H.B. NO. 3097

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~~] "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 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 431:6-201, 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 and one hundred per cent of its ceded

reinsurance payable required by this code, in the following assets as defined by section 431:5-201: 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 3. 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 4. 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 5. 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, 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 that do

not qualify under subsection (a) after satisfying the requirements of section 431:6-201."

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

"**§431:6-322 Common trust funds[~~,~~]; mutual funds.** [~~An~~] (a) Subject to the limitations in subsection (b), an insurer may invest in:

(1) A bank's common trust fund as defined in the United States Internal Revenue Code of 1986, Section 584; and

(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.

(b) In aggregate, an insurer's amount of investment in common trust funds and mutual funds, including investments made pursuant to section 431:6-317, 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. 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."

SECTION 7. Section 431:6-601, Hawaii Revised Statutes, is amended by:

(1) Amending subsection (a) to repeal the definition of "SVO".

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

(2) Amending subsection (b) to read as follows:

"(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 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect on January 1, 2009.

INTRODUCED BY: _____

BY REQUEST

JAN 22 2008

H.B. NO. 3097

Report Title:
Insurance; Investments

Description:
Provides insurers with greater investment flexibility by updating the Insurance Code to reflect the investment strategies, such as stocks, bonds, and notes developed since the Code was last updated in 1987.

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JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO INSURANCE.

PURPOSE: Allow insurers more investment flexibility without significantly lessening protection to insurance policyholders and to reflect more current regulatory standards.

MEANS: Amend sections 431:6-101(a), 431:6-201(b), 431:6-302, 431:6-303, 431:6-317, 431:6-322, and 431:6-601(a) and (b), Hawaii Revised Statutes.

JUSTIFICATION: The current insurer investment provisions have remained relatively unchanged since they were established during the re-codification of insurance laws in 1987. Since that time, the National Association of Insurance Commissioners (NAIC) has modernized the basis and limitations for allowable investments and provided guidance and authoritative literature. These amendments provide greater flexibility and diversification to insurers' investment portfolios. For example, section 431:6-317 previously limited an insurer's investment in common stocks after satisfying the requirements of section 431:6-201(b). Amending section 431:6-317 allows insurers to use their investments in common stocks to meet the requirements of section 431:6-201(b). The delayed effective date allows insurers the opportunity to adjust their investments and investment strategies in compliance with the revised provisions.

Impact on the public: The public and policyholders may benefit from reduced rates from insurers who have earned increased investment income from their investment portfolio.

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Impact on the department and other agencies:
None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: CCA-106.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: January 1, 2009.