

CERTIFICATION OF ENROLLMENT

HOUSE BILL 3011

60th Legislature
2008 Regular Session

Passed by the House February 4, 2008
Yeas 93 Nays 0

Speaker of the House of Representatives

Passed by the Senate March 6, 2008
Yeas 49 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 3011** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 3011

Passed Legislature - 2008 Regular Session

State of Washington 60th Legislature 2008 Regular Session

By Representatives Loomis, Rodne, and Kelley

Read first time 01/21/08. Referred to Committee on Insurance,
Financial Services & Consumer Protection.

1 AN ACT Relating to safeguarding securities owned by insurers;
2 amending RCW 48.13.450, 48.13.455, 48.13.460, 48.13.465, 48.13.475, and
3 48.13.490; and adding a new section to chapter 48.13 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 48.13.450 and 2000 c 221 s 1 are each amended to read
6 as follows:

7 The definitions in this section apply throughout RCW 48.13.450
8 through 48.13.475 unless the context clearly requires otherwise.

9 (1) "Agent" means a national bank, state bank, trust company, or
10 broker/dealer that maintains an account in its name in a clearing
11 corporation or that is a member of the federal reserve system and
12 through which a custodian participates in a clearing corporation,
13 including the treasury/reserve automated debt entry securities system
14 (TRADES) or treasury direct systems; except that with respect to
15 securities issued by institutions organized or existing under the laws
16 of a foreign country or securities used to meet the deposit
17 requirements pursuant to laws of a foreign country as a condition of
18 doing business therein, "agent" may include a corporation that is

1 organized or existing under the laws of a foreign country and that is
2 legally qualified under those laws to accept custody of securities.

3 (2) "Broker/dealer" means a broker or dealer as defined in RCW
4 62A.8-102(1)(c), that is registered with and subject to the
5 jurisdiction of the securities and exchange commission, maintains
6 membership in the securities investor protection corporation, and has
7 a tangible net worth equal to or greater than two hundred fifty million
8 dollars.

9 ~~((+2))~~ (3) "Clearing corporation" means a ~~((depository))~~
10 corporation ~~((which maintains a book entry accounting system and which~~
11 ~~meets the requirements of))~~ as defined in RCW 62A.8-102(1)(e) that is
12 organized for the purpose of effecting transactions in securities by
13 computerized book-entry, except that with respect to securities issued
14 by institutions organized or existing under the laws of any foreign
15 country or securities used to meet the deposit requirements pursuant to
16 the laws of a foreign country as a condition of doing business therein,
17 "clearing corporation" may include a corporation that is organized or
18 existing under the laws of any foreign country and is legally qualified
19 under such laws to effect transactions in securities by computerized
20 book-entry. "Clearing corporation" also includes treasury/reserve
21 automated debt entry securities system and treasury direct book-entry
22 securities systems established pursuant to 31 U.S.C. Sec. 3100 et seq.,
23 12 U.S.C. pt. 391, and 5 U.S.C. pt. 301.

24 ~~((+3))~~ (4) "Commissioner" means the insurance commissioner of the
25 state of Washington.

26 ~~((+4) "Federal reserve book entry securities system" means the~~
27 ~~computerized systems sponsored by the United States department of the~~
28 ~~treasury and certain agencies and instrumentalities of the United~~
29 ~~States for holding and transferring securities of the United States~~
30 ~~government and such agencies and instrumentalities, respectively, and~~
31 ~~managed by the federal reserve system for participating financial~~
32 ~~institutions.~~

33 ~~(5) "Participating financial institution" means a depository~~
34 ~~financial institution such as a national bank, state bank, savings and~~
35 ~~loan, credit union, or trust company that is:~~

36 ~~(a) Authorized to participate in the federal reserve book entry~~
37 ~~system; and~~

1 ~~(b) Licensed by the United States or the banking authorities in its~~
2 ~~state of domicile and is regularly examined by the licensing authority.~~

3 ~~(6) "Qualified)) (5) "Custodian" means ((either a participating~~
4 ~~financial institution or a clearing corporation, or both. A qualified~~
5 ~~custodian does not include a broker))):~~

