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SENATE BILL 6760

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State of Washington

56th Legislature

2000 Regular Session

By Senator Prentice; by request of Insurance Commissioner

Read first time 01/26/2000. Referred to Committee on Commerce, Trade, Housing & Financial Institutions.

1 AN ACT Relating to the safeguarding of securities of domestic  
2 insurance companies, health care service contractors, health  
3 maintenance organizations, and health carriers; amending RCW 48.04.010  
4 and 48.04.020; and adding new sections to chapter 48.13 RCW.

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

6 NEW SECTION. **Sec. 1.** The definitions in this section apply  
7 throughout sections 1 through 6 of this act unless the context clearly  
8 requires otherwise.

9 (1) "Broker" means a broker as defined in RCW 62A.8-102(1)(c).

10 (2) "Clearing corporation" means a depository corporation which  
11 maintains a book entry accounting system and which meets the  
12 requirements of RCW 62A.8-102(1)(e).

13 (3) "Commissioner" means the insurance commissioner of the state of  
14 Washington.

15 (4) "Federal reserve book-entry securities system" means the  
16 computerized systems sponsored by the United States department of the  
17 treasury and certain agencies and instrumentalities of the United  
18 States for holding and transferring securities of the United States  
19 government and such agencies and instrumentalities, respectively, and

1 managed by the federal reserve system for participating financial  
2 institutions.

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

6 (a) Authorized to participate in the federal reserve book-entry  
7 system; and

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

10 (6) "Qualified custodian" means either a participating financial  
11 institution or a clearing corporation, or both. A qualified custodian  
12 does not include a broker.

13 (7) "Securities" means instruments as defined in RCW  
14 62A.8-102(1)(o).

15 NEW SECTION. **Sec. 2.** Notwithstanding any other provision of law,  
16 a domestic insurance company may deposit or arrange for the deposit of  
17 securities held in or purchased for its general account and its  
18 separate accounts in a clearing corporation or the federal reserve  
19 book-entry securities system. When securities are deposited with a  
20 clearing corporation, certificates representing securities of the same  
21 class of the same issuer may be merged and held in bulk in the name of  
22 the nominee of such clearing corporation with any other securities  
23 deposited with such clearing corporation by any person, regardless of  
24 the ownership of such securities, and certificates representing  
25 securities of small denominations may be merged into one or more  
26 certificates of larger denominations. The records of any participating  
27 financial institution through which an insurance company holds  
28 securities in the federal reserve book-entry securities system, and the  
29 records of any custodian banks through which an insurance company holds  
30 securities in a clearing corporation, shall at all times show that such  
31 securities are held for such insurance company and for which accounts  
32 thereof. Ownership of, and other interests in, such securities may be  
33 transferred by bookkeeping entry on the books of such clearing  
34 corporation or in the federal reserve book-entry securities system  
35 without, in either case, physical delivery of certificates representing  
36 such securities.

1        NEW SECTION.    **Sec. 3.**    The following are the only authorized  
2 methods of holding securities:

3        (1) A domestic insurance company may hold securities in definitive  
4 certificates;

5        (2) A domestic insurance company may, pursuant to an agreement,  
6 designate a participating financial institution or institutions as its  
7 custodian through which it can transact and maintain book-entry  
8 securities on behalf of the insurance company; or

9        (3) A domestic insurance company may, pursuant to an agreement,  
10 participate in depository systems of clearing corporations directly or  
11 through a custodian bank.

12       NEW SECTION.    **Sec. 4.**    A domestic insurance company using the  
13 methods of holding securities under section 3 (2) or (3) of this act is  
14 required to receive a confirmation from:

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

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

25       NEW SECTION.    **Sec. 5.**    (1) A broker executing a securities trade  
26 pursuant to an order from a domestic insurance company shall send  
27 confirmation to the domestic insurance company or the clearing  
28 corporation confirming the order has been executed within twenty-four  
29 hours after order completion.

30       (2) A broker may not hold in its own account for longer than  
31 seventy-two hours any securities bought or sold pursuant to an order  
32 from a domestic insurance company.

