

ENGROSSED HOUSE
BILL NO. 2934

By: Peterson (Ron) of the House
and

Aldridge of the Senate

An Act relating to insurance; amending 36 O.S. 2001, Section 1628, which relates to securities deposited under the Oklahoma Insurance Code; modifying definitions; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 36 O.S. 2001, Section 1628, is amended to read as follows:

Section 1628. A. As used in this section:

1. "Agent" shall mean a national bank, state bank, or trust company which maintains an account in its name in a clearing corporation or which is a member of the Federal Reserve System and through which a custodian participates in a clearing corporation or the Federal Reserve book-entry system, 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 therein, "agent" may, with the prior approval of the Commissioner, include a corporation which is organized or existing under the laws of any foreign country and which is legally qualified under such law to accept custody of securities;

2. "Clearing corporation" shall mean a corporation as defined in paragraph (5) of subsection (a) of Section 8-102 of Title 12A of the Oklahoma Statutes which is organized for the purpose of effecting transactions in securities by computerized book-entry,

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 therein, "clearing corporation" may include a corporation which is organized or existing under the laws of any foreign country and which is legally qualified under such laws to effect transactions in securities by computerized book-entry. ~~Such~~ The term "clearing corporation" also includes "Treasury/Reserve Automated Debt Entry Securities System" and "Treasury Direct" book-entry securities systems established pursuant to 31 U.S.C., Section 3100 et seq., 12 U.S.C. pt. 391 and 5 U.S.C. pt. 301. Clearing corporations shall have been approved for use by the Commissioner;

3. "Commissioner" shall mean the Insurance Commissioner of the State of Oklahoma or an authorized representative;

4. "Custodian" shall mean a national bank, state bank, or trust company which has at all times aggregate capital, surplus, and undivided profits of not less than Five Hundred Thousand Dollars (\$500,000.00) and which is regulated by either state banking laws or is a member of the Federal Reserve System and which is legally qualified to accept custody of securities in accordance with the standards set forth below, or a broker-dealer as defined by Section 1-102 of Title 71 of the Oklahoma Statutes that is registered with and subject to the jurisdiction of the Securities and Exchange Commission, maintains membership in the Securities Investor Protection Corporation, and has a tangible net worth equal to or greater than Two Hundred Fifty Million Dollars (\$250,000,000.00), 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 therein, "custodian" may include a bank, trust company, or similar

institution which has at all times aggregate capital, surplus, and undivided profits of not less than the equivalent of Five Hundred Thousand Dollars (\$500,000.00) and which is legally qualified to accept custody of securities;

5. "Federal Reserve book-entry system" shall mean the computerized systems sponsored by the United States Department of the Treasury and certain agencies and instrumentalities of the United States for holding and transferring securities of the United States government and the agencies and instrumentalities, respectively, in Federal Reserve Banks through banks which are members of the Federal Reserve System or which otherwise have access to the computerized systems; and

6. "Securities" shall mean certificated securities and uncertificated securities as defined in paragraphs (4) and (18) of subsection (a) of Section 8-102 of Title 12A of the Oklahoma Statutes.

B. 1. a. Notwithstanding any other provision of law, a domestic insurance company may deposit or arrange for the deposit of securities held in or purchased for its general account and its separate accounts in a clearing corporation or the Federal Reserve book-entry system. When securities are deposited with a clearing corporation, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of the clearing corporation with any other securities deposited with the clearing corporation by any person, regardless of the ownership of the securities, and certificates representing securities of small denominations may be merged into one or more certificates of larger denominations. The records of any agent through which an insurance company holds

securities in the Federal Reserve book-entry system, and the records of any custodian banks through which an insurance company holds securities in a clearing corporation, shall at all times show that the securities are held for the insurance company and for which accounts thereof.

- b. Ownership of, and other interests in, the securities may be transferred by bookkeeping entry on the books of the clearing corporation or in the Federal Reserve book-entry system without, in either case, physical delivery of certificates representing such securities; and

2. Notwithstanding any other provision of law, securities eligible for deposit under the Oklahoma Insurance Code relating to deposit of securities by an insurance company as a condition of commencing or continuing to do an insurance business in this state may be deposited with a clearing corporation or held in the Federal Reserve book-entry system and used to meet the deposit requirements under the Oklahoma Insurance Code and shall be under the control of the Commissioner and shall not be withdrawn by the insurance company without the approval of the Commissioner. Any insurance company holding securities in this manner shall provide to the Commissioner evidence issued by its custodian or an agent through which the insurance company has deposited securities with a clearing corporation or held in the Federal Reserve book-entry system, respectively, in order to establish that the securities are actually recorded in an account in the name of the custodian or agent and evidence that the records of the custodian or agent reflect that the securities are held subject to the order of the Commissioner.