6 (a) A national bank, state bank, or trust company that shall, at
7 all times acting as a custodian, be no less than adequately capitalized
8 as determined by the standards adopted by United States banking
9 regulators and that is regulated by either state banking laws or is a
10 member of the federal reserve system and that is legally qualified to
11 accept custody of securities; except that with respect to securities
12 issued by institutions organized or existing under the laws of a
13 foreign country, or securities used to meet the deposit requirements
14 pursuant to laws of a foreign country as a condition of doing business
15 therein, "custodian" may include a bank or trust company incorporated
16 or organized under the laws of a country other than the United States
17 that is regulated as such by that country's government or an agency
18 thereof that shall at all times acting as a custodian be no less than
19 adequately capitalized as determined by the standards adopted by the
20 international banking authorities and legally qualified to accept
21 custody of securities; or

22 (b) A broker/dealer.

23 (6) "Custodied securities" means securities held by the custodian
24 or its agent or in a clearing corporation, including the
25 treasury/reserve automated debt equity securities system (TRADES) or
26 treasury direct systems.

27 (7) "Securities" means instruments as defined in RCW 62A.8-
28 102(1)(o).

29 (8) "Securities certificate" has the same meaning as in RCW
30 62A.8-102(1)(d).

31 (9) "Tangible net worth" means shareholders equity, less intangible
32 assets, as reported in the broker/dealer's most recent annual or
33 transition report pursuant to section 13 or 15(d) of the securities
34 exchange act of 1934 (S.E.C. Form 10-K) filed with the securities and
35 exchange commission.

36 (10) "Treasury/reserve automated debt entry securities system"
37 ("TRADES") and "treasury direct" mean book-entry securities systems

1 established pursuant to 31 U.S.C. Sec. 3100 et seq., 12 U.S.C. pt. 391,
2 and 5 U.S.C. pt. 301, with the operation of TRADES and treasury direct
3 subject to 31 C.F.R. pt. 357 et seq.

4 **Sec. 2.** RCW 48.13.455 and 2000 c 221 s 2 are each amended to read
5 as follows:

6 Notwithstanding any other provision of law, a domestic insurance
7 company may deposit or arrange for the deposit of securities held in or
8 purchased for its general account and its separate accounts in a
9 clearing corporation (~~((or the federal reserve book entry securities~~
10 ~~system))~~). When securities are deposited with a clearing corporation,
11 securities certificates representing securities of the same class of
12 the same issuer may be merged and held in bulk in the name of the
13 nominee of such clearing corporation with any other securities
14 deposited with such clearing corporation by any person, regardless of
15 the ownership of such securities, and securities certificates
16 representing securities of small denominations may be merged into one
17 or more certificates of larger denominations. The records of any
18 (~~(participating financial institution)~~) custodian through which an
19 insurance company holds securities (~~((in the federal reserve book entry~~
20 ~~securities system, and the records of any custodian banks through which~~
21 ~~an insurance company holds securities in a clearing corporation,))~~)
22 shall at all times show that such securities are held for such
23 insurance company and for which accounts thereof. Ownership of, and
24 other interests in, such securities may be transferred by bookkeeping
25 entry on the books of such clearing corporation (~~((or in the federal~~
26 ~~reserve book entry securities system))~~) without(~~(, in either case,)~~)
27 physical delivery of securities certificates representing such
28 securities.

29 **Sec. 3.** RCW 48.13.460 and 2000 c 221 s 3 are each amended to read
30 as follows:

31 The following are the only authorized methods of holding
32 securities:

- 33 (1) A domestic insurance company may hold securities in definitive
34 certificates;
- 35 (2) A domestic insurance company may, pursuant to an agreement,

1 designate a (~~participating financial institution or institutions as~~
2 ~~its~~) custodian through which it can transact and maintain book-entry
3 securities on behalf of the insurance company; or

4 (3) A domestic insurance company may, pursuant to an agreement,
5 participate in depository systems of clearing corporations directly or
6 through a custodian (~~bank~~).

7 **Sec. 4.** RCW 48.13.465 and 2000 c 221 s 4 are each amended to read
8 as follows:

9 A domestic insurance company using the methods of holding
10 securities under RCW 48.13.460 (2) or (3) is required to receive a
11 confirmation from:

12 (1) The (~~participating financial institution or the qualified~~)
13 custodian whenever securities are received or surrendered pursuant to
14 the domestic insurance company's instructions to a securities broker;
15 or

16 (2) The securities broker provided that the domestic insurance
17 company has given the (~~participating financial institution or~~
18 ~~qualified~~) custodian and the securities broker matching instructions
19 authorizing the transaction, which have been confirmed by the
20 (~~participating financial institution or qualified~~) custodian prior to
21 surrendering funds or securities to conduct the transaction.

