chapter.

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

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

(4) If the commissioner is satisfied by evidence of the financial stability of an insurer and the competence of management and its investment advisors, the commissioner, after a hearing, may by order adjust the class limitations in RCW 48.13.071, for that insurer, to the extent that the commissioner is satisfied that the interests of insureds, creditors, and the public of this state are sufficiently protected in other ways. Adjustments granted with respect to RCW 48.13.071, in aggregate, are limited to an amount equal to ten percent of the insurer's liabilities. [2011 c 188 s 14.]

RCW 48.13.141 Aggrieved insurer—Request for hearing. An insurer aggrieved by an order or any other act or failure to act of the commissioner regarding compliance with this chapter or rules adopted under this chapter may request a hearing by following the procedures of chapters 48.04 and 34.05 RCW. [2011 c 188 s 15.]

RCW 48.13.151 Confidentiality of investment policy information. The investment policy, or information related to the investment policy provided to the commissioner for review under this chapter shall be considered confidential and shall not be a public record or subject to subpoena. [2011 c 188 s 16.]

RCW 48.13.161 Chapter prevails over other statutes—Valuation of assets. (1) This chapter prevails over any other statute purporting to authorize an insurer to make a particular investment if the other statute was enacted before July 1, 2012, and prevails over any statute enacted after July 1, 2012, unless the latter specifically includes amendments made to this chapter.

(2) An insurer shall value its assets in accordance with the valuation standards of the national association of insurance commissioners to the extent those standards are consistent with the statutes of this state or rules or orders of the commissioner. [2011 c 188 s 17.]

RCW 48.13.171 Rule making—Special investment restrictions. (1)

The commissioner may, in accordance with chapter 34.05 RCW, adopt rules interpreting and implementing the provisions of this chapter.

(2) The commissioner may, in accordance with chapter 34.05 RCW, adopt special investment restrictions as follows:

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

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

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

(ii) Specification of maximum amounts of assets that may be invested in a single investment, or an issue, a class or a group of classes of investments, expressed as percentages of total assets, capital, surplus, legal reserves, or other variables;

(iii) Prescription of qualitative tests for investments and conditions under which investments may be made, including requirements of specified ratings from investment advisory services, listing on specified stock exchanges, collateral, marketability, currency matching, and the financial and legal status of the issuer and its earnings capacity.

(3) If the commissioner is satisfied by evidence of the financial stability of an insurer and the competence of management and its investment advisors, the commissioner, after a hearing, may by order grant an exemption to that insurer from any restriction under subsection (2) of this section to the extent that the commissioner is satisfied that the interests of insureds, creditors, and the general public of this state are protected in other ways. [2011 c 188 s 18.]

RCW 48.13.350 Written record of investments—Contents. A

written record of each investment or loan of the funds of a domestic insurer shall contain:

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

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

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

(4) In the case of all investments:

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

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

interest. [2011 c 188 s 20; 2009 c 549 s 7055; 1949 c 190 s 20; 1947 c 79 s .13.35; Rem. Supp. 1949 s 45.13.35.]

RCW 48.13.360 Investments of foreign and alien insurers. The investments of a foreign or alien insurer shall be as permitted by the laws of its domicile but shall be of a quality substantially as high as those required under this chapter for similar funds of like domestic insurers. [1947 c 79 s .13.36; Rem. Supp. 1947 s 45.13.36.]

RCW 48.13.450 Safeguarding securities—Definitions. The definitions in this section apply throughout RCW 48.13.450 through 48.13.475 unless the context clearly requires otherwise.

(1) "Agent" means a national bank, state bank, trust company, or broker/dealer that maintains an account in its name in a clearing corporation or that is a member of the federal reserve system and through which a custodian participates in a clearing corporation, including the treasury/reserve automated debt entry securities system (TRADES) or treasury direct systems; except that with respect to securities issued by institutions organized or existing under the laws of a foreign country or securities used to meet the deposit requirements pursuant to laws of a foreign country as a condition of doing business therein, "agent" may include a corporation that is organized or existing under the laws of a foreign country and that is legally qualified under those laws to accept custody of securities.

