

EHB 2934

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THE STATE SENATE
Wednesday, April 5, 2006

ENGROSSED

House Bill No. 2934

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

1 which is legally qualified under such law to accept custody of
2 securities;

3 2. "Clearing corporation" shall mean a corporation as defined
4 in paragraph (5) of subsection (a) of Section 8-102 of Title 12A of
5 the Oklahoma Statutes which is organized for the purpose of
6 effecting transactions in securities by computerized book-entry,
7 except that with respect to securities issued by institutions
8 organized or existing under the laws of any foreign country or
9 securities used to meet the deposit requirements pursuant to the
10 laws of a foreign country as a condition of doing business therein,
11 "clearing corporation" may include a corporation which is organized
12 or existing under the laws of any foreign country and which is
13 legally qualified under such laws to effect transactions in
14 securities by computerized book-entry. ~~Such~~ The term "clearing
15 corporation" also includes "Treasury/Reserve Automated Debt Entry
16 Securities System" and "Treasury Direct" book-entry securities
17 systems established pursuant to 31 U.S.C., Section 3100 et seq., 12
18 U.S.C. pt. 391 and 5 U.S.C. pt. 301. Clearing corporations shall
19 have been approved for use by the Commissioner;

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

22 4. "Custodian" shall mean a national bank, state bank, or trust
23 company which has at all times aggregate capital, surplus, and

1 undivided profits of not less than Five Hundred Thousand Dollars
2 (\$500,000.00) and which is regulated by either state banking laws or
3 is a member of the Federal Reserve System and which is legally
4 qualified to accept custody of securities in accordance with the
5 standards set forth below, or a broker-dealer as defined by Section
6 1-102 of Title 71 of the Oklahoma Statutes that is registered with
7 and subject to the jurisdiction of the Securities and Exchange
8 Commission, maintains membership in the Securities Investor
9 Protection Corporation, and has a tangible net worth equal to or
10 greater than Two Hundred Fifty Million Dollars (\$250,000,000.00),
11 except that with respect to securities issued by institutions
12 organized or existing under the laws of any foreign country, or
13 securities used to meet the deposit requirements pursuant to the
14 laws of a foreign country as a condition of doing business therein,
15 "custodian" may include a bank, trust company, or similar
16 institution which has at all times aggregate capital, surplus, and
17 undivided profits of not less than the equivalent of Five Hundred
18 Thousand Dollars (\$500,000.00) and which is legally qualified to
19 accept custody of securities;

20 5. "Federal Reserve book-entry system" shall mean the
21 computerized systems sponsored by the United States Department of
22 the Treasury and certain agencies and instrumentalities of the
23 United States for holding and transferring securities of the United

1 States government and the agencies and instrumentalities,
2 respectively, in Federal Reserve Banks through banks which are
3 members of the Federal Reserve System or which otherwise have access
4 to the computerized systems; and

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

9 B. 1. a. Notwithstanding any other provision of law, a domestic
10 insurance company may deposit or arrange for the
11 deposit of securities held in or purchased for its
12 general account and its separate accounts in a
13 clearing corporation or the Federal Reserve book-entry
14 system. When securities are deposited with a clearing
15 corporation, certificates representing securities of
16 the same class of the same issuer may be merged and
17 held in bulk in the name of the nominee of the
18 clearing corporation with any other securities
19 deposited with the clearing corporation by any person,
20 regardless of the ownership of the securities, and
21 certificates representing securities of small
22 denominations may be merged into one or more
23 certificates of larger denominations. The records of

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

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

14 2. Notwithstanding any other provision of law, securities
15 eligible for deposit under the Oklahoma Insurance Code relating to
16 deposit of securities by an insurance company as a condition of
17 commencing or continuing to do an insurance business in this state
18 may be deposited with a clearing corporation or held in the Federal
19 Reserve book-entry system and used to meet the deposit requirements
20 under the Oklahoma Insurance Code and shall be under the control of
21 the Commissioner and shall not be withdrawn by the insurance company
22 without the approval of the Commissioner. Any insurance company
23 holding securities in this manner shall provide to the Commissioner

1 evidence issued by its custodian or an agent through which the
2 insurance company has deposited securities with a clearing
3 corporation or held in the Federal Reserve book-entry system,
4 respectively, in order to establish that the securities are actually
5 recorded in an account in the name of the custodian or agent and
6 evidence that the records of the custodian or agent reflect that
7 the securities are held subject to the order of the Commissioner.