22 **Sec. 5.** RCW 48.13.475 and 2000 c 221 s 6 are each amended to read
23 as follows:

24 (1) Notwithstanding the maintenance of securities with a
25 (~~qualified~~) custodian pursuant to agreement, if the commissioner:

26 (a) Has reasonable cause to believe that the domestic insurer:

27 (i) Is conducting its business and affairs in such a manner as to
28 threaten to render it insolvent;

29 (ii) Is in a hazardous condition or is conducting its business and
30 affairs in a manner that is hazardous to its policyholders, creditors,
31 or the public; or

32 (iii) Has committed or is committing or has engaged or is engaging
33 in any act that would constitute grounds for rendering it subject to
34 rehabilitation or liquidation proceedings; or

35 (b) Determines that irreparable loss and injury to the property and

1 business of the domestic insurer has occurred or may occur unless the
2 commissioner acts immediately;
3 then the commissioner may, without hearing, order the insurer and the
4 ((qualified)) custodian promptly to effect the transfer of the
5 securities to another ((qualified)) custodian approved by the
6 commissioner. Upon receipt of the order, the ((qualified)) custodian
7 shall promptly effect the transfer of the securities. Notwithstanding
8 the pendency of any hearing or request for hearing, the order shall be
9 complied with by those persons subject to that order. Any challenge to
10 the validity of the order shall be made under chapter 48.04 RCW,
11 however, the stay of action provisions of RCW 48.04.020 do not apply.
12 It is the responsibility of both the insurer and the ((qualified))
13 custodian to oversee that compliance with the order is completed as
14 expeditiously as possible. Upon receipt of an order, there shall be no
15 trading of the securities without specific instructions from the
16 commissioner until the securities are received by the new ((qualified))
17 custodian, except to the extent trading transactions are in process on
18 the day the order is received by the insurer and the failure to
19 complete the trade may result in loss to the insurer's account.
20 Issuance of an order does not affect the ((qualified)) custodian's
21 liabilities with regard to the securities that are the subject of the
22 order.

23 (2) No person other than the insurer has standing at the hearing by
24 the commissioner or for any judicial review of the order.

25 **Sec. 6.** RCW 48.13.490 and 2000 c 221 s 7 are each amended to read
26 as follows:

27 The commissioner may adopt rules ((to implement and administer RCW
28 ~~48.13.450 through 48.13.475~~)) governing the deposit by insurance
29 companies of securities with clearing corporations, including
30 establishing standards for national banks, state banks, trust
31 companies, and brokers/dealers to qualify as custodians for insurance
32 company securities.

33 NEW SECTION. **Sec. 7.** A new section is added to chapter 48.13 RCW
34 to read as follows:

35 (1) An insurance company may, by written agreement with a

1 custodian, provide for the custody of its securities with that
2 custodian. The securities that are the subject of the agreement may be
3 held by the custodian or its agent or in a clearing corporation.

4 (2) The agreement shall be in writing and shall be authorized by a
5 resolution of the board of directors of the insurance company or of an
6 authorized committee of the board. The terms of the agreement shall
7 comply with the following:

8 (a) Securities certificates held by the custodian shall be held
9 separate from the securities certificates of the custodian and all of
10 its customers;

11 (b) Securities held indirectly by the custodian and securities in
12 a clearing corporation shall be separately identified on the
13 custodian's official records as being owned by the insurance company.
14 The records shall identify which securities are held by the custodian
15 or by its agent and which securities are in a clearing corporation. If
16 the securities are in a clearing corporation, the records shall also
17 identify where the securities are and the name of the clearing
18 corporation; and if the securities are held by an agent, the records
19 shall also identify the name of the agent;

20 (c) All custodied securities that are registered shall be
21 registered in the name of the company or in the name of the nominee of
22 the company or in the name of the custodian or its nominee, or, if in
23 a clearing corporation, in the name of the clearing corporation or its
24 nominee;