(2) "Broker/dealer" means a broker or dealer as defined in RCW 62A.8-102(1)(c), that is registered with and subject to the jurisdiction of the securities and exchange commission, maintains membership in the securities investor protection corporation, and has a tangible net worth equal to or greater than two hundred fifty million dollars.

(3) "Clearing corporation" means a corporation as defined in RCW 62A.8-102(1)(e) that is organized for the purpose of effecting transactions in securities by computerized book-entry, except that with respect to securities issued by institutions organized or existing under the laws of any foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, "clearing corporation" may include a corporation that is organized or existing under the laws of any foreign country and is legally qualified under such laws to effect transactions in securities by computerized book-entry. "Clearing corporation" also includes treasury/reserve automated debt entry securities system and treasury direct book-entry securities systems established pursuant to 31 U.S.C. Sec. 3100 et seq., 12 U.S.C. pt. 391, and 5 U.S.C. pt. 301.

(4) "Commissioner" means the insurance commissioner of the state of Washington.

(5) "Custodian" means:

(a) A national bank, state bank, or trust company that shall, at all times acting as a custodian, be no less than adequately capitalized as determined by the standards adopted by United States banking regulators and that is regulated by either state banking laws or is a member of the federal reserve system and that is legally qualified to accept custody of securities; except that with respect to securities issued by institutions organized or existing under the laws

of a foreign country, or securities used to meet the deposit requirements pursuant to laws of a foreign country as a condition of doing business therein, "custodian" may include a bank or trust company incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government or an agency thereof that shall at all times acting as a custodian be no less than adequately capitalized as determined by the standards adopted by the international banking authorities and legally qualified to accept custody of securities; or

(b) A broker/dealer.

(6) "Custodied securities" means securities held by the custodian or its agent or in a clearing corporation, including the treasury/reserve automated debt entry securities system (TRADES) or treasury direct systems.

(7) "Securities" means instruments as defined in RCW 62A.8-102(1)(o).

(8) "Securities certificate" has the same meaning as in RCW 62A.8-102(1)(d).

(9) "Tangible net worth" means shareholders equity, less intangible assets, as reported in the broker/dealer's most recent annual or transition report pursuant to section 13 or 15(d) of the securities exchange act of 1934 (S.E.C. Form 10-K) filed with the securities and exchange commission.

(10) "Treasury/reserve automated debt entry securities system" ("TRADES") and "treasury direct" mean book-entry securities systems established pursuant to 31 U.S.C. Sec. 3100 et seq., 12 U.S.C. pt. 391, and 5 U.S.C. pt. 301, with the operation of TRADES and treasury direct subject to 31 C.F.R. pt. 357 et seq. [2009 c 161 s 2; 2008 c 234 s 1; 2000 c 221 s 1.]

RCW 48.13.455 Safeguarding securities—Deposit in a clearing corporation—Certificates—Records. Notwithstanding any other provision of law, a domestic insurance company may deposit or arrange for the deposit of securities held in or purchased for its general account and its separate accounts in a clearing corporation. When securities are deposited with a clearing corporation, securities certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other securities deposited with such clearing corporation by any person, regardless of the ownership of such securities, and securities certificates representing securities of small denominations may be merged into one or more certificates of larger denominations. The records of any custodian through which an insurance company holds securities shall at all times show that such securities are held for such insurance company and for which accounts thereof. Ownership of, and other interests in, such securities may be transferred by bookkeeping entry on the books of such clearing corporation without physical delivery of securities certificates representing such securities. [2008 c 234 s 2; 2000 c 221 s 2.]

RCW 48.13.460 Safeguarding securities—Authorized methods of holding securities. The following are the only authorized methods of holding securities:

(1) A domestic insurance company may hold securities in definitive certificates;

(2) A domestic insurance company may, pursuant to an agreement, designate a custodian through which it can transact and maintain book-entry securities on behalf of the insurance company; or

(3) A domestic insurance company may, pursuant to an agreement, participate in depository systems of clearing corporations directly or through a custodian . [2008 c 234 s 3; 2000 c 221 s 3.]

