

## Senate Bill No. 733

### CHAPTER 197

An act to amend Section 1192.95 of the Insurance Code, relating to insurance.

[Approved by Governor July 30, 1995. Filed with  
Secretary of State July 31, 1995.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 733, Lewis. Insurance: excess funds investments.

Existing law authorizes an insurer to make excess funds investments in investment pools and cash management pools that, among other things, are required to be a corporation, partnership, trust, or business trust, as specified.

This bill would additionally provide that those investment pools and cash management pools may be a limited liability company.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1192.95 of the Insurance Code is amended to read:

1192.95. (a) Notwithstanding Section 1100, an insurer may make excess funds investments in investment pools and cash management pools established pursuant to this section. The pools shall meet all of the following standards:

(1) All participants in a pool shall each be affiliated with one another within the meaning of subdivision (a) of Section 1215 and shall all be insurers, or a pension plan or profit-sharing plan of a participant or affiliate.

(2) The pools shall be a corporation, partnership, trust, limited liability company, or business trust domiciled in the United States with all assets held in accordance with Section 1104.9 and shall be maintained in one or more accounts in the name of or on behalf of the investment pool. Pool assets shall be held under a bank custody agreement that states and recognizes the claims and rights of each participant, acknowledges that the pool assets are held solely for the benefit of each participant in proportion to the aggregate amount of its pool investments, and states that the investments shall not be commingled with the general assets of the custodian or any other person. The pool manager shall be an insurer as defined by Section 826 or a business entity registered as an investment adviser under the federal Investment Act of 1940. The fiduciary duties a manager owes to the limited liability company and its members are those of a



partner to a partnership. This duty may not be restricted by agreement.

(3) Any management fee shall be subject to disapproval by the commissioner. Costs directly incurred in acquiring or selling assets, such as commissions, transaction fees, or custodial fees, are not management fees and may be charged by the pool to the participants as long as these fees are on a direct cost reimbursement basis. All costs shall be apportioned to each participant in proportion to its interest in the pool.

(4) All shares of the pool shall be of the same class with equal rights, preferences, and privileges. Each share shall participate equally in dividends and distributions declared by the pool on liquidation in proportion to each participant's interest. When issued, the shares shall be fully paid and nonassessable and shall have no preemptive, conversion, or exchange rights.

(5) Each participant shall be entitled to require the pool to redeem all or any portion of the shares held by the participant on demand without penalty or assessment on any business day.

(6) All assets of a cash management pool shall be assets that participant insurers may lawfully acquire individually and shall be: (A) debt obligations issued by or on behalf of the United States, its territories and possessions, the District of Columbia, and states or their political subdivisions, agencies, and instrumentalities, including industrial development obligations, having a maturity not exceeding one year; (B) corporate debt obligations, other than debt obligations issued, assumed, guaranteed, or insured by a participant or by any affiliate of a participant, having a maturity not exceeding one year and that are rated One or Two by the Securities Valuation Office of the National Association of Insurance Commissioners; or (C) accounts, deposits, or obligations of banks or savings and loan associations insured by an agency or instrumentality of the federal government.

(7) All assets of an investment pool shall be: (A) investments that are authorized under Section 1191, other than stock issued, assumed, guaranteed, or insured by a participant or any affiliate of a participant; (B) accounts, deposits, or obligations of banks or savings and loan associations insured by an agency or instrumentality of the federal government; or (C) investments that are authorized under Section 1192, other than securities or notes issued, assumed, guaranteed, or insured by a participant or any affiliate of a participant, or under Section 1194.5 or 1241.

(8) The assets of pools shall be required to meet the requirements of and be authorized for investment by a domestic incorporated insurer under Article 3 (commencing with Section 1170) or this article.

(9) No pool shall make investments in purchases of, or loans upon, more than 30 percent of the total in par value or more than 30 percent



of the total number of outstanding shares of the capital stock of any one corporation.

(10) Transactions between the pool and its participants shall not be deemed to be material for purposes of subdivision (c) of Section 1215.4. Investment activity of pools and transactions between pools and participants shall be reported annually in the registration statement required by Section 1215.4.

(11) Participation in an investment pool shall be subject to a written pooling agreement that shall be approved by the participant's board of directors and shall provide that (A) the underlying assets of the pool shall not be commingled with the general assets of the pool manager or any other person; (B) each participant must own an undivided interest in the underlying assets of the pool; (C) the underlying assets of the investment pool are held solely for the benefit of each participant; and (D) the pool manager shall make the records of the investment pool available for inspection by the commissioner. Pool agreements shall also specify what type of share participants hold to evidence their beneficial interest in the pool's assets. Prior to the execution of a pool agreement, a participating insurer's board of directors must approve the agreement only after having received a written opinion from an independent outside counsel explaining the ramifications and possible effects that a declaration of insolvency by a participant will have on the insurer's share of the investment pool.

(12) No participant insurer may invest more than 10 percent of admitted assets in a single pool or more than 25 percent of admitted assets in all pools combined.

(13) Each participant's proportionate share of the assets of a pool shall be deemed to be the direct holdings of that participant for purposes of determining compliance with the investment requirements of this code and shall be reported as such on required quarterly and annual reports. Pools operated as limited liability companies pursuant to Title 2.5 (commencing with Section 17000) of the Corporations Code shall conform their investments to this paragraph and the requirements of Sections 1200 and 1201.

(14) The pool manager shall compile and maintain detailed accounting records setting forth (A) the cash received and disbursements reflecting each participant's proportional investment in the investment pool; (B) a complete description of all underlying assets of the investment pool including amount, interest rate, and maturity date, if any, and other appropriate designations; and (C) other records that, on a daily basis, will allow the commissioner and the participants to verify each participant's investments in the pool.

(15) Pools shall not borrow or loan assets, except for securities-lending arrangements that are otherwise lawful for insurer participants of the pool.



(b) As used in this section, “share” means stock, participation unit, certificate of interest, or other evidence of beneficial ownership in the pool, whether evidenced by an instrument or by a book entry maintained by the pool.

(c) The commissioner shall have the authority to review any pool agreement and to disapprove any agreement that does not comply with this section. The commissioner shall have the authority to review the operation of any pool and to order compliance with this section. The commissioner shall have the authority to disallow, as an admitted asset, any pool investment not in compliance with this section. The commissioner may impose a fee upon any pool to recoup the actual cost of review under this section.