C. 1. An insurance company may, by written agreement with a custodian, provide for the custody of its securities with a custodian, which securities may be held by the custodian or its

agent or in a clearing corporation or in the Federal Reserve book-entry system. Securities so held, whether held by the custodian or its agent or in a clearing corporation or in the Federal Reserve book-entry system, are referred to herein as "custodied securities";

2. Any such agreement shall be in writing and shall be authorized by a resolution of the board of directors of the insurance company or of an authorized committee thereof. The terms of the agreement shall comply with the following:

- a. certified securities held by the custodian shall be held either separate from the securities of the custodian and of all of its other customers or in a fungible bulk of securities as part of a Filing of Securities by Issue (FOSBI) arrangement,
- b. securities held in a fungible bulk by the custodian and securities in a clearing corporation or in the Federal Reserve book-entry system shall be separately identified on the custodian's official records as being owned by the insurance company. The records shall identify which custodied securities are held by the custodian or by its agent and which securities are in a clearing corporation or in the Federal Reserve book-entry system. If the securities are in a clearing corporation or in the Federal Reserve book-entry system, the records shall also identify where the securities are and if in a clearing corporation, the name of the clearing corporation and if through an agent, the name of the agent,
- c. all custodied securities that are registered shall be registered in the name of the company or in the name of a nominee of the company or in the name of the custodian or its nominee or, if in a clearing

corporation, in the name of the clearing corporation or its nominee,

- d. custodied securities shall be held subject to the instructions of the insurance company and shall be withdrawable upon the demand of the insurance company, except that custodied securities used to meet the deposit requirements set forth in the Insurance Code shall, to the extent required by the Code, be under the control of the Commissioner and shall not be withdrawn by the insurance company without the approval of the Commissioner,
- e. the custodian shall be required to send or cause to be sent to the insurance company a confirmation of all transfers of custodied securities to or from the account of the insurance company. In addition, the custodian shall be required to furnish the insurance company with reports of holdings of custodied securities at such times and containing such information as may be reasonably requested by the insurance company,
- f. during the course of the custodian's regular business hours, any officer or employee of the insurance company, any independent accountant selected by the insurance company, and any representative of an appropriate regulatory body shall be entitled to examine, on the premises of the custodian, the custodian's records relating to custodied securities, but only upon furnishing the custodian with written instructions to that effect from an appropriate officer of the insurance company,
- g. the custodian and its agents shall be required to send to the insurance company

- (1) all reports which they receive from a clearing corporation or the Federal Reserve book-entry system on their respective systems of internal accounting control, and
 - (2) any reports prepared by outside auditors on the custodian's or its agents' internal accounting control of custodied securities that the insurance company may reasonably request,
- h. the custodian shall maintain records sufficient to determine and verify information relating to custodied securities that may be reported in the insurance company's annual statement and supporting schedules and information required in any audit of the financial statements of the insurance company,
 - i. the custodian shall provide, upon written request from an appropriate officer of the insurance company, the appropriate affidavits, substantially in the form provided in subsections F, G and H of this section, with respect to custodied securities,
 - j. the custodian shall be obligated to indemnify the insurance company for any loss of custodied securities occasioned by the negligence or dishonesty of the custodian's officers and employees, or burglary, robbery, holdup, theft or mysterious disappearance, including loss by damage or destruction,
 - k. in the event that there is a loss of custodied securities for which the custodian shall be obligated to indemnify the insurance company as provided in subparagraph j of this paragraph, the custodian shall promptly replace the securities or the value thereof and the value of any loss of rights or privileges resulting from said loss of securities,

1. the agreement may provide that the custodian will not be liable for any failure to take any action required to be taken under the agreement in the event and to the extent that the taking of such action is prevented or delayed by war (whether declared or not and including existing wars), revolution, insurrection, riot, civil commotion, act of God, accident, fire, explosion, stoppage of labor, strikes or other differences with employees, laws, regulations, orders or other acts of any governmental authority, or any other cause whatever beyond its reasonable control, and
- m. in the event that the custodian gains entry in a clearing corporation or in the Federal Reserve book-entry system through an agent, there shall be an agreement between the custodian and the agent under which the agent shall be subject to the same liability for loss of custodied securities as the custodian, provided, however, that, if the agent shall be subject to regulation under the laws of a jurisdiction which is different from the jurisdiction the laws of which regulate the custodian, the Commissioner may accept a standard of liability applicable to the agent which is different from the standard of liability applicable to the custodian.

D. A company may loan stocks or obligations held by it pursuant to the provisions of this act to a broker-dealer registered under the Securities ~~and~~ Exchange Act of 1934 or a member bank. The loan must be evidenced by a written agreement which provides that:

1. The loan will be fully collateralized by cash or obligations issued or guaranteed by the United States or an agency or an instrumentality thereof, and the collateral will be adjusted each

business day during the term of the loan to maintain the required collateralization in the event of market value changes in the loaned securities or collateral;

2. The loan may be terminated by the company at any time, and the borrower will return the loaned stocks or obligations or their equivalent within five (5) business days after termination; and

3. The company has the right to retain the collateral or use the collateral to purchase investments equivalent to the loaned securities if the borrower defaults under the terms of the agreement and the borrower remains liable for any losses and expenses incurred by the company due to default that are not covered by the collateral.

E. An investment may consist of an individual interest in a pool of obligations or a fractional interest in a single obligation if the certificate of participation or interest or the confirmation of participation or interest in the investment shall be issued in the name of the company or the name of the custodian bank or the nominee of either and the certificate or confirmation must, if held by a custodian bank, be kept separate and apart from the investments of others so that at all times the participation may be identified as belonging solely to the company making the investment.