RCW 48.13.465 Safeguarding securities—Requirement to receive a confirmation. A domestic insurance company using the methods of holding securities under RCW 48.13.460 (2) or (3) is required to receive a confirmation from:

(1) The custodian whenever securities are received or surrendered pursuant to the domestic insurance company's instructions to a securities broker; or

(2) The securities broker provided that the domestic insurance company has given the custodian and the securities broker matching instructions authorizing the transaction, which have been confirmed by the custodian prior to surrendering funds or securities to conduct the transaction. [2008 c 234 s 4; 2000 c 221 s 4.]

RCW 48.13.470 Safeguarding securities—Broker executing a trade—Time limits. (1) A broker executing a securities trade pursuant to an order from a domestic insurance company shall send confirmation to the domestic insurance company or the clearing corporation confirming the order has been executed within twenty-four hours after order completion.

(2) A broker may not hold in its own account for longer than seventy-two hours any securities bought or sold pursuant to an order from a domestic insurance company. [2000 c 221 s 5.]

RCW 48.13.475 Safeguarding securities—Maintenance with a custodian—Commissioner may order transfer—Challenge to order—Standing at hearing or for judicial review. (1) Notwithstanding the maintenance of securities with a custodian pursuant to agreement, if the commissioner:

(a) Has reasonable cause to believe that the domestic insurer:

(i) Is conducting its business and affairs in such a manner as to threaten to render it insolvent;

(ii) Is in a hazardous condition or is conducting its business and affairs in a manner that is hazardous to its policyholders, creditors, or the public; or

(iii) Has committed or is committing or has engaged or is engaging in any act that would constitute grounds for rendering it subject to rehabilitation or liquidation proceedings; or

(b) Determines that irreparable loss and injury to the property and business of the domestic insurer has occurred or may occur unless the commissioner acts immediately;

then the commissioner may, without hearing, order the insurer and the custodian promptly to effect the transfer of the securities to another custodian approved by the commissioner. Upon receipt of the order, the custodian shall promptly effect the transfer of the securities.

Notwithstanding the pendency of any hearing or request for hearing, the order shall be complied with by those persons subject to that order. Any challenge to the validity of the order shall be made under chapter 48.04 RCW, however, the stay of action provisions of RCW 48.04.020 do not apply. It is the responsibility of both the insurer and the custodian to oversee that compliance with the order is completed as expeditiously as possible. Upon receipt of an order, there shall be no trading of the securities without specific instructions from the commissioner until the securities are received by the new custodian, except to the extent trading transactions are in process on the day the order is received by the insurer and the failure to complete the trade may result in loss to the insurer's account. Issuance of an order does not affect the custodian's liabilities with regard to the securities that are the subject of the order.

(2) No person other than the insurer has standing at the hearing by the commissioner or for any judicial review of the order. [2008 c 234 s 5; 2000 c 221 s 6.]

RCW 48.13.480 Safeguarding securities—Insurance company's securities—Written agreement with custodian—Required terms.

(1) An insurance company may, by written agreement with a custodian, provide for the custody of its securities with that custodian. The securities that are the subject of the agreement may be held by the custodian or its agent or in a clearing corporation.

(2) The agreement shall be in writing and shall be authorized by a resolution of the board of directors of the insurance company or of an authorized committee of the board. The terms of the agreement shall comply with the following:

(a) Securities certificates held by the custodian shall be held separate from the securities certificates of the custodian and all of its customers;

(b) Securities held indirectly by the custodian and securities in a clearing corporation shall be separately identified on the custodian's official records as being owned by the insurance company. The records shall identify which securities are held by the custodian or by its agent and which securities are in a clearing corporation. If the securities are in a clearing corporation, the records shall also identify where the securities are and the name of the clearing corporation; and if the securities are held by an agent, the records shall also identify the name of the agent;

(c) All custodied securities that are registered shall be registered in the name of the company or in the name of the nominee of the company or in the name of the custodian or its nominee, or, if in a clearing corporation, in the name of the clearing corporation or its nominee;

(d) Custodied securities shall be held subject to the instructions of the insurance company and shall be withdrawable upon the demand of the insurance company, except custodied securities used to meet the deposit requirements;