25 (d) Custodied securities shall be held subject to the instructions
26 of the insurance company and shall be withdrawable upon the demand of
27 the insurance company, except custodied securities used to meet the
28 deposit requirements;

29 (e) The custodian shall be required to send or cause to be sent to
30 the insurance company a confirmation of all transfers of custodied
31 securities to or from the account of the insurance company.
32 Confirmation of all transfers shall be provided to the insurance
33 company in hard copy or electronic format. In addition, the custodian
34 shall be required to furnish, no less than monthly, the insurance
35 company with reports of various holdings of custodied securities at
36 times and containing information reasonably requested by the insurance
37 company. The custodian's trust committee's annual reports of its

1 review of the insurer trust accounts shall also be provided to the
2 insurer. Reports and verifications may be transmitted in electronic or
3 paper format;

4 (f) During the course of the custodian's regular business hours, an
5 officer or employee of the insurance company, an independent accountant
6 selected by the insurance company, and a representative of an
7 appropriate regulatory body shall be entitled to examine, on the
8 premise of the custodian, the custodian's records relating to the
9 custodied securities, but only upon furnishing the custodian with
10 written instructions to that effect from an appropriate officer of the
11 insurance company;

12 (g) The custodian and its agents shall be required to send to the
13 insurance company:

14 (i) All reports that they receive from a clearing corporation on
15 their respective systems of internal accounting control; and

16 (ii) Reports prepared by outside auditors on the custodians or its
17 agents internal accounting control of custodied securities that the
18 insurance company may reasonably request;

19 (h) The custodian shall maintain records sufficient to determine
20 and verify information relating to custodied securities that may be
21 reported in the insurance company's annual statement and supporting
22 schedules and information required in an audit of the financial
23 statements of the insurance company;

24 (i) The custodian shall provide, upon written request from an
25 appropriate officer of the insurance company, the appropriate
26 affidavits;

27 (j) A national bank, state bank, or trust company shall secure and
28 maintain insurance protection in an adequate amount covering the bank's
29 or trust company's duties and activities as custodian for the insurer's
30 assets, and shall state in the custody agreement that the protection is
31 in compliance with the requirements of the custodian's banking
32 regulator. A broker/dealer shall secure and maintain insurance
33 protection for each insurance company's custodied securities in excess
34 of that provided by the securities investor protection corporation in
35 an amount equal to or greater than the market value of each respective
36 insurance company's custodied securities. The commissioner may
37 determine whether the type of insurance is appropriate and whether the
38 amount of coverage is adequate;

1 (k) The custodian shall be obligated to indemnify the insurance
2 company for any loss of custodied securities occasioned by the
3 negligence or dishonesty of the custodian's officers or employees or
4 agents, or burglary, robbery, holdup, theft, or mysterious
5 disappearance, including loss by damage or destruction;

6 (l) In the event that there is a loss of custodied securities for
7 which the custodian shall be obligated to indemnify the insurance
8 company as provided in (k) of this subsection, the custodian shall
9 promptly replace the securities of the value thereof and the value of
10 any loss of rights or privileges resulting from the loss of securities;

11 (m) The custodian will not be liable for a failure to take an
12 action required under the agreement in the event and to the extent that
13 the taking of the action is prevented or delayed by war (whether
14 declared or not, including existing wars), revolution, insurrection,
15 riot, civil commotion, accident, fire, explosion, labor stoppage and
16 strikes, laws, regulations, orders, or other acts of any governmental
17 authority, which are beyond its reasonable control;

18 (n) In the event that the custodian gains entry in a clearing
19 corporation through an agent, there shall be an agreement between the
20 custodian and the agent under which the agent shall be subject to the
21 same liability for loss of custodied securities as the custodian.
22 However, if the agent is subject to regulation under the laws of a
23 jurisdiction that are different from the laws of the jurisdiction that
24 regulates the custodian, the commissioner may accept a standard of
25 liability applicable to the agent that is different from the standard
26 of liability applicable to the custodian;

27 (o) The custodian shall provide written notification to the office
28 of the insurance commissioner if the custodial agreement with the
29 insurer has been terminated or if one hundred percent of the account
30 assets in any one custody account have been withdrawn. This
31 notification shall be remitted to the commissioner within three
32 business days of the withdrawal of one hundred percent of the account
33 assets.

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