33       NEW SECTION.    **Sec. 6.**    (1) Notwithstanding the maintenance of  
34 securities with a qualified custodian pursuant to agreement, if the  
35 commissioner:

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

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

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

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

9 (b) Determines that irreparable loss and injury to the property and  
10 business of the domestic insurer has occurred or may occur unless the  
11 commissioner acts immediately;

12 then the commissioner may, without hearing, order the insurer and the  
13 qualified custodian promptly to effect the transfer of the securities  
14 to another qualified custodian approved by the commissioner. Upon  
15 receipt of the order, the qualified custodian shall promptly effect the  
16 transfer of the securities. Notwithstanding the pendency of any  
17 hearing or request for hearing, the order shall be complied with by  
18 those persons subject to that order. Any challenge to the validity of  
19 the order shall be made under chapter 48.04 RCW, however, the stay of  
20 action provisions of RCW 48.04.020 do not apply. It is the  
21 responsibility of both the insurer and the qualified custodian to  
22 oversee that compliance with the order is completed as expeditiously as  
23 possible. Upon receipt of an order, there shall be no trading of the  
24 securities without specific instructions from the commissioner until  
25 the securities are received by the new qualified custodian, except to  
26 the extent trading transactions are in process on the day the order is  
27 received by the insurer and the failure to complete the trade may  
28 result in loss to the insurer's account. Issuance of an order does not  
29 affect the qualified custodian's liabilities with regard to the  
30 securities that are the subject of the order.

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

33 NEW SECTION. **Sec. 7.** The commissioner may adopt rules to  
34 implement and administer sections 1 through 6 of this act.

35 **Sec. 8.** RCW 48.04.010 and 1990 1st ex.s. c 3 s 1 are each amended  
36 to read as follows:

1 (1) The commissioner may hold a hearing for any purpose within the  
2 scope of this code as he or she may deem necessary. The commissioner  
3 shall hold a hearing:

4 (a) If required by any provision of this code; or

5 (b) Except under section 6 of this act, upon written demand for a  
6 hearing made by any person aggrieved by any act, threatened act, or  
7 failure of the commissioner to act, if such failure is deemed an act  
8 under any provision of this code, or by any report, promulgation, or  
9 order of the commissioner other than an order on a hearing of which  
10 such person was given actual notice or at which such person appeared as  
11 a party, or order pursuant to the order on such hearing.

12 (2) Any such demand for a hearing shall specify in what respects  
13 such person is so aggrieved and the grounds to be relied upon as basis  
14 for the relief to be demanded at the hearing.

15 (3) Unless a person aggrieved by a written order of the  
16 commissioner demands a hearing thereon within ninety days after  
17 receiving notice of such order, or in the case of a licensee under  
18 Title 48 RCW within ninety days after the commissioner has mailed the  
19 order to the licensee at the most recent address shown in the  
20 commissioner's licensing records for the licensee, the right to such  
21 hearing shall conclusively be deemed to have been waived.

22 (4) If a hearing is demanded by a licensee whose license has been  
23 temporarily suspended pursuant to RCW 48.17.540, the commissioner shall  
24 hold such hearing demanded within thirty days after receipt of the  
25 demand or within thirty days of the effective date of a temporary  
26 license suspension issued after such demand, unless postponed by mutual  
27 consent.

28 **Sec. 9.** RCW 48.04.020 and 1982 c 181 s 2 are each amended to read  
29 as follows:

30 (1) Such demand for a hearing received by the commissioner prior to  
31 the effective date of action taken or proposed to be taken by him or  
32 her shall stay such action pending the hearing, except as to action  
33 taken or proposed

34 (a) under an order on hearing, or

35 (b) under an order pursuant to an order on hearing, or

36 (c) under an order to make good an impairment of the assets of an  
37 insurer, or

1 (d) under an order of temporary suspension of license issued  
2 pursuant to RCW 48.17.540 as now or hereafter amended.

3 (2) In any case where an automatic stay is not provided for, and if  
4 the commissioner after written request therefor fails to grant a stay,  
5 the person aggrieved thereby may apply to the superior court for  
6 Thurston county for a stay of the commissioner's action.

7 (3) A stay of action is not available for actions taken by the  
8 commissioner under section 6 of this act.

9 NEW SECTION. Sec. 10. Sections 1 through 7 of this act are each  
10 added to chapter 48.13 RCW.

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