(e) The custodian shall be required to send or cause to be sent to the insurance company a confirmation of all transfers of custodied securities to or from the account of the insurance company. Confirmation of all transfers shall be provided to the insurance company in hard copy or electronic format. In addition, the custodian

shall be required to furnish, no less than monthly, the insurance company with reports of various holdings of custodied securities at times and containing information reasonably requested by the insurance company. The custodian's trust committee's annual reports of its review of the insurer trust accounts shall also be provided to the insurer. Reports and verifications may be transmitted in electronic or paper format;

(f) During the course of the custodian's regular business hours, an officer or employee of the insurance company, an independent accountant selected by the insurance company, and a representative of an appropriate regulatory body shall be entitled to examine, on the premise of the custodian, the custodian's records relating to the custodied securities, but only upon furnishing the custodian with written instructions to that effect from an appropriate officer of the insurance company;

(g) The custodian and its agents shall be required to send to the insurance company:

(i) All reports that they receive from a clearing corporation on their respective systems of internal accounting control; and

(ii) Reports prepared by outside auditors on the custodians or its agents internal accounting control of custodied securities that the insurance company may reasonably request;

(h) The custodian shall maintain records sufficient to determine and verify information relating to custodied securities that may be reported in the insurance company's annual statement and supporting schedules and information required in an audit of the financial statements of the insurance company;

(i) The custodian shall provide, upon written request from an appropriate officer of the insurance company, the appropriate affidavits;

(j) A national bank, state bank, or trust company shall secure and maintain insurance protection in an adequate amount covering the bank's or trust company's duties and activities as custodian for the insurer's assets, and shall state in the custody agreement that the protection is in compliance with the requirements of the custodian's banking regulator. A broker/dealer shall secure and maintain insurance protection for each insurance company's custodied securities in excess of that provided by the securities investor protection corporation in an amount equal to or greater than the market value of each respective insurance company's custodied securities. The commissioner may determine whether the type of insurance is appropriate and whether the amount of coverage is adequate;

(k) The custodian shall be obligated to indemnify the insurance company for any loss of custodied securities occasioned by the negligence or dishonesty of the custodian's officers or employees or agents, or burglary, robbery, holdup, theft, or mysterious disappearance, including loss by damage or destruction;

(l) In the event that there is a loss of custodied securities for which the custodian shall be obligated to indemnify the insurance company as provided in (k) of this subsection, the custodian shall promptly replace the securities of the value thereof and the value of any loss of rights or privileges resulting from the loss of securities;

(m) The custodian will not be liable for a failure to take an action required under the agreement in the event and to the extent that the taking of the action is prevented or delayed by war (whether declared or not, including existing wars), revolution, insurrection,

riot, civil commotion, accident, fire, explosion, labor stoppage and strikes, laws, regulations, orders, or other acts of any governmental authority, which are beyond its reasonable control;

(n) In the event that the custodian gains entry in a clearing corporation through an agent, there shall be an agreement between the custodian and the agent under which the agent shall be subject to the same liability for loss of custodied securities as the custodian. However, if the agent is subject to regulation under the laws of a jurisdiction that are different from the laws of the jurisdiction that regulates the custodian, the commissioner may accept a standard of liability applicable to the agent that is different from the standard of liability applicable to the custodian;

(o) The custodian shall provide written notification to the office of the insurance commissioner if the custodial agreement with the insurer has been terminated or if one hundred percent of the account assets in any one custody account have been withdrawn. This notification shall be remitted to the commissioner within three business days of the withdrawal of one hundred percent of the account assets. [2008 c 234 s 7.]

RCW 48.13.490 Safeguarding securities—Rules. The commissioner may adopt rules governing the deposit by insurance companies of securities with clearing corporations, including establishing standards for national banks, state banks, trust companies, and brokers/dealers to qualify as custodians for insurance company securities. [2008 c 234 s 6; 2000 c 221 s 7.]

RCW 48.13.900 Effective date—2011 c 188. This act takes effect July 1, 2012. [2011 c 188 s 24.]