

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 497
SENATE BILL 472

AN ACT TO PERMIT FILING OF SECURITIES BY ISSUE AND THE ESTABLISHMENT
AND USE OF A SECURITIES CLEARING CORPORATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 36-32 is revised to read as follows:

"§ 36-32. **Banks holding securities in name of nominee.** — A bank holding securities as fiduciary may hold them in the name of a nominee, without mention of the trust in the certificate or securities registration book. Provided, that

- (1) The trust records and all reports or accounts rendered by the fiduciary clearly show the ownership of the securities by the fiduciary and the facts regarding its holdings;
- (2) The nominee shall not have possession of the securities or access thereto except under the immediate supervision of the fiduciary or when such securities are deposited by the fiduciary in a clearing corporation as defined in G.S. 25-8-102(3).

The fiduciary shall personally be liable for any loss to the trust resulting from an act of such nominee in connection with such securities so held."

Sec. 2. A new section is hereby added to Chapter 36 of the General Statutes to read as follows:

"§ 36-32.1. **Bank and trust company assets kept separate; records of securities.** — Every trust company shall keep its trust assets separate and distinct from assets owned by the bank. The books and accounts of the trust company shall at all times show the ownership of all moneys, funds, investments, and property held by the company. Stock or other securities may be kept by the company in either of the following ways:

- (1) All certificates representing the securities of an account may be held separate from those of all other accounts; or
- (2) Certificates representing securities of the same class of the same issuer held for particular accounts may be held in bulk without certification as to ownership attached and, to the extent feasible, certificates of small denomination may be merged into one or more certificates of larger denomination, provided that the trust company, when operating under the method of safekeeping security certificates described in this paragraph, shall be subject to such rules and regulations as, in the case of State chartered institutions, the State Banking Commission and, in the case of national banking associations, the Comptroller of the Currency may from time to time issue and, upon demand by any person to whom it has a duty to account, it shall certify in writing the securities held by it for an account."

Sec. 3. G.S. 25-8-102(3) is rewritten to read as follows:

"§ 25-8-102. **Definitions and index of definitions.** — (3) A 'clearing corporation' is a corporation

- (a) at least ninety percent (90%) of the capital stock of which is held by or for one or more persons (other than individuals), each of whom

- (i) is subject to supervision or regulation pursuant to the provisions of federal or State banking laws or State insurance laws, or
 - (ii) is a broker or dealer or investment company registered under the Securities Exchange Act of 1934 or the Investment Company Act of 1940, or
 - (iii) is a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934, and none of whom, other than a national securities exchange or association, holds in excess of twenty percent (20%) of the capital stock of such corporation; and
- (b) any remaining capital stock of which is held by individuals who have purchased such capital stock at or prior to the time of their taking office as directors of such corporation and who have purchased only so much of such capital stock as may be necessary to permit them to qualify as such directors."

Sec. 4. A new section is hereby added to Chapter 53 of the General Statutes to read as follows:

"§ 53-159.1. Power of fiduciary or custodian to deposit securities in a clearing corporation. — Notwithstanding any other provision of law, any fiduciary holding securities in its fiduciary capacity, any bank or trust company holding securities in a fiduciary capacity or as a custodian or agent is authorized to deposit or arrange for the deposit of such securities in a clearing corporation as defined in G.S. 25-8-102(3). When such securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other such securities deposited in such clearing corporation by any person regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such bank or trust company acting as a fiduciary or as a custodian or managing agent shall at all times show the name of the party for whose account the securities are so deposited. Title to such securities may be transferred by bookkeeping entry on the books of such clearing corporation without physical delivery of certificates representing such securities. A bank or trust company so depositing securities pursuant to this section shall be subject to such rules and regulations as, in the case of State chartered institutions, the State Banking Commission and, in the case of national banking associations, the Comptroller of the Currency may from time to time issue. A bank or trust company acting as custodian or agent for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such bank or trust company in such clearing corporation for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of such fiduciary's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary in such clearing corporation for its account as such fiduciary. This section shall apply to any fiduciary holding securities in its fiduciary capacity, and to any bank or trust company holding securities as a fiduciary or as a custodian or managing agent acting on the effective date of this section or who thereafter may act regardless of the date of the agreement, instrument or court order by which it is appointed and regardless of whether or not such fiduciary, custodian or agent owns capital stock of such clearing corporation. The fiduciary shall personally be liable for any loss to the trust resulting from an act of such nominee in connection with such securities so deposited."

