

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: H2/18/99

A Bill

Act 452 of 1999
HOUSE BILL 1339

5 By: Representative Magnus
6
7

For An Act To Be Entitled

9 "AN ACT TO AMEND ARKANSAS CODE 23-69-134, TO ALLOW
10 SECURITIES BROKERAGE FIRMS TO ACT AS CUSTODIANS FOR
11 DOMESTIC INSURANCE COMPANIES' SECURITIES; AND FOR
12 OTHER PURPOSES. "
13

Subtitle

14 "TO AMEND ARKANSAS CODE 23-69-134, TO
15 ALLOW SECURITIES BROKERAGE FIRMS TO ACT
16 AS CUSTODIANS FOR DOMESTIC INSURANCE
17 COMPANIES' SECURITIES. "
18
19
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Arkansas Code 23-69-134 is hereby amended to read as
24 follows:

25 "23-69-134 Maintenance of home office and records.

26 (a) Every domestic insurer shall have and maintain its principal place
27 of business and home office in this state and shall keep therein complete
28 records of its assets, transactions, and affairs in accordance with such
29 methods and systems as are customary or suitable as to the kind or kinds of
30 insurance transacted.

31 (b) Every domestic insurer shall have and maintain its assets in this
32 state, except as to:

33 (1) Real property and personal property appurtenant thereto
34 lawfully owned by the insurer and located outside this state; and

35 (2) Such property of the insurer as may be customary, necessary,
36 and convenient to enable and facilitate the operation of its branch offices

1 and regional home offices located outside this state as referred to in
2 subsection (d) of this section.

3 (3) Such securities of the insurer that are readily marketable and
4 have a maturity of one (1) year or less from the date of purchase and that are
5 kept in safekeeping in a federally chartered bank, bank and trust company or
6 national bank association domiciled outside the State of Arkansas, provided
7 that:

8 (A) The insurer shall maintain in its possession a
9 safekeeping receipt for those securities evidencing uncontestable ownership;
10 and

11 (B) At no time shall the insurer hold pursuant to this
12 subdivision (b)(3) securities in an aggregate amount in excess of the greater
13 of:

- 14 (i) ten percent (10%) of its assets; or
- 15 (ii) forty percent (40%) of its surplus if a life or
16 disability insurer, or of its surplus to policyholders if other than a life or
17 disability insurer.

18 (4) In the discretion of the Commissioner, custodied securities
19 may be held or managed inside or outside the state by a bank custodian as
20 defined by and subject to the requirements imposed on bank custodians by rules
21 of the Department governing the holding and transferring of securities through
22 Federal Reserve book-entry. In addition, custodied securities may be held or
23 managed inside or outside the state by a securities brokerage firm meeting the
24 following qualifications:

25 The securities broker/dealer firm must be registered with and subject to
26 jurisdiction of the Securities and Exchange Commission, maintain membership in
27 the Securities Investor Protection Corporation, and demonstrate by its most
28 recent audited financial statement and regulatory filings:

29 (i) tangible net worth equal to or greater than one
30 hundred million dollars (\$100,000,000) and regulatory net capital in an amount
31 determined by the commissioner; or

32 (ii) tangible net worth equal to or greater than fifty
33 million dollars (\$50,000,000), along with:

34 (a) regulatory net capital in an amount
35 determined by the commissioner, and

36 (b) Securities Investor Protection Corporation

1 excess insurance coverage equal to or greater than the market value of the
2 insurers' securities held by the custodian and in the form approved by the
3 commissioner.

4 (B) The deposited securities with the Qualified
5 Broker/Dealer must be governed by a written custodial agreement governing the
6 insurer's deposit of the insurer's securities such that the Qualified
7 Broker/Dealer agrees that:

8 (i) The Qualified Broker/Dealer shall exercise the
9 same due care that is expected of a fiduciary with the responsibility for the
10 safeguarding of the insurer's custodied securities and for compliance with all
11 provisions of the custodial agreement, whether the insurer's custodied
12 securities are in the custodian's possession or have been deposited or
13 redeposited by the custodian with a subcustodian.

14 (ii) The Qualified Broker/Dealer shall indemnify the
15 insurer for any loss of custodied securities occasioned by the negligence or
16 dishonesty of custodian's officers and employees, or burglary, robbery, hold-
17 up, theft or mysterious disappearance, including loss by damage or
18 destruction. In the event of such loss, the custodian must promptly replace
19 the custodied securities or the value thereof, and the value of any loss of
20 rights or privileges resulting from said loss of custodied securities.

21 (iii) Custodied securities shall be segregated at all
22 times from the proprietary assets of the Broker/Dealer. The Broker/Dealer's
23 official records shall separately identify custodied securities owned by the
24 insurer.

25 (iv) All custodied securities that are registered
26 shall be registered in the name of the insurer or in the name of a nominee of
27 the insurer or in the name of the custodian or its nominee or, if in a
28 depository corporation, in the name of the depository corporation or its
29 nominee.

30 (v) All activities involving the insurer's custodied
31 securities shall be subject to the insurer's instructions and the custodied
32 securities shall be withdrawable upon demand by the insurer, or by the
33 Commissioner of the Arkansas Insurance Department, at any time.

34 (vi) The custodian shall furnish, upon request by the
35 insurer, or by the Commissioner of the Arkansas Insurance Department, a
36 confirmation of all purchases, sales or transfers of custodied securities to

1 or from the account of the insurer, and reports of custodied securities
2 sufficient to verify information reported in the insurer's annual statement
3 filed with the Arkansas Insurance Department and supporting schedules and
4 information required in any audit of the insurer's financial statement

5 (vii) The insurer or its designee, or the Commissioner
6 of the Arkansas Insurance Department, shall at all times be entitled to
7 examine all records maintained by the Broker/Dealer relating to the insurer's
8 custodied securities.

