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# A BILL FOR AN ACT

RELATING TO INSURANCE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

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

3           "(a) For purposes of this article:

4           ~~[(1) Obligation includes bonds, debentures, notes, or other~~  
5           ~~evidences of indebtedness.~~

6           ~~-(2) Institution includes corporations, joint stock~~  
7           ~~associations, and business trusts.~~

8           ~~-(3) Net earnings available for fixed charges means net~~  
9           ~~income after deducting operating and maintenance~~  
10           ~~expenses, taxes other than federal and state income~~  
11           ~~taxes, depreciation, and depletion, but excluding~~  
12           ~~extraordinary nonrecurring items of income or expense~~  
13           ~~appearing in the regular financial statements of such~~  
14           ~~institution.~~

15           ~~-(4) Fixed charges includes interest on funded and unfunded~~  
16           ~~debt, amortization of debt discount, and rentals for~~  
17           ~~leased properties.]~~

18           "Cash" includes cash equivalents.



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

9       "Fixed charges" means interest on funded and unfunded debt,  
10 amortization of debt discount, and rentals for leased properties.

11       "Institution" means corporations, joint-stock associations,  
12 and business trusts.

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

19       "Obligation" means bonds, debentures, notes, or other  
20 evidence of indebtedness.

21       "Surplus as regards to policyholders" means the excess of the  
22 insurer's admitted assets over its liabilities.



1       "SVO" means the Securities Valuation Office of the National  
2 Association of Insurance Commissioners.

3       ~~[-(5) Value]~~ "Value" means fair value. Market value is the  
4 best evidence of fair value."

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

7       "(c) Any limitation based upon the amount of the insurer's  
8 assets or surplus shall relate to assets or surplus as shown by  
9 the insurer's annual statement as of December 31 preceding date  
10 of investment."

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

13       "(a) Notwithstanding the provisions of section 431:6-321,  
14 no security or other investment shall be eligible for purchase  
15 or acquisition under this article unless it is interest bearing  
16 or interest accruing or ~~[dividend or]~~ income paying, is not then  
17 in default in any respect, and the insurer is entitled to  
18 receive for its exclusive account and benefit, the interest or  
19 income accruing thereon; except, that it may acquire real  
20 property and non-dividend paying securities as provided in this  
21 article. An insurer's aggregate investment in non-dividend  
22 paying securities shall not exceed the greater of twenty-five



1 per cent of its admitted assets or fifty per cent of its surplus  
2 as regards to policyholders as defined in section 431:6-101."

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

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

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

15 "**§431:6-302 Corporate obligations.** An insurer may invest  
16 any of its funds in obligations other than those eligible for  
17 investment under section 431:6-306 if they are [~~issued~~]:

18 (1) Issued, assumed, or guaranteed by any solvent  
19 institution created or existing under the laws of the  
20 United States or of any state, or district thereof[~~-~~];  
21 and [~~are qualified under any of the following~~].





1       ~~(1) Obligations which are secured by adequate collateral~~  
2       ~~security and bear fixed interest, if during each of~~  
3       ~~any three, including the last two, of the five fiscal~~  
4       ~~years next preceding the date of acquisition by the~~  
5       ~~insurer, the net earnings of the issuing, assuming, or~~  
6       ~~guaranteeing institution available for its fixed~~  
7       ~~charges, as defined in section 431:6-101, have been~~  
8       ~~not less than one and one fourth times the total of~~  
9       ~~its fixed charges for such year. In determining the~~  
10       ~~adequacy of collateral security, not more than one-~~  
11       ~~third of the total value of the required collateral~~  
12       ~~shall consist of stock other than stock meeting the~~  
13       ~~requirements of section 431:6-303,~~

14       ~~(2) Fixed interest bearing obligations, other than those~~  
15       ~~described in item (1), if the net earnings of the~~  
16       ~~issuing, assuming, or guaranteeing institution~~  
17       ~~available for its fixed charges for a period of five~~  
18       ~~fiscal years next preceding the date of acquisition by~~  
19       ~~the insurer, have averaged per year not less than one~~  
20       ~~and one half times its average annual fixed charges~~  
21       ~~applicable to the period, and if during the last year~~  
22       ~~of the period, the net earnings have been not less~~



1 ~~than one and one half times its fixed charges for the~~  
2 ~~year; or~~

3 ~~(3) Adjustment, income or other contingent interest~~  
4 ~~obligations, if the net earnings of the issuing,~~  
5 ~~assuming, or guaranteeing institution available for~~  
6 ~~its fixed charges for a period of five fiscal years~~  
7 ~~next preceding the date of acquisition by the insurer~~  
8 ~~have averaged per year not less than one and one half~~  
9 ~~times the sum of its annual fixed charges and its~~  
10 ~~average maximum contingent interest applicable to the~~  
11 ~~period, and if during each of [the] last two years of~~  
12 ~~the period, the net earnings have been not less than~~  
13 ~~one and one half times the sum of its fixed charges~~  
14 ~~and maximum contingent interest for the year.]~~

15 (2) Filed with the SVO or are considered "filing exempt"  
16 by the Purposes and Procedures Manual of the SVO, or  
17 its successor publication."