8 C. 1. An insurance company may, by written agreement with a
9 custodian, provide for the custody of its securities with a
10 custodian, which securities may be held by the custodian or its
11 agent or in a clearing corporation or in the Federal Reserve book-
12 entry system. Securities so held, whether held by the custodian or
13 its agent or in a clearing corporation or in the Federal Reserve
14 book-entry system, are referred to herein as "custodied securities";

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

19 a. certified securities held by the custodian shall be
20 held either separate from the securities of the
21 custodian and of all of its other customers or in a
22 fungible bulk of securities as part of a Filing of
23 Securities by Issue (FOSBI) arrangement,

- 1 b. securities held in a fungible bulk by the custodian
2 and securities in a clearing corporation or in the
3 Federal Reserve book-entry system shall be separately
4 identified on the custodian's official records as
5 being owned by the insurance company. The records
6 shall identify which custodied securities are held by
7 the custodian or by its agent and which securities are
8 in a clearing corporation or in the Federal Reserve
9 book-entry system. If the securities are in a
10 clearing corporation or in the Federal Reserve book-
11 entry system, the records shall also identify where
12 the securities are and if in a clearing corporation,
13 the name of the clearing corporation and if through an
14 agent, the name of the agent,
- 15 c. all custodied securities that are registered shall be
16 registered in the name of the company or in the name
17 of a nominee of the company or in the name of the
18 custodian or its nominee or, if in a clearing
19 corporation, in the name of the clearing corporation
20 or its nominee,
- 21 d. custodied securities shall be held subject to the
22 instructions of the insurance company and shall be
23 withdrawable upon the demand of the insurance company,

1 except that custodied securities used to meet the
2 deposit requirements set forth in the Insurance Code
3 shall, to the extent required by the Code, be under
4 the control of the Commissioner and shall not be
5 withdrawn by the insurance company without the
6 approval of the Commissioner,

7 e. the custodian shall be required to send or cause to be
8 sent to the insurance company a confirmation of all
9 transfers of custodied securities to or from the
10 account of the insurance company. In addition, the
11 custodian shall be required to furnish the insurance
12 company with reports of holdings of custodied
13 securities at such times and containing such
14 information as may be reasonably requested by the
15 insurance company,

16 f. during the course of the custodian's regular business
17 hours, any officer or employee of the insurance
18 company, any independent accountant selected by the
19 insurance company, and any representative of an
20 appropriate regulatory body shall be entitled to
21 examine, on the premises of the custodian, the
22 custodian's records relating to custodied securities,
23 but only upon furnishing the custodian with written

1 instructions to that effect from an appropriate
2 officer of the insurance company,
3 g. the custodian and its agents shall be required to send
4 to the insurance company
5 (1) all reports which they receive from a clearing
6 corporation or the Federal Reserve book-entry
7 system on their respective systems of internal
8 accounting control, and
9 (2) any reports prepared by outside auditors on the
10 custodian's or its agents' internal accounting
11 control of custodied securities that the
12 insurance company may reasonably request,
13 h. the custodian shall maintain records sufficient to
14 determine and verify information relating to custodied
15 securities that may be reported in the insurance
16 company's annual statement and supporting schedules
17 and information required in any audit of the financial
18 statements of the insurance company,
19 i. the custodian shall provide, upon written request from
20 an appropriate officer of the insurance company, the
21 appropriate affidavits, substantially in the form
22 provided in subsections F, G and H of this section,
23 with respect to custodied securities,

