

INSURANCE CODE

TITLE 4. REGULATION OF SOLVENCY

SUBTITLE B. RESERVES AND INVESTMENTS

CHAPTER 423. TRANSACTIONS WITH MONEY AND OTHER ASSETS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 423.001. APPLICABILITY OF CHAPTER. (a) This chapter applies to a domestic insurer regulated under this code, including:

- (1) a stock company;
- (2) a reciprocal or interinsurance exchange;
- (3) a Lloyd's plan;
- (4) a fraternal benefit society;
- (5) a stipulated premium company;
- (6) a mutual insurance company of any kind, including:
 - (A) a statewide mutual assessment company;
 - (B) a local mutual aid association;
 - (C) a burial association;
 - (D) a county mutual insurance company; and
 - (E) a farm mutual insurance company; and
- (7) any other organization or person engaged in the

business of insurance.

(b) A provision of this code limiting the regulation of an insurer under this code does not limit the application of this chapter, except that this chapter does not apply to an insurer that is exempted from its application by another statute that cites this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 423.002. AMBIGUITIES AND CONFLICTS WITH OTHER LAW. This chapter controls to the extent of an ambiguity or a conflict between this chapter and another provision of this code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 423.003. RULES. The commissioner may adopt rules

necessary to implement this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 423.004. STATUTORY DEPOSITS WITH DEPARTMENT.

(a) Except as provided by Subsection (c), notwithstanding any requirement under this code that an insurer deposit with the comptroller money or other assets for the security of an insurer's policyholders or creditors, including a deposit required by another state, an insurer may deposit the required money or other assets with the department in accordance with this section.

(b) A deposit authorized by Subsection (a):

- (1) must be approved by the commissioner;
- (2) is subject to any requirements applicable to the type of deposit;
- (3) must be held under the commissioner's control; and
- (4) may not be substituted or withdrawn by the insurer without the commissioner's approval.

(c) This section does not apply to any deposit made under Chapter 406 or a deposit of fees or taxes under this code.

Added by Acts 2015, 84th Leg., R.S., Ch. 263 (S.B. 1427), Sec. 1, eff. September 1, 2015.

SUBCHAPTER B. TRANSACTIONS WITH MONEY

Sec. 423.051. DEPOSIT AND INVESTMENT OF MONEY. A director, member of a committee, officer, or clerk of a domestic insurer who has the duty to handle or invest the insurer's money may not:

- (1) invest the money other than in the corporate name of the insurer, except as provided by Section 423.102;
- (2) deposit the money unless the deposit is:
 - (A) in the corporate name of the insurer;
 - (B) in a pooling account with one or more affiliates, as described by Section 823.003; or
 - (C) in accordance with a reinsurance agreement;
- (3) borrow the insurer's money;
- (4) have any interest in a loan, pledge, security, or

property of the insurer, except as a stockholder; or

(5) take or receive for the individual's use a fee, brokerage, commission, gift, or other consideration for, or on account of, a loan made by or on behalf of the insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 423.052. MONEY HELD IN POOLING ACCOUNT. (a) Only a domestic insurer and an affiliate, as described by Section 823.003, may hold money in a pooling account.

(b) The accounting and operating records and books of the insurer and affiliate must be adequately detailed to identify specific insurance policies and policyholders with the money from premiums received by the insurer that issues the policies.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 423.053. AUTHORITY TO DEPOSIT MONEY IN ACCOUNT OF REINSURER. A reinsurance agreement between a domestic insurer and an affiliate, as described by Section 823.003, must specifically authorize the deposit of money from premiums to the account of the affiliate that assumes the reinsurance.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER C. TRANSACTIONS WITH OTHER ASSETS

Sec. 423.101. DEFINITION. In this subchapter, "clearing corporation" means:

(1) a clearing corporation as defined by Section 8.102(a), Business & Commerce Code; or

(2) a clearance system that:

(A) is organized or operating under the laws of at least one foreign country;

(B) provides for book-entry settlement and custody of internationally traded securities; and

(C) has been organized and in operation for not

less than 15 consecutive years.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 423.102. DEPOSIT AND HOLDING OF SECURITIES. (a) A domestic insurer that has securities held in or purchased for the insurer's general account or separate accounts may deposit the securities or arrange through an agent, broker, or dealer for deposit of the securities with a clearing corporation or in the Federal Reserve book-entry system.