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

20 **"§431:6-303 Preferred or guaranteed stocks or shares.** An  
21 insurer may invest any of its funds, in an aggregate amount not  
22 exceeding fifteen per cent of its assets, in preferred or



1 guaranteed stocks or shares, other than common stocks, of  
2 solvent institutions existing under the laws of the United  
3 States or of any state, district, or territory thereof, if all  
4 of the prior obligations and prior preferred stocks, if any, of  
5 ~~[such]~~ the institution at the date of acquisition by the insurer  
6 are [eligible]:

7 (1) Eligible as investments under this article; and [if  
8 ~~qualified under either of the following:~~

9 ~~(1) Preferred stocks or shares shall be deemed qualified~~  
10 ~~if:~~

11 ~~(A) The net earnings of the institution available for~~  
12 ~~its fixed charges for a period of five fiscal~~  
13 ~~years next preceding the date of acquisition by~~  
14 ~~the insurer must have averaged per year not less~~  
15 ~~than one and one half times the sum of its~~  
16 ~~average annual fixed charges, if any, its average~~  
17 ~~annual maximum contingent interest, if any, and~~  
18 ~~its average annual preferred dividend~~  
19 ~~requirements applicable to the period; and~~

20 ~~(B) During each of the last two years of such period,~~  
21 ~~the net earnings must have been not less than one~~  
22 ~~and one half times the sum of its fixed charges,~~



1                   ~~contingent interest, and preferred dividend~~  
2                   ~~requirements for such year. The term preferred~~  
3                   ~~dividend requirements shall be deemed to mean~~  
4                   ~~cumulative or noncumulative dividends whether~~  
5                   ~~paid or not.~~

6           ~~(2) Guaranteed stocks or shares shall be deemed qualified~~  
7           ~~if the assuming or guaranteeing institution meets the~~  
8           ~~requirements of section 431:6-302(1), construed so as~~  
9           ~~to include as a fixed charge the amount of guaranteed~~  
10           ~~dividends of such issue or the rental covering the~~  
11           ~~guarantee of such dividends.]~~

12           (2) Filed with the SVO or are considered "filing exempt"  
13           by the Purposes and Procedures Manual of the SVO, or  
14           its successor publication."

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

17           "**§431:6-313 Foreign securities.** (a) An insurer  
18 authorized to transact insurance in a foreign country may invest  
19 any of its funds, in an aggregate amount not exceeding its  
20 deposit and reserve obligations incurred in such country, in  
21 securities of or in such country possessing characteristics and



1 of a quality similar to those required pursuant to this article  
2 for investments in the United States.

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

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

17 (1) The aggregate amount of foreign investments then held  
18 by the insurer under this subsection shall not exceed  
19 twenty per cent of its admitted assets; and

20 (2) The aggregate amount of foreign investments then held  
21 by the insurer under this subsection in a single  
22 foreign jurisdiction shall not exceed ten per cent of



1 its admitted assets as to a foreign jurisdiction that  
2 has a sovereign debt rating of SVO 1 or three per cent  
3 of its admitted assets as to any other foreign  
4 jurisdiction.

5 (d) Investments acquired under this section shall be  
6 aggregated with investments of the same types made under all other  
7 sections of this article, and in a similar manner, for the  
8 purposes of determining compliance with limitations, if any,  
9 contained in the other sections."

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

12 **"§431:6-317 Common stocks.** [~~After satisfying the~~  
13 ~~requirements of section 431:6-201, an insurer may invest any of~~  
14 ~~its funds in common shares of stock in solvent United States~~  
15 ~~corporations that qualify as a sound investment.] (a) An~~  
16 insurer may invest any of its funds in common shares of stock  
17 that are filed with the SVO or are considered "filing exempt" by  
18 the Purposes and Procedures Manual of the SVO, or its successor  
19 publication. In aggregate, an insurer's amount of investment in  
20 common stocks, including investments made pursuant to section  
21 431:6-322 and non-dividend paying stocks, shall not exceed the  
22 greater of twenty-five per cent of its admitted assets or one



1 hundred per cent of its surplus as regards to policyholders as  
2 defined in section 431:6-101.

