

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE DRS75236-LT-74A\* (3/6)

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

Sponsors: Senator Boseman.

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.