- 1 j. the custodian shall be obligated to indemnify the
2 insurance company for any loss of custodied securities
3 occasioned by the negligence or dishonesty of the
4 custodian's officers and employees, or burglary,
5 robbery, holdup, theft or mysterious disappearance,
6 including loss by damage or destruction,
- 7 k. in the event that there is a loss of custodied
8 securities for which the custodian shall be obligated
9 to indemnify the insurance company as provided in
10 subparagraph j of this paragraph, the custodian shall
11 promptly replace the securities or the value thereof
12 and the value of any loss of rights or privileges
13 resulting from said loss of securities,
- 14 l. the agreement may provide that the custodian will not
15 be liable for any failure to take any action required
16 to be taken under the agreement in the event and to
17 the extent that the taking of such action is prevented
18 or delayed by war (whether declared or not and
19 including existing wars), revolution, insurrection,
20 riot, civil commotion, act of God, accident, fire,
21 explosion, stoppage of labor, strikes or other
22 differences with employees, laws, regulations, orders
23 or other acts of any governmental authority, or any

1 other cause whatever beyond its reasonable control,
2 and
3 m. in the event that the custodian gains entry in a
4 clearing corporation or in the Federal Reserve book-
5 entry system through an agent, there shall be an
6 agreement between the custodian and the agent under
7 which the agent shall be subject to the same liability
8 for loss of custodied securities as the custodian,
9 provided, however, that, if the agent shall be subject
10 to regulation under the laws of a jurisdiction which
11 is different from the jurisdiction the laws of which
12 regulate the custodian, the Commissioner may accept a
13 standard of liability applicable to the agent which is
14 different from the standard of liability applicable to
15 the custodian.

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

20 1. The loan will be fully collateralized by cash or obligations
21 issued or guaranteed by the United States or an agency or an
22 instrumentality thereof, and the collateral will be adjusted each
23 business day during the term of the loan to maintain the required

1 collateralization in the event of market value changes in the loaned
2 securities or collateral;

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

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

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

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

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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

1 custody of the bank for the account of the insurance company as of
2 the close of business on _____; that, unless otherwise
3 indicated on the schedule, the next maturing and all subsequent
4 coupons were then either attached to coupon bonds or in the process
5 of collection; and that, unless otherwise shown on the schedule, all
6 such securities were in bearer form or in registered form in the
7 name of the insurance company or its nominee or of the bank or its
8 nominee, or were in the process of being registered in such form;
9 That the bank as custodian has the responsibility for the
10 safekeeping of the securities as that responsibility is specifically
11 set forth in the agreement between the bank as custodian and the
12 insurance company; and
13 That, to the best of his or her knowledge and belief, unless
14 otherwise shown on the schedule, the securities were the property of
15 the insurance company and were free of all liens, claims, or
16 encumbrances whatsoever.

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

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

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

5 FORM B

6 CUSTODIAN AFFIDAVIT

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

9 STATE OF _____)

10) ss

11 COUNTY OF _____)

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

16 (hereinafter called the "bank"):

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

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

1 That the bank has caused certain of such securities to be deposited
2 with _____ and that the schedule attached hereto
3 is a true and complete statement of the securities of the insurance
4 company of which the bank was custodian as of the close of business
5 on _____, and which were so deposited on
6 such date;

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

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

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

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

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

4 FORM C

5 CUSTODIAN AFFIDAVIT

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

8 STATE OF _____)

9) ss

10 COUNTY OF _____)

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

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

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

22 That it has caused certain securities to be credited to its

1 book-entry account with the Federal Reserve Bank of _____
2 under the Federal Reserve book-entry procedure; and that the
3 schedule attached hereto is a true and complete statement of the
4 securities of the insurance company of which the bank was custodian
5 as of the close of business on _____ which were in a "General"
6 book-entry account maintained in the name of the bank on the books
7 and records of the Federal Reserve Bank of _____ at
8 that date;

9 That the bank has the responsibility for the safekeeping of the
10 securities both in the possession of the bank or in the "General"
11 book-entry account as is specifically set forth in the agreement
12 between the bank as custodian and the insurance company; and
13 That, to the best of his or her knowledge and belief, unless
14 otherwise shown on the schedule, the securities were the property
15 of the insurance company and were free of all liens, claims, or
16 encumbrances whatsoever.

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

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

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

1 SECTION 3. It being immediately necessary for the preservation
2 of the public peace, health and safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.

5 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND LABOR, dated 4-3-06 -
6 DO PASS.