

CHAPTER 812

S.B. No. 719

An Act relating to authorizing and limiting transactions with funds and assets of Texas domestic insurers and to payment of certain debentures payable on liquidation; amending Article 21.39-B, Chapter 21, Insurance Code, as amended, by amending Section 1 and adding Section 5 and Article 21.39C; repealing laws in conflict; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 1, Article 21.39-B, Chapter 21, Insurance Code, as amended, is amended to read as follows:

"Section 1. Any director, member of a committee, or officer, or any clerk of a domestic company, who is charged with the duty of handling or investing its funds, shall not:

"(1) deposit or invest such funds, except in the corporate name of such company, provided, however, that securities kept under a custodial agreement or trust agreement with a bank or trust company may be issued in the name of a nominee of such bank or trust company if such bank or trust company has corporate trust powers and is duly authorized to act as a custodian or trustee and is organized under the laws of the United States of America or any state thereof and either (i) is a member of the Federal Reserve System, (ii) ~~or~~ is a member of or is eligible to receive deposits which are insured by the Federal Deposit Insurance Corporation, or (iii) 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;

"(2) borrow the funds of such company;

"(3) be interested in any way in any loan, pledge, security, or property of such company, except as stockholder; or

"(4) take or receive to his own use any fee, brokerage, commission, gift, or other consideration for, or on account of, a loan made by or on behalf of such company."

SECTION 2. Article 21.39-B, Chapter 21, Insurance Code, as amended, is amended by adding a new Section 5 to read as follows:

"Section 5. (a) *Subject to compliance with the provisions of Article 21.49-1 of this code, nothing in this article shall prevent a domestic insurance company, which is a member of an insurance holding company system having insurance affiliates licensed in this state with assets in an aggregate amount in excess of \$1,000,000,000, from authorizing an affiliated corporation to invest, hold, and administer as agent or nominee on behalf of such domestic insurance company those bonds, notes, or other evidences of indebtedness and repurchase agreements that are authorized and permissible investments under this code, or participations therein, and which mature within one year of the date of acquisition thereof; provided that such securities are invested, held, and administered pursuant to a written agreement authorized by the board of directors of the insurance company or an authorized committee thereof, and which is submitted to the Commissioner of Insurance for prior approval under the provisions of Subsection (d) of Section 4 of Article 21.49-1 of this code and receives the written approval of the commissioner based upon satisfactory evidence that such agreement will facilitate the operations of the domestic insurance company and will not unreasonably diminish the service to or protection of the domestic insurance company's policyholders in this state.*

"The agreement shall comply with the following terms: (1) the affiliated corporation shall maintain records adequate to identify and verify the securities (or proportionate interests therein) belonging to the insurance company in an office located in the State of Texas; (2) the affiliated corporation shall allow the commissioner or his designee to examine all records relating to those securities held subject to the agreement; (3) the insurance company may authorize the affiliated corporation (i) to hold the securities of the insurance company in bulk, in certificates issued in the name of the affiliated corporation or its nominee and to commingle them with securities owned by other affiliates of the affiliated corporation, (ii) to provide for such securities to be held by a custodian, including the custodian of securities of the affiliated corporation, or in a clearing corporation or the Federal Reserve book-entry system as provided in this article, and (iii) to purchase, sell, or otherwise dispose of the securities in accordance with instructions received from the insurance company; (4) the insurance company shall report annually by amendment to its registration statement filed as required by Subsection (d) of Section 3 of Article 21.49-1 of this code (i) all investments and transactions with the affiliated corporation pursuant to this section, and (ii) the market value of all securities held by the affiliated corporation on behalf of the insurer as of December 31 of the year next preceding the date of such amendment; (5) all of such investments

and transactions with or among affiliates of the insurer must otherwise comply with all other applicable provisions of Article 21.49-1 of this code or applicable rules adopted thereunder by the State Board of Insurance; and (6) such other provisions as may be required pursuant to regulations promulgated by the State Board of Insurance.

“(b) As used herein, the term ‘affiliated corporation’ means a corporation (i) organized under the laws of one of the states of the United States of America or of the District of Columbia, and (ii) that is a wholly owned subsidiary of a domestic insurance company or is under common control with such insurance company such that the affiliated corporation and such insurance company are wholly owned subsidiaries either direct or indirect of a controlling corporation.

“(c) As used herein, the terms ‘insurance holding company system’ and ‘insurer’ have the meanings assigned to such terms in Article 21.49-1 of this code.”

SECTION 3. Chapter 21, Insurance Code, is amended by adding a new Article 21.39C to read as follows:

“Article 21.39C. PAYMENT OF DEBENTURES PAYABLE UPON LIQUIDATION. In any civil action under Article 21.28 of this code for collection of a debenture payable upon liquidation of the assets of a company such action for collection shall not be considered a claim under that article. Debentures which are properly reflected as outstanding obligations on the company books and records as payable upon liquidation shall be paid by the receiver out of any surplus remaining after payment of all claims and reserves therefor have been paid or set aside, but prior to the distribution to shareholders.”

SECTION 4. All laws and parts of laws in conflict herewith shall be and the same are hereby repealed.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on May 1, 1985, by the following vote: Yeas 27, Nays 3; Senate concurred in House amendment on May 21, 1985, by the following vote: Yeas 31, Nays 0; passed the House, with amendment, on May 17, 1985, by the following vote: Yeas 134, Nays 0, one present not voting.

Approved: June 15, 1985

Effective: Immediately