

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE DRH70203-LT-74* (3/6)

Short Title: Custodial Agreements & Clearing Corp. Act.-AB (Public)

Sponsors: Representatives Goforth and Holliman (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ADOPT THE NATIONAL ASSOCIATION OF INSURANCE
COMMISSIONERS' MODEL ACT ON CUSTODIAL AGREEMENTS AND
CLEARING CORPORATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-5-1 through G.S. 58-5-125 is designated as Part 1 of Article 5 of Chapter 58 of the General Statutes, entitled "Deposits and Bonds by Insurance Companies."

SECTION 2. Article 5 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 2. Custodial Agreements and Clearing Corporations.

"§ 58-5-140. Purpose.

The purpose of this Part and G.S. 58-5-21 and G.S. 58-5-22 is to authorize insurance companies to use modern systems for holding and transferring securities without physical delivery of securities certificates, subject to appropriate rules of the Commissioner.

"§ 58-5-145. Definitions.

As used in this Part and in G.S. 58-5-21 and G.S. 58-5-22:

- (1) "Clearing corporation" means a corporation as defined in G.S. 25-8-102(a)(5), 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 in that country, "clearing corporation" includes a corporation that is organized or existing under the laws of any foreign country and is legally qualified under those laws to effect transactions in securities by computerized book-entry. "Clearing corporation" also includes "Treasury/Reserve

1 Automated Debt Entry Securities System" and "Treasury Direct"
2 book-entry securities systems established pursuant to 31 U.S.C. §
3 3101, et seq.

4 (2) "Custodian" means a national bank, state bank, trust company, broker,
5 or dealer that participates in a clearing corporation.

6 (3) "Securities" means instruments as defined in G.S. 25-8-102(a)(15).

7 **"§ 58-5-150. Use of book-entry systems.**

8 (a) Notwithstanding any other provision of law, a domestic insurance company
9 may deposit or arrange for the deposit of securities held in or purchased for its general
10 account and its separate accounts in a clearing corporation. When securities are
11 deposited with a clearing corporation, certificates representing securities of the same
12 class of the same issuer may be merged and held in bulk in the name of the nominee of
13 that clearing corporation with any other securities deposited with that clearing
14 corporation by any person, regardless of the ownership of those securities. Certificates
15 representing securities of small denominations may be merged into one or more
16 certificates of larger denominations. The records of any custodian through which an
17 insurance company holds securities in a clearing corporation shall at all times show that
18 those securities are held for that insurance company and for which accounts of that
19 company. Ownership of, and other interests in, those securities may be transferred by
20 bookkeeping entry on the books of the clearing corporation without physical delivery of
21 certificates representing those securities.

22 (b) The Commissioner may adopt rules governing the deposit by insurance
23 companies of securities with clearing corporations, including establishing standards for
24 national banks, state banks, trust companies, brokers, and dealers to qualify as
25 custodians for insurance company securities."

26 **SECTION 3.** Part 1 of Article 5 of Chapter 58 of the General Statutes is
27 amended by adding two new sections to read:

28 **"§ 58-5-21. Deposit of securities by domestic insurance companies.**

29 Notwithstanding any other provision of law, the securities qualified for deposit by
30 domestic insurance companies under this Part may be deposited with a clearing
31 corporation. Securities deposited with a clearing corporation and used to meet the
32 deposit requirements set forth in this Part shall be under the control of the
33 Commissioner and shall not be withdrawn by the insurance company without the
34 approval of the Commissioner. Any insurance company holding securities in this
35 manner shall provide to the Commissioner evidence issued by its custodian through
36 which the insurance company has deposited the securities in a clearing corporation in
37 order to establish that the securities are actually recorded in an account in the name of
38 the custodian and that the records of the custodian reflect that the securities are held
39 subject to the order of the Commissioner.

40 **"§ 58-5-22. Deposit of securities by foreign insurance companies.**

41 Notwithstanding any other provision of law, securities eligible for deposit under this
42 Part relating to deposit of securities by an insurance company as a condition of
43 commencing or continuing to do an insurance business in this State may be deposited
44 with a clearing corporation. Securities deposited with a clearing corporation and used to

1 meet the deposit requirements under this Part shall be under the control of the
2 Commissioner and shall not be withdrawn by the insurance company without the
3 approval of the Commissioner. Any insurance company holding securities in this
4 manner shall provide to the Commissioner evidence issued by its custodian in order to
5 establish that the securities are actually recorded in an account in the name of the
6 custodian and evidence that the records of the custodian reflect that the securities are
7 held subject to the order of the Commissioner."

8 **SECTION 4.** This act becomes effective October 1, 2008.