

SENATE BILL No. 139

By Committee on Financial Institutions and Insurance

1-28

9 AN ACT relating to insurance; concerning deposits and securities; relat-
10 ing to the federal home loan bank; amending K.S.A. 40-2a20 and 40-
11 2b20 and K.S.A. 2008 Supp. 40-229a and repealing the existing
12 sections.
13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 2008 Supp. 40-229a is hereby amended to read as
16 follows: 40-229a. (a) (1) (A) All cash, securities, real estate deeds, mort-
17 gages or other assets deposited with the commissioner of insurance pur-
18 suant to the provisions of the insurance code of the state of Kansas shall
19 be deposited with any Kansas financial institution acceptable to the com-
20 missioner through which a custodial or controlled account, a joint custody
21 receipt arrangement or any combination of these or other measures that
22 are acceptable to the commissioner is used.

23 (B) All such deposits shall be held by such financial institution on
24 behalf of the commissioner in trust for the use and benefit of such com-
25 pany and such company's policyholders and creditors. Such assets shall
26 be released from such deposits only upon written approval of the
27 commissioner.

28 (C) All income from deposits belong to the depositing organization
29 and shall be paid to it as it becomes available. The commissioner, upon
30 written approval, may direct the financial institution to permit exchange
31 of securities or assets upon deposit of specified substituted securities or
32 assets.

33 (D) All forms for deposit, withdrawal or exchange shall be prescribed,
34 prepared and furnished by the commissioner and no facsimile signatures
35 shall be used or recognized.

36 (E) The commissioner or assistant commissioner of insurance or in-
37 surance department employee authorized by the commissioner may at
38 any time inspect the securities on deposit in any such financial institution.

39 (F) Nothing in this act shall be construed to hold the state of Kansas,
40 the commissioner, assistant commissioner or authorized employee liable
41 either personally or officially for any default of such financial institution.

42 (2) Real estate shall be deposited with the commissioner by the de-
43 positing organization executing a deed or assignment conveying title

1 thereto to the commissioner, in trust for the use and benefit of such
2 company. Such deeds or assignment shall be recorded in the office of the
3 register of deeds of the county in which such real estate is situated. When
4 the depositing organization is authorized to withdraw real estate from
5 deposit, the commissioner shall execute deeds to such organization or
6 such other persons, companies or corporations as directed by such or-
7 ganization. The costs of registering such deeds shall be paid by the de-
8 positing organization.

9 (3) All deposits made with the commissioner shall be audited by the
10 commissioner and the state treasurer not less frequently than once each
11 three years. The commissioner may accept an audit performed by another
12 governmental agency acceptable to the commissioner, in lieu of this audit
13 requirement.

14 (b) Assets, except real estate assets, deposited pursuant to this section
15 shall be held by the custodian on behalf of the commissioner as in trust
16 for the use and benefit of the depositing organization. Such assets shall
17 remain the specific property of the organization and shall not be subject
18 to the claim of any third party against the custodian.

19 (c) The custodian is authorized to redeposit such assets with a clear-
20 ing corporation as defined in K.S.A. 84-8-102 and amendments thereto,
21 if such clearing corporation is domiciled in the United States. The cus-
22 todian is authorized to hold such assets through the federal reserve bank
23 book-entry system.

24 (d) The commissioner shall adopt rules and regulations to establish
25 requirements relating to deposits under this section appropriate to assure
26 the security and safety of such deposits, including but not limited to the
27 following:

- 28 (1) Capital and surplus of the custodian;
- 29 (2) title in which deposited assets are held;
- 30 (3) records to be kept by the custodian and the commissioner's access
31 thereto;
- 32 (4) periodic reports by the custodian to the commissioner;
- 33 (5) responsibility of the custodian to indemnify the depositor for loss
34 of deposited assets;
- 35 (6) withdrawal or exchange of deposited assets; and
- 36 (7) authority of the commissioner to terminate the deposit if the con-
37 dition of the custodian should threaten the security of the deposited
38 assets.