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

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

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

11 "**§431:6-322 Common trust funds**~~[7]~~**;** **mutual funds**~~[+]~~**;** **and**  
12 **exchanged traded funds.** [~~A~~] (a) Subject to the limitations in  
13 subsections (b) and (c), an insurer may invest in:

14 (1) A bank's common trust fund as defined in Section 584  
15 of the United States Internal Revenue Code of ~~[1954,~~  
16 ~~Section 584; and]~~ 1986, as amended;

17 (2) The securities of any open-end management type  
18 investment company or investment trust registered with  
19 the federal Securities and Exchange Commission under  
20 the Investment Company Act of 1940, as amended, if the  
21 investment company or trust, other than one of which  
22 as a subsidiary of the insurer is investment adviser



1 or principal underwriter, has a new value of not less  
2 than \$25,000,000 as of the date of investment by the  
3 insurer[-]; and

4 (3) An exchange traded fund that is registered with the  
5 federal Securities and Exchange Commission under the  
6 Investment Company Act of 1940, as amended, and is  
7 traded on a public exchange.

8 (b) In aggregate, an insurer's amount of investment in  
9 common trust funds, mutual funds, and exchange traded funds,  
10 including investments made pursuant to section 431:6-317(a),  
11 shall not exceed the greater of twenty-five per cent of its  
12 admitted assets or one hundred per cent of its surplus as  
13 regards to policyholders as defined in section 431:6-101. This  
14 limitation shall not apply to investments approved on the  
15 "Mutual Funds List" from the Purposes and Procedures Manual of  
16 the SVO, or its successor publication.

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

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

22 "(a) For purposes of this section:





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

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

9 "Government money market mutual fund" means a money market  
10 mutual fund that at all times:

11 (1) Invests only in obligations issued, guaranteed, or  
12 insured by the government of the United States or  
13 collateralized repurchase agreements composed of these  
14 obligations; and

15 (2) Qualifies for investment without a reserve under the  
16 Purposes and Procedures of the SVO or any successor  
17 publication.

18 "Money market mutual fund" means a mutual fund that meets  
19 the conditions of 17 Code of Federal Regulations [~~part~~] Part  
20 270.2a-7, under the Investment Company Act of 1940 (15 [~~U.S.C.~~  
21 §] United States Code Section 80a-1 et seq.), as amended, or  
22 renumbered.



1 "Obligation" means a bond, note, debenture, trust  
2 certificate, including equipment certificate, production  
3 payment, negotiable bank certificate of deposit, bankers'  
4 acceptance, credit tenant loan, loan secured by financing net  
5 leases and other evidence of indebtedness for the payment of  
6 money (or participation, certificates, or other evidence of an  
7 interest in any of the foregoing), whether constituting a  
8 general obligation of the issuer or payable only out of certain  
9 revenues or certain funds pledged or otherwise dedicated for  
10 payment.

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

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

21 "Reverse repurchase transaction" means a transaction in  
22 which an insurer sells securities to a business entity and is



1 obligated to repurchase the sold securities or equivalent  
2 securities from the business entity at a specified price, either  
3 within a specified period of time or upon demand.

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

9 ~~["SVO" means the Securities Valuation Office of the  
10 National Association of Insurance Commissioners.]~~

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

13 (1) Invest only in:

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

21 (i) A remaining maturity of three hundred  
22 ninety-seven days or less or a put that



1 entitles the holder to receive the principal  
2 amount of the obligation which put may be  
3 exercised through maturity at specified  
4 intervals not exceeding three hundred  
5 ninety-seven days; or

6 (ii) A remaining maturity of three years or less  
7 and a floating interest rate that resets no  
8 less frequently than quarterly on the basis  
9 of a current short-term index (federal  
10 funds, prime rate, treasury bills, London  
11 InterBank Offered Rate [~~"LIBOR"~~] or  
12 commercial paper) and is subject to no  
13 maximum limit, if the obligations do not  
14 have an interest rate that varies inversely  
15 to market interest rate changes;

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

18 (C) Securities lending, repurchase, and reverse  
19 repurchase transactions that meet all the  
20 requirements of section [~~431:6-322~~] 431:6-318;  
21 or



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

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

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



**Report Title:**

Insurance; Investments

**Description:**

Amends current provisions of the insurance investment statutes allowing insurers more investment flexibility without significantly lessening protection to insurance policyholders and to reflect more current regulatory standards. (SB3019 HD2)

