

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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HOUSE BILL 738*

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

Sponsors: Representatives Goforth, Holliman (Primary Sponsors); and Alexander.

Referred to: Insurance.

March 15, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO ADOPT THE NATIONAL ASSOCIATION OF INSURANCE
3 COMMISSIONERS' MODEL ACT ON CUSTODIAL AGREEMENTS AND
4 CLEARING CORPORATIONS.

5 The General Assembly of North Carolina enacts:

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

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

11 "Part 2. Custodial Agreements and Clearing Corporations.

12 "**§ 58-5-140. Purpose.**

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

17 "**§ 58-5-145. Definitions.**

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

- 19 (1) "Clearing corporation" means a corporation as defined in
20 G.S. 25-8-102(a)(5), except that with respect to securities issued by
21 institutions organized or existing under the laws of any foreign country
22 or securities used to meet the deposit requirements pursuant to the laws
23 of a foreign country as a condition of doing business in that country,
24 "clearing corporation" includes a corporation that is organized or
25 existing under the laws of any foreign country and is legally qualified
26 under those laws to effect transactions in securities by computerized
27 book-entry. "Clearing corporation" also includes "Treasury/Reserve
28 Automated Debt Entry Securities System" and "Treasury Direct"

1 book-entry securities systems established pursuant to 31 U.S.C. §
2 3101, et seq.

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

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

6 **"§ 58-5-150. Use of book-entry systems.**

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

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

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

27 **"§ 58-5-21. Deposit of securities by domestic insurance companies.**

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

39 **"§ 58-5-22. Deposit of securities by foreign insurance companies.**

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

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

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