(b) If securities are deposited directly with a clearing corporation or deposited indirectly through a participating custodian bank, certificates representing securities of the same class of the same issuer may be merged and held in bulk, in the name of a nominee of the clearing corporation, with any other securities deposited with the clearing corporation by any person, regardless of the ownership of the securities.

(c) Certificates under Subsection (b) that represent securities of small denominations may be merged into one or more certificates of larger denominations.

(d) The records of an agent, broker, dealer, or member bank through which an insurer holds securities in the Federal Reserve book-entry system and the records of a custodian bank through which an insurer holds securities with a clearing corporation must show that the securities are held for the insurer and show the accounts for which the securities are held.

(e) A bank must enter into a custodial agreement with an insurer to be eligible to act as a participating custodian bank for the insurer under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 423.103. SECURITIES HELD UNDER CUSTODIAL OR TRUST AGREEMENT. A domestic insurer's securities that are held under a custodial agreement or trust agreement with a bank, Federal Home Loan Bank, or trust company may be issued in the name of a nominee of the bank, Federal Home Loan Bank, or trust company only if the bank,

Federal Home Loan Bank, or trust company:

- (1) has corporate trust powers;
- (2) is authorized to act as a custodian or trustee;
- (3) is organized under the laws of the United States or any state of the United States; and
- (4) meets one of the following requirements:
 - (A) is a member of the Federal Reserve System;
 - (B) is a member of or is eligible to receive deposits that are insured by the Federal Deposit Insurance Corporation;
 - (C) maintains an account with a Federal Reserve Bank and is subject to supervision and examination by the Board of Governors of the Federal Reserve System; or
 - (D) is subject to supervision and examination by the Federal Housing Finance Board.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 423.104. PROOF OF OWNERSHIP OF SECURITIES. (a) A domestic insurer may demonstrate ownership of a security through a definitive certificate or in accordance with rules adopted under this section.

(b) The commissioner shall adopt rules under which a domestic insurer may demonstrate ownership of an uncertificated security, as defined by Section 8.102(a), Business & Commerce Code, consistent with common practices of securities exchanges and markets. The rules must establish:

- (1) standards for the types of uncertificated securities the insurer may hold;
- (2) the manner in which the insurer may demonstrate ownership of the security; and
- (3) adequate financial safeguards relating to the ownership of uncertificated securities.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 423.105. MANDATORY DEPOSIT OF SECURITIES; COMMISSIONER

CONTROL. (a) An insurer that is required to deposit securities as a condition of engaging in the business of insurance in this state may deposit the securities with a clearing corporation or in the Federal Reserve book-entry system.

(b) Securities under Subsection (a) are under the commissioner's control and may not be withdrawn by the insurer without the commissioner's approval.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 423.106. REQUIRED EVIDENCE FOR SECURITIES. (a) An insurer that deposits securities under Section 423.105 shall provide evidence to the commissioner to establish that:

(1) the securities are recorded in an account in the name of:

(A) the participating custodian bank or member bank through which the insurer deposits the securities with a clearing corporation or in the Federal Reserve book-entry system; or

(B) the insurer, if the insurer makes the deposit directly with the clearing corporation as a direct participant; and

(2) the records of the participating custodian bank, direct participant, or member bank and of the clearing corporation show that the securities are under the commissioner's control.

(b) Evidence under Subsection (a)(1) must be issued, as applicable, by:

(1) the participating custodian bank;

(2) the member bank; or

(3) the insurer, when the insurer makes the deposit directly with the clearing corporation as a direct participant.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 423.107. ASSETS DEPOSITED WITH CLEARING CORPORATION. A domestic insurer may deposit assets with a clearing corporation only if:

(1) the insurer is a member of an insurance holding

company system that has assets of at least \$5 billion, as shown by annual statements of member insurers for the preceding year;

(2) the insurer uses the clearing corporation only as a depository for investments in internationally traded securities;

(3) the insurer's total investment in internationally traded securities under Subdivision (2) does not exceed the insurer's policyholders' surplus; and

(4) the insurer does not use securities deposited with the clearing corporation as security for reinsurance.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 423.108. LIMITATION ON ASSETS DEPOSITED WITH CLEARING CORPORATION. The commissioner by rule may adopt a reasonable limit on the percentage of a domestic insurer's assets that may be deposited with a clearing corporation. The limit may not exceed five percent of the insurer's total assets, as shown by the insurer's annual statement filed with the department for the year preceding the year for which the limit is adopted.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.