9 (viii) The custodian shall not use any of the
10 insurer's custodied securities for the Broker/Dealer's benefit and none of the
11 insurer's custodied securities shall be loaned, pledged, or hypothecated to
12 any person or organization .

13 (ix) The Broker/Dealer shall maintain 'securities all
14 risks coverage' or other insurance satisfactory to the Commissioner at levels
15 considered reasonable and customary for the custodian banking industry
16 covering the Broker/Dealer's duties and activities as custodian for the
17 insurer's assets and shall describe the nature and extent of such insurance
18 protection. Any change in such insurance protection during the term of the
19 custodial agreement shall be promptly disclosed to the insurer.

20 (x) The Broker/Dealer is authorized and instructed by
21 the insurer to honor any requests made by the Arkansas Insurance Department
22 for information concerning the insurer's custodied securities. The department,
23 from time to time, may request, and the custodian shall furnish, a detailed
24 listing of the insurer's custodied securities and an affidavit by the
25 Broker/Dealer certifying the custodian's safekeeping responsibilities relative
26 to the custodied securities. The Broker/Dealer's response to such requests
27 shall be made directly to the department and shall encompass all of the
28 insurer's custodied securities.

29 (xi) Any other requirements provided by rules and
30 regulations of the commissioner.

31 (c)(1) Removal of all or a material part of the records or assets of a
32 domestic insurer from this state except pursuant to a plan of merger or
33 consolidation approved by the commissioner under this code, or for such other
34 reasonable purposes and periods of time as may be approved by the commissioner
35 in writing in advance of the removal, or concealment of the records or assets
36 or material part thereof from the commissioner is prohibited.

1 (2) Any person who removes or attempts to remove the records or
2 assets or the material part thereof from the home office or other place of
3 business or of safekeeping of the insurer in this state with the intent to
4 remove them from this state, or who conceals or attempts to conceal them from
5 the commissioner, in violation of this subsection, shall upon conviction be
6 guilty of a felony punishable by a fine of not
7 more than ten thousand dollars (\$10,000) or by imprisonment in the
8 penitentiary for not more than five (5) years, or by both fine and
9 imprisonment in the discretion of the court.

10 (3) Upon any removal or attempted removal of the records or
11 assets, or upon retention of the records or assets or material part thereof
12 outside this state, beyond the period therefor specified in the commissioner's
13 consent under which the records were so removed, or upon concealment of or
14 attempt to conceal records or assets in violation of this section, the
15 commissioner may institute delinquency proceedings against the insurer
16 pursuant to the provisions of §§ 23-68-101 — 23-68-113 and 23-68-115 — 23-
17 68-132.

18 (d) This section shall not be deemed to prohibit or prevent an insurer
19 from:

20 (1) Establishing and maintaining branch offices or regional home
21 offices in other states where necessary or convenient to the transaction of
22 its business and keeping in those offices the detailed records and assets
23 customary and necessary for the servicing of its insurance in force and
24 affairs in the territory served by the office, as long as the records and
25 assets are made readily available at the office for examination by the
26 commissioner at his request;

27 (2) Having, depositing, or transmitting funds and assets of the
28 insurer in or to jurisdictions outside of this state as reasonably and
29 customarily required in the regular course of its business;

30 (3) Maintaining its home office, records, and assets in another
31 state, provided:

32 (A) The insurer shall keep in its home office complete
33 records of its assets, transactions, and affairs in accordance with such
34 methods and systems as are customary or suitable as to the kinds of insurance
35 transacted;

36 (B) The insurer was maintaining its home office in another

1 state upon January 1, 1960;

2 (C) All records and assets of the insurer are made readily
3 available at the home office for examination by the commissioner at his
4 request; and

5 (D) The insurer shall maintain a principal place of business
6 in this state where service of process may be made as provided in § 23-79-204
7 and § 23-79-205."

8

9 SECTION 2. All provisions of this Act of a general and permanent nature
10 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
11 Revision Commission shall incorporate the same in the Code.

12

13 SECTION 3. If any provision of this Act or the application thereof to
14 any person or circumstance is held invalid, such invalidity shall not affect
15 other provisions or applications of the Act which can be given effect without
16 the invalid provision or application, and to this end the provisions of this
17 Act are declared to be severable.

18

19 SECTION 4. All laws and parts of laws in conflict with this Act are
20 hereby repealed.

21

22 SECTION 5. EMERGENCY CLAUSE. It is hereby found and determined by the
23 Eighty-second General Assembly that the area of insurance is a rapidly growing
24 and changing industry; that the effectiveness of this act is essential to the
25 operation of the insurance industry; that the availability of qualified
26 custodians for insurance company assets is diminishing; and that a delay in
27 the effective date would cause unnecessary hardship to the insurance industry
28 in placing their assets with qualified custodians. Therefore, an emergency is
29 declared to exist and this act being immediately necessary for the
30 preservation of the public peace, health and safety shall become effective on
31 the date of its approval by the Governor. If the bill is neither approved nor
32 vetoed by the Governor, it shall become effective on the expiration of the
33 period of time during which the Governor may veto the bill. If the bill is
34 vetoed by the Governor and the veto is overridden, it shall become effective
35 on the date the last house overrides the veto.

36

/s/ Magnu

APPROVED: 3/8/1999s