39 (e) As used in this section:

- 40 (1) "Commissioner" means the commissioner of insurance; and
- 41 (2) "financial institution" means a *federal home loan bank*, a savings
42 and loan association and savings bank organized under the laws of the
43 United States or another state, a national bank, state bank or trust com-

1 pany, which have main or branch offices in this state, shall at all times
2 during which such *federal home loan bank*, savings and loan association,
3 savings bank, national bank, state bank or trust company acts as a custo-
4 dian be:

5 (A) No less than adequately capitalized as determined by the stan-
6 dards adopted by the ~~United States banking regulators~~ *regulator charged*
7 *with establishing standards for, and assessing, the institution's solvency;*

8 (B) regulated by either state or federal banking laws, *the federal home*
9 *loan bank act, as amended* or is a member of the federal reserve system;
10 and

11 (C) legally qualified to accept custody of securities.

12 (3) "Main office" and "branch" shall have the meanings ascribed to
13 such terms in K.S.A. 9-1408 and amendments thereto.

14 Sec. 2. K.S.A. 40-2a20 is hereby amended to read as follows: 40-
15 2a20. (a) Any insurance company other than life organized under any
16 law of this state, with the direction or approval of a majority of its board
17 of directors or authorized committee thereof, may:

18 (1) Adopt a nominee name unique to such insurance company in
19 which such insurance company's securities may be registered;

20 (2) designate a state or national bank *or a federal home loan bank*
21 having trust powers to obtain a nominee name for such insurance com-
22 pany in which such insurance company's securities may be registered; or

23 (3) designate a state or national bank having trust powers as trustee
24 to make any investment authorized by this act in the name of such trustee
25 or such trustee's nominee.

26 (b) Under the provisions of paragraphs (2) and (3) of subsection (a),
27 the designated state or national bank *or the federal home loan bank* may
28 arrange for such securities to be held in a clearing corporation. Such
29 arrangement must be in accordance with a written agreement, approved
30 by the commissioner of insurance, between the insurance company and
31 its designated bank and must impose the same degree of responsibility
32 on the bank as if such securities were held in definitive form by such
33 bank.

34 (c) As used in this section "clearing corporation" means: (1) A cor-
35 poration defined in subsection (5) of K.S.A. 84-8-102, and amendments
36 thereto;

37 (2) any organization or system for clearance and settlement of secu-
38 rities transactions which is operated or owned by a bank, trust company
39 or other entity that is subject to regulation by the United States federal
40 reserve board or the United States comptroller of the currency; or

41 (3) any clearing agency registered with the securities and exchange
42 commission pursuant to the securities exchange act of 1934, section 17A,
43 and amendments thereto.

1 Sec. 3. K.S.A. 40-2b20 is hereby amended to read as follows: 40-
2 2b20. (a) Any life insurance company organized under any law of this
3 state, with the direction or approval of a majority of its board of directors,
4 may:

5 (1) Adopt a nominee name unique to such insurance company in
6 which such insurance company's securities may be registered;

7 (2) designate a state or national bank *or a federal home loan bank*
8 having trust powers to obtain a nominee name for such insurance com-
9 pany in which such insurance company's securities may be registered; or

10 (3) designate a state or national bank having trust powers as trustee
11 to make any investment authorized by this act in the name of such trustee
12 or such trustee's nominee.

13 (b) Under the provisions of paragraphs (2) and (3) of subsection (a),
14 the designated state or national bank *or the federal home loan bank* may
15 arrange for such securities to be held in a clearing corporation. Such
16 arrangement must be in accordance with a written agreement, approved
17 by the commissioner of insurance, between the insurance company and
18 its designated bank and must impose the same degree of responsibility
19 on the bank as if such securities were held in definitive form by such
20 bank.

21 (c) As used in this section "clearing corporation" means: (1) A cor-
22 poration defined in subsection (3) of K.S.A. 84-8-102, and amendments
23 thereto;

24 (2) any organization or system for the clearance and settlement of
25 securities transactions which is operated or owned by a bank, trust com-
26 pany or other entity that is subject to regulation by the United States
27 federal reserve board or the United States comptroller of the currency;
28 or

29 (3) any clearing agency registered with the securities and exchange
30 commission pursuant to the securities exchange act of 1934, section 17A,
31 and amendments thereto.

32 Sec. 4. K.S.A. 40-2a20 and 40-2b20 and K.S.A. 2008 Supp. 40-229a
33 are hereby repealed.

34 Sec. 5. This act shall take effect and be in force from and after its
35 publication in the statute book.