

State of Arkansas

*As Engrossed: H2/18/99*

82nd General Assembly

# A Bill

Regular Session, 1999

HOUSE BILL 1339

By: Representative Magnus

## For An Act To Be Entitled

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

## Subtitle

"TO AMEND ARKANSAS CODE 23-69-134, TO ALLOW SECURITIES BROKERAGE FIRMS TO ACT AS CUSTODIANS FOR DOMESTIC INSURANCE COMPANIES' SECURITIES. "

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

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

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

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

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

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

(2) Such property of the insurer as may be customary, necessary, 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/ Magnus