Sec. 5. G.S. 33-42.1 is revised to read as follows:

"§ 33-42.1. Guardian to exhibit investments and bank statements. — At the time the accounts required by this Article and other provisions of law are filed, the clerk of the superior court shall require the guardian to exhibit to the court all investments and bank statements showing cash balance, and the clerk of the superior court shall certify on the original account that an examination was made of all investments and the cash balance, and that the same are correctly stated in the account: Provided, such examination may be made by the clerk of the

superior court of the county in which such guardian resides or the county in which such securities are located and, when the guardian is a duly authorized bank or trust company, such examination may be made by the clerk of the superior court of the county in which such bank or trust company has its principal office or in which such securities are located; the certificate of the clerk of the superior court of such county shall be accepted by the clerk of the superior court of any county in which such guardian is required to file an account; provided that banks, organized under the laws of North Carolina or the Acts of Congress, engaged in doing a trust and fiduciary business in this State, when acting as guardian, or in other fiduciary capacity, shall be exempt from the requirements of this section, when a certificate executed by a trust examiner employed by a governmental unit, by a bank's internal auditors who are responsible only to the bank's board of directors or by an independent certified public accountant who is responsible only to the bank's board of directors is exhibited to the clerk of the superior court and when said certificate shows that the securities are held by the fiduciary or by a clearing corporation for the fiduciary and when said certificate shows that the securities held by or for the fiduciary have been examined within one year."

Sec. 6. G.S. 34-10 is revised to read as follows:

"§ 34-10. Guardian's accounts to be filed; hearing on accounts. — Every guardian, who shall receive on account of his ward any moneys from the Bureau, shall file with the court annually, on the anniversary date of the appointment, in addition to such other accounts as may be required by the court, a full, true, and accurate account under oath of all moneys so received by him, of all 698 disbursements thereof, and showing the balance thereof in his hands at the date of such account and how invested. A certified copy of each of such accounts filed with the court shall be sent by the guardian to the office of the Bureau having jurisdiction over the area in which such court is located.

At the time such account is filed the clerk of the superior court shall require the guardian to exhibit to the court all investments and bank statements showing cash balance and the clerk of the superior court shall certify on the original account and the certified copy which the guardian sends the Bureau that an examination was made of all investments and cash balance and that same are correctly stated in the account; provided that banks, organized under the laws of North Carolina or the Acts of Congress, engaged in doing a trust and fiduciary business in this State, when acting as guardian, or in other fiduciary capacity, shall be exempt from the requirement of exhibiting such investments and bank statements, and the clerk of the superior court shall not be required to so certify as to the accounts of such banks, except that in addition to the officer verifying the accounts, there shall be added a certificate of another officer of the bank certifying that all assets referred to in the account are held by the guardian or by a clearing corporation for the guardian. If objections are raised to such an accounting, the court shall fix a time and place for the hearing thereon not less than 15 days nor more than 30 days from the date of filing such objections, and notice shall be given by the court to the aforesaid Bureau office and the North Carolina Department of Veterans Affairs by mail not less than 15 days prior to the date fixed for the hearing. Notice of such hearing shall also be given to the guardian."

Sec. 7. G.S. 53-47 is revised to read as follows:

"§ 53-47. Stocks, limitations on investment in. — No bank shall make any investment in the capital stock of any other state or national bank: Provided, that nothing herein shall be construed to prevent banks doing business under this Chapter from subscribing to or purchasing, upon such terms as may be agreed upon, the capital stock of clearing corporations as defined in G.S. 25-8-102(3), the capital stock of banks organized under that act of Congress known as the 'Edge Act' or the capital stock of central reserve banks whose capital stock exceeds one million dollars (\$1,000,000). To constitute a central reserve bank as contemplated by this Chapter, at least fifty percent (50%) of the capital stock of such bank shall be owned by other banks. The investment of any bank in the capital stock of such central reserve bank or

bank organized under the act of Congress commonly known as the 'Edge Act,' shall at no time exceed ten percent (10%) of the paid-in capital and permanent surplus of the bank making same. No bank shall invest more than fifty percent (50%) of its permanent surplus in the stocks of other corporations, firms, partnerships, or companies, unless such stock is purchased to protect the bank from loss. Any stocks owned or hereafter acquired in excess of the limitations herein imposed shall be disposed of at public or private sale within six months after the date of acquiring the same, and if not so disposed of they shall be charged to profit and loss account, and no longer carried on the books as an asset. The limit of time in which said stocks shall be disposed of or charged off the books of the bank may be extended by the Commissioner of Banks if in his judgment it is for the best interest of the bank that such extension be granted; provided that the limitations imposed in this section on the ownership of stock in or securities of corporations is suspended to the extent (and to that extent only) that any bank operating under the supervision of the Commissioner of Banks may subscribe for and purchase shares of stock in or debentures, bonds or other types of securities of any corporation organized under the laws of the United States of America for the purpose of insuring to depositors a part or all of their funds on deposit in banks where and to such extent as such stock or security ownership is required in order to obtain the benefits of such deposit insurance for its depositors."

Sec. 8. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 15th day of May, 1973.