

31A-2-206 Receipt and handling of deposits.

- (1) As used in this chapter:
 - (a) "Custodian institution" means a financial institution in this state as defined under Section 7-1-103 that:
 - (i) has authority under Title 7, Chapter 5, Trust Business, to engage in a trust business; and
 - (ii) is approved by the commissioner to have custody of deposited securities, whether physically, through the Federal Reserve book-entry system, or through a clearing corporation as defined under Subsection 70A-8-101(1).
 - (b) "Federal Reserve book-entry system" means the computerized system sponsored by the United States Department of the Treasury and certain other agencies and instrumentalities of the United States for holding and transferring securities of the United States government and other agencies and instrumentalities.
- (2) Subject to the commissioner's approval and to the requirements of this section, the state treasurer shall accept, and a custodian institution qualified under Subsection (1)(a) may accept:
 - (a) deposits required or permitted under this title or rules adopted under this title;
 - (b) deposits of domestic insurers or of alien insurers domiciled in this state if required by the laws of other states as a prerequisite to authority to do an insurance business in other states; and
 - (c) deposits resulting from application of any retaliatory provisions of this title.
- (3) Deposits authorized under Subsection (2) shall be of securities described in Subsection (7).
- (4) Unless otherwise provided by the law requiring or permitting the deposit, each deposit shall be held in trust:
 - (a) first, for administrative costs under Subsection 31A-27a-701(2)(a);
 - (b) second, for the claimants under Subsection 31A-27a-701(2)(c);
 - (c) third, for the claimants under Subsection 31A-27a-701(2)(d); and
 - (d) fourth, for all other creditors in the order of priority established under Section 31A-27a-701.
- (5) A claim may be made against the deposit of an alien insurer only if it arises out of a transaction in the United States.
- (6) Deposits may be made by:
 - (a) delivering physical custody and control of the deposited security to the state treasurer or a custodian institution, accompanied by a statement signed by the depositor indicating that the deposit shall be held in trust under the terms of this section and subject to the commissioner's exclusive direction until control is released by the commissioner; or
 - (b) delivering to the commissioner, on a form adopted by rule, a signed certificate of a custodian institution, describing securities qualifying for deposit under Subsection (7) that are on deposit with a clearing corporation or held in the Federal Reserve book-entry system in the name of the custodian institution, in trust for the purposes stated under this section, and that these securities are subject to the exclusive direction of the commissioner and may not be withdrawn or transferred by any person, including the insurer owning the securities, without the commissioner's written approval.
- (7)
 - (a) Deposits may consist of any securities authorized in Subsection (7)(b) for which there is a ready market if they:
 - (i) are expressly approved by the commissioner;
 - (ii) are subject to disposition by the state treasurer or custodian institution only with the concurrence of the commissioner; and
 - (iii) are not available to any other person except as expressly provided by law.
 - (b) The authorized securities are:
 - (i) deposits or certificates of deposit insured by the Federal Deposit Insurance Corporation;

- (ii) bonds or other evidences of indebtedness that are guaranteed as to principal and interest by the United States;
 - (iii) tax anticipation bonds or notes, general obligation bonds, or revenue bonds of this state or of any county, incorporated city or town, school district, or other political subdivision of this state, if the bonds or notes are rated AAA by Standard and Poor's or an equivalent nationally recognized rating agency;
 - (iv) bonds or other evidences of indebtedness issued or guaranteed by an agency or instrumentality of the United States; and
 - (v) any other security approved by the commissioner that the commissioner considers an equivalent grade investment to those enumerated under Subsections (7)(b)(i) through (iv) based on tests of the safety of principal and liquidity.
- (8) Securities held on deposit shall be valued under Section 31A-17-401 as those investments are valued for life insurers, or at market, whichever is lower. The securities shall be revalued whenever the commissioner requests to ensure continued compliance with the requirements of this title.
- (9)
- (a) The state treasurer or custodian institution shall:
 - (i) deliver to the depositor a receipt for all securities deposited or held;
 - (ii) issue a duplicate copy of the receipt to the commissioner; and
 - (iii) permit the depositor to inspect its physically held securities at any reasonable time.
 - (b) On application of the depositor or when required by the law of any state or country or by the order of any court of competent jurisdiction, the state treasurer or custodian institution shall certify that the deposit was made and what is on deposit.
 - (c) Depositors, the state treasurer, any custodian institution, and the commissioner shall each keep a permanent record of securities deposited or held under this section and of any substitutions or withdrawals. They shall compare records at least annually.
- (10) A transfer of a deposited security, whether voluntary or by operation of law, is valid only if approved in writing by the commissioner and countersigned by the state treasurer or custodian institution.
- (11) Neither a judgment creditor nor other person may levy upon any deposit held under this section.
- (12) A depositor that has complied with all provisions of this title intended to preserve its financial solidity is, while solvent and complying with the laws of this state, entitled to:
- (a) receive interest and cash dividends accruing on the securities held for its account; and
 - (b) substitute for deposited securities other eligible securities, as expressly approved by the commissioner.
- (13) Within 45 days after the commissioner gives notice to a depositor that a deposit is not an acceptable deposit under Subsection (7), the depositor shall substitute other eligible securities expressly approved by the commissioner and allowed under Subsection (7).
- (14) A depositor may voluntarily deposit or transfer control of eligible securities in excess of requirements to absorb fluctuations in value and to facilitate substitution of securities.
- (15) Upon the depositor's request and upon approval of the commissioner, any deposit or part of a deposit shall be released to, or on order of, the depositor to the extent not needed to satisfy requirements of this title. On the order of a court of competent jurisdiction, the deposit or appropriate part of the deposit shall be released to the person for whom it is held.
- (16) Each depositor shall pay the cost of custody of securities by a custodian institution or by the state treasurer.
- (17) The commissioner shall adopt rules to implement this section.

Amended by Chapter 309, 2007 General Session