F. The following shall be substantially the form of custodian affidavit for use by a custodian bank where securities entrusted to its care have not been redeposited elsewhere:

FORM A

CUSTODIAN AFFIDAVIT

(For use by a custodian bank where securities entrusted to its care have not been redeposited elsewhere.)

STATE OF _____)

) ss

COUNTY OF _____)

_____, being duly sworn deposes and says that he or she is _____ of _____, a banking corporation organized under and pursuant to the laws of the _____ with the principal place of business at _____ (hereinafter called the "bank"):

That his or her duties involve supervision of activities of the bank as custodian and records relating thereto;

That the bank is custodian for certain securities of _____ having a place of business at _____ (hereinafter called the "insurance company") pursuant to an agreement between the bank and the insurance company;

That the schedule attached hereto is a true and complete statement of securities (other than those caused to be deposited with The Depository Trust Company or like entity or a Federal Reserve Bank under the Federal Reserve book-entry procedure) which were in the custody of the bank for the account of the insurance company as of the close of business on _____; that, unless otherwise indicated on the schedule, the next maturing and all subsequent coupons were then either attached to coupon bonds or in the process of collection; and that, unless otherwise shown on the schedule, all such securities were in bearer form or in registered form in the name of the insurance company or its nominee or of the bank or its nominee, or were in the process of being registered in such form;

That the bank as custodian has the responsibility for the safekeeping of the securities as that responsibility is specifically set forth in the agreement between the bank as custodian and the insurance company; and

That, to the best of his or her knowledge and belief, unless otherwise shown on the schedule, the securities were the property of the insurance company and were free of all liens, claims, or encumbrances whatsoever.

Subscribed and sworn to
before me this _____ day
of _____ 19__

_____(L.S.)
Vice President (or other
authorized officer)

G. The following shall be substantially the form of custodian affidavit for use in instances where a custodian bank maintains securities on deposit with The Depository Trust Company or like entity:

FORM B

CUSTODIAN AFFIDAVIT

(For use in instances where a custodian bank maintains securities on deposit with The Depository Trust Company or like entity.)

STATE OF _____)

) ss

COUNTY OF _____)

_____, being duly sworn deposes and says that he or she is _____ of _____, a banking corporation organized under and pursuant to the laws of the _____ with the principal place of business at _____

(hereinafter called the "bank"):

That his or her duties involve supervision of activities of the bank as custodian and records relating thereto;

That the bank is custodian for certain securities of _____ with a place of business at _____ (hereinafter called the "insurance company") pursuant to an agreement between the bank and the insurance company;

That the bank has caused certain of such securities to be deposited with _____ and that the schedule attached hereto is a true and complete statement of the securities of the insurance company of which the bank was custodian as of the close of business

on _____, and which were so deposited on such date;

That the bank as custodian has the responsibility for the safekeeping of the securities both in the possession of the bank or deposited with _____ as is specifically set forth in the agreement between the bank as custodian and the insurance company; and

That, to the best of his or her knowledge and belief, unless otherwise shown on the schedule, the securities were the property of the insurance company and were free of all liens, claims, or encumbrances whatsoever.

Subscribed and sworn to before me this _____ day of _____ 19__

_____(L.S.)
Vice President (or other authorized officer)

H. The following shall be substantially the form of custodian affidavit for use where ownership is evidenced by book-entry at a Federal Reserve Bank:

FORM C

CUSTODIAN AFFIDAVIT

(For use where ownership is evidenced by book-entry at a Federal Reserve Bank.)

STATE OF _____)

) ss

COUNTY OF _____)

_____, being duly sworn deposes and says that he is _____ of the _____, a banking corporation organized under and pursuant to the laws of the _____ with the principal place of business at _____ (hereinafter called the "bank"):

That his or her duties involve supervision of activities of the bank as custodian and records relating thereto;

That the bank is custodian for certain securities of _____ with a place of business at _____ (hereinafter called the "insurance company") pursuant to an agreement between the bank and the insurance company;

That it has caused certain securities to be credited to its book-entry account with the Federal Reserve Bank of _____ under the Federal Reserve book-entry procedure; and that the schedule attached hereto is a true and complete statement of the securities of the insurance company of which the bank was custodian as of the close of business on _____ which were in a "General" book-entry account maintained in the name of the bank on the books and records of the Federal Reserve Bank of _____ at that date;

That the bank has the responsibility for the safekeeping of the securities both in the possession of the bank or in the "General" book-entry account as is specifically set forth in the agreement between the bank as custodian and the insurance company; and

That, to the best of his or her knowledge and belief, unless otherwise shown on the schedule, the securities were the property of the insurance company and were free of all liens, claims, or encumbrances whatsoever.

Subscribed and sworn to

before me this ____ day

of _____ 19__

_____ (L.S.)

Vice President (or other
authorized officer)

SECTION 2. This act shall become effective July 1, 2006.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 15th day of March, 2006.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2006.

Presiding